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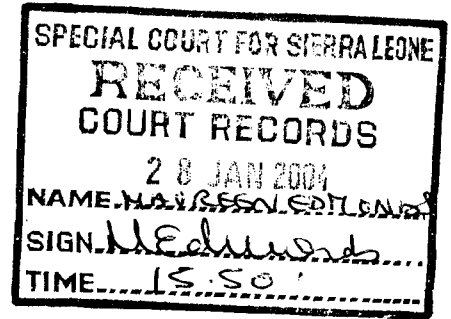
THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN - SIERRA LEONE

**IN THE APPEALS CHAMBER**

Before: Judge Geoffrey Robertson, Q.C. President  
Judge Emmanuel O. Ayoola  
Judge Gelaga King  
Judge Renate Winter  
Judge.....

Registrar: Mr. Robin Vincent

Date filed: 28<sup>th</sup> January, 2004.



CASE NO. SCSL - 2003-01-PT

THE PROSECUTOR

**Against**

CHARLES GHANKAY TAYLOR also known as

CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR - APPLICANT

**AND**

JUDGE GEOFFREY ROBERTSON, Q.C. PRESIDENT OF THE APPEALS CHAMBER OF  
THE SPECIAL COURT FOR SIERRA LEONE - RESPONDENT

APPLICANT'S MOTION AGAINST THE UNWHOLESOME AND BIAS COMMENTS MADE BY THE PRESIDENT AND PRESIDING JUDGE OF THE APPEALS CHAMBER OF THE SPECIAL COURT FOR SIERRA LEONE GEOFFREY ROBERTSON Q.C. WHEN HE DESCRIBED EX-PRESIDENT CHARLES GHANKAY TAYLOR THE APPLICANT HEREIN AS A VICIOUS WARLORD AT PAGE 466 OF HIS BOOK ENTITLED CRIMES AGAINST HUMANITY - THE STRUGGLE FOR GLOBAL JUSTICE UNDER THE SUBTITLE - LESSONS FROM SIERRA LEONE STARTING FROM PAGE 465 ONWARDS AS WELL AS ON OTHER TWO GROUNDS WHICH GO TO JURISDICTION AND/OR EXCESS OF JURISDICTION

Office of the Prosecutor:

Mr. David M. Crane, Prosecutor  
Mr. Desmond de Silva Q.C. Deputy Prosecutor  
Mr. Walter Marcus-Jones, Senior Appellate Counsel  
Mr. Christopher Staker, Senior Appellate Counsel  
Mr. Abdul Tejan -Cole, Appellate Counsel

Applicant's Counsel

Terence Michael Terry

Respondent:

Judge Geoffrey Robertson, Q.C. President and  
Presiding Judge of the Appeals Chamber of the  
Special Court for Sierra Leone.

**THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN – SIERRA LEONE**

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The Accused the Applicant herein brings this Motion before the Appeals Chamber of the Special Court for Sierra Leone seeking specific remedies referred to below against the President and Presiding Judge of the said Appeals Chamber of the Special Court for Sierra Leone Geoffrey Robertson, Q.C. on grounds of bias and/OR the appearance of bias on his part in circumstances wherein he described Ex-President Charles Ghankay Taylor the Applicant herein as a vicious warlord at page 466 of his book entitled “CRIMES

AGAINST HUMANITY – THE STRUGGLE FOR GLOBAL JUSTICE” under the Subtitle Lessons From Sierra Leone, starting from page 465 onwards, as well as on the ground that the said Appeals Chamber of the Special Court for Sierra Leone lacked jurisdiction and/OR acted in excess of jurisdiction when it proceeded to hear the arguments before it on the 31<sup>st</sup> October and 1<sup>st</sup> November 2003 respectively in respect of the said Motion of the 23<sup>rd</sup> July 2003 submitted to it by the Trial Chamber pursuant to Rule 72(E) of the Rules of Procedure and Evidence of the Special Court without the full complement of 5 Judges contrary to Article 2(2)(c) to be found under the Schedule to the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone to wit (the Special Court Agreement, 2002 (Ratification) Act, 2002). In addition for a Declaration that the purported amendment to Rule 72(E) & (F) of the Rules of Procedure and Evidence of the said Special Court for Sierra Leone adopted at an alleged plenary meeting on 30<sup>th</sup> October 2003 a day before the actual commencement of the said hearing before the said Appeals Chamber of the said Motion of the 23<sup>rd</sup> day of July 2003 which was deemed to have retrospective effect is ultra vires, contrary to, and does violence to the provisions of Article 2(2)(c) contained under the Schedule referred to as the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone to wit (the Special Court Agreement, 2002 (Ratification) Act, 2002). The said amendment to Rule 72(E) & (F) of the Rules of Procedure and Evidence of the said Special Court for Sierra Leone is exhibited to the Index of Attachment – 1 that is the affidavit of Ayo Max-Dixon as Exhibit “A M D 5”.

### **INTRODUCTION**

In the light of Rule 72 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone, Article 2(2)(c) to be found under the Schedule to the Agreement between the United Nations and the Government of Sierra Leone to wit (the Special Court Agreement, 2002 (Ratification) Act, 2002) and the inherent jurisdiction of the Appeals chamber of the Special Court for Sierra Leone, the Applicant herein submits this Motion to move the Appeals Chamber of the Special Court for Sierra Leone to grant the Orders prayed for in this Motion on the grounds canvassed below.

**ARGUMENT**

**RULES**

Rule 72 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.

**ARTICLES**

Article 2(2)(c) is to be found under the Schedule to the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone to wit (the Special Court Agreement, 2002 (Ratification) Act, 2002). Based on a Power of Attorney dated the 22<sup>nd</sup> of July 2003 and duly signed by the Accused herein the Applicant appointed Terence Michael Terry as his Defence Counsel at the Special Court for Sierra Leone and subsequently instructed him by letter dated the 6<sup>th</sup> January 2004. Both the Power of Attorney dated the 22<sup>nd</sup> July, 2003 and the letter of instructions of the 6<sup>th</sup> of January 2004 are exhibited to the index of attachment 1 – that is the affidavit of Ayo Max-Dixon as Exhibits “A M D 1” & “A M D 2” respectively.

The Applicant Charles Ghankay Taylor Ex-President and one time Head of State of the Republic of Liberia will further rely on Rule 72 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone, Article 2(2)(c) to be found under the Schedule to the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone to wit (the Special Court Agreement, 2002 (Ratification) Act, 2002) as well as under the inherent jurisdiction of the Court.

**FACTUAL BASIS FOR THE MOTION**

The Applicant Charles Ghankay Taylor filed a Motion under protest and without waiving of immunity accorded to the then President and Head of State of the Republic of Liberia before the Trial Chamber on the 23<sup>rd</sup> July 2003. Both the Motion of the 23<sup>rd</sup> July, 2003 and the Consequential Order of the Trial Chamber of the Special Court for Sierra Leone of the 19<sup>th</sup> September, 2003 are exhibited to the said index of attachment 1 as Exhibits “A M D 3” & “A M D 4” respectively.

The said Motion of the 23<sup>rd</sup> July 2003 was submitted to the Appeals Chamber by the Trial Chamber for its determination on Jurisdictional grounds. It raised 2 issues on which the said Applicant prayed for orders to quash the indictment and set aside and/OR cancel both the Indictment and Warrant of Arrest of the 7<sup>th</sup> March, 2003 issued by Judge Bankole

Thompson. The Appeals Chamber proceeded to hear the said Motion of 23<sup>rd</sup> July 2003 submitted to it by the Trial Chamber on the 31<sup>st</sup> October, 2003 and 1<sup>st</sup> November, 2003 respectively. His Honour Judge Geoffrey Robertson Q.C. presided over the hearings of the 31<sup>st</sup> October and 1<sup>st</sup> November 2003 before the said Appeals Chamber together with three other Judges namely His Honour Judge Gelaga King, His Honour Judge Emmanuel O. Ayoola and His Honour Judge Renate Winter. After full arguments were canvassed before the said Appeals Chamber by all the parties and the respective amicus curiae, the matter was then adjourned for Ruling which is yet to be delivered by the said Appeals chamber. It is in respect of the foregoing matters that the Applicant is now seeking the below mentioned Orders on grounds of bias and/OR apparent bias on the part of the presiding Judge His Honour Geoffrey Robertson Q.C. on grounds of excess of Jurisdiction in that the Appeals Chamber proceeded to hear the said Motion of the 23<sup>rd</sup> day of July 2003 without the full compliment of 5 Judges of the said Appeals Chamber, and on the further ground seeking a declaratory order relating to the purported amendment to Rules 72(E) and (F) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.

Counsel for the Applicant will rely on the index of attachment 1 – that is the affidavit of Ayo Max-Dixon sworn to on the 27<sup>th</sup> day of January 2004 at 3:40 o'clock in the afternoon and its attached exhibits; and will rely particularly on the facts deposed to in paragraphs 2 to 10 respectively of the said affidavit and/OR any other supplemental and additional affidavit(s) sworn to by the said Ayo Max-Dixon or by any other deponent(s) in support of the Orders prayed for in support of this application herein by way of Motion dated the 27<sup>th</sup> day of January 2004.

## **LEGAL BASIS FOR THE MOTION**

### **THE HISTORICAL CONTEXT**

It is submitted by Counsel for the Applicant that the rule against bias is of antiquity and has found various forms of expression in the old cases. Lord Coke held in *The Earl of Derby's case* – (1613) 12 Co. Rep. 114; 77 E.R. 1390 that “the Chamberlain of Chester, being sole Judge of Equity, cannot decree anything wherein himself is party, for he cannot be a judge in propria causa”. In *Brookes v. Earl of Rivers* (1668) Hard 503; 145 E.R. 569 – it was held that “where a judge has an interest, neither he nor his deputy can determine a cause, or sit in court; and if he does, a prohibition lies. In *Wright v. Crump* – it was held that it is

“misconduct” for one to sit as a judge in a cause in which he is party, and that the King’s Bench will grant an attachment against a judge of an inferior court for such misconduct. In *Parishes of Great Charte and Kennington* – (1742) 2 Strange 1173; 93 E.R. 1107, it was held that “practice could not overturn so fundamental a rule of justice, as that a party interested could not be a judge” – 93 E.R. 1107 at 1108.

It is submitted that in 1999 the House of Lords – In *R. v. Bow Street Metropolitan Stipendiary Magistrate, ex p. Pinochet Ugarte (No. 2)* [1999] 1 All E.R. 577 (hereinafter referred to as ‘*Ex p. Pinochet*’) set aside one of its own decisions on the ground of an appearance of bias and ordered a new hearing of the appeal.

It is further submitted that disqualification on grounds of bias may take one of two forms – automatic disqualification, and disqualification for apprehended bias. In England apprehended bias means a real danger of bias – *R. v. Gough* [1993] 2 All E.R. 724. It is submitted that elsewhere, it means a reasonable apprehension or suspicion of bias – e.g. Australia – see *R. v. Webb* (1994) 181 C.L.R. 41, HC Aus. In *Ex p. Pinochet* the House of Lords decided to apply automatic disqualification.

On the question of BIAS: See *Franklin & others v. Minister of Town & Country Planning* H.L.: 1947 2 AER “p. 289:- at p. 296 Per Lord Thankerton:- “The proper significance of the word ‘bias’ is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, such as a Judge, OR those who are commonly regarded as holding a quasi judicial office, such as an ARBITRATOR.”

Counsel for the Applicant submits that the right to a hearing by an independent and impartial tribunal established by Law is guaranteed under the 1991 Constitution of Sierra Leone Act No. 6 of 1991. Whilst Counsel for the Applicant is on this issue, he hopes that he will be permitted in addition to draw strength from a decision of the European Court of Human Rights which has been concerned with the appearance of impartiality as with actual impartiality (for example, See the case of:- LANGBORGER V. SWEDEN: 1989 12 EHRR. 416.

Counsel for the Applicant submits most respectfully that in the light of the unwholesome and bias comments made by the President and Presiding Judge of the Appeals Chamber of the Special Court for Sierra Leone Geoffrey Robertson, Q.C. when he described Ex-

President Charles Ghankay Taylor the Applicant herein as a vicious warlord at page 466 of his book entitled “CRIMES AGAINST HUMANITY – THE STRUGGLE FOR GLOBAL JUSTICE” under the Subtitle Lessons From Sierra Leone, starting from page 465 onwards, His Honour Judge Geoffrey Robertson, Q.C. ought properly with respect to reclude himself from the panel of Judges assigned to hear, entertain and adjudicate upon the said Motion of the 23<sup>rd</sup> of July 2003 before the said Appeals Chamber on the 31<sup>st</sup> October, 2003 and 1<sup>st</sup> November, 2003 respectively up until the delivery of the Ruling which is still pending.

As a matter of law it is submitted that the said Judge Geoffrey Robertson, Q.C. the Respondent herein knew and/OR ought to have known that his aforesaid comments referred to in the immediate preceding paragraph of this Motion point to bias and/OR the appearance of bias on his part which should have warranted him reclusing himself from sitting and presiding over the said proceedings of the 31<sup>st</sup> October, 2003 and 1<sup>st</sup> November, 2003 respectively before the Appeals Chamber up until its ruling which is yet to be delivered. In this connection Counsel for the Applicant will seek to rely on the above plethora of authorities referred to above in this Motion herein.

It is submitted that Order one (1) sought for in this Motion by the Applicant is about one thing and one thing alone – The Rule of Law. Furthermore it is submitted that the very credibility of the judicial system and the confidence of the Special Court for Sierra Leone in the role of the law and regrettably by extension the Presiding Judge of the Appeals Chamber who is vested with enormous powers under Act No. 9 of 2002 of the Special Court Agreement, 2002 (Ratification) Act, 2002, is at stake. This is particularly so when on the available evidence, the particular Judge in question is indeed a legend of the law in his own life time. That being the case, it is further submitted that where the effect is aimed at creating a destabilising effect in the administering of justice, the greater interest of the public in the society and in the maintenance of an uninhibited administration of justice must prevail. To that extent, it is submitted that if His Honour Judge Robertson Q.C. should err at all, he should on balance most respectfully err in favour of reclusing himself in the above case up until the Ruling which is yet to be delivered by the Appeals Chamber and thereafter.

On the second issue namely that the said Appeals Chamber of the Special Court erred in law and acted in excess of jurisdiction, it is respectfully submitted that Article 2(2)(c) to be found under the Schedule to the Agreement between the United Nations and the

Government of Sierra Leone on the establishment of a Special Court for Sierra Leone to wit (the Special Court Agreement, 2002 (Ratification) Act, 2002) expressly spells out and in no uncertain terms that the Appeals Chamber of the Special Court shall comprise of 5 Judges and the use of the word “shall” in that particular statutory provision is mandatory meaning that what is thereby enjoined is not merely desired to be done, but must be done. Furthermore it is submitted that when Parliament lays down a statutory requirement for the exercise of legal authority, it expects its authority to be obeyed, down to the minutest detail. It is submitted that based on the facts of this instant case, we are in the presence of total non compliance with the requirements of the said Article 2(2) (c) that are mandatory. It is further submitted most respectfully that the violation of that mandatory provision as events have turned out to be in this instant case deprived the Appeals Chamber of the Special Court for Sierra Leone of jurisdiction and further in proceeding as it did to hear entertain and adjudicate on that said Motion of 23<sup>rd</sup> July, 2003 it consequently acted in excess of jurisdiction. For this submission Counsel will draw sustenance from and will rely upon a number of authorities namely:

- (1) Anisminic Limited vs. foreign Compensation Commission & Another 1969 (1) AER page 208: 1969 2 AC 147.
- (2) Timitimi v. Amabebe 14 WACA page 374.
- (3) Madukolu v. Nkemdilim (1962) 1 All NLR 587 at 594 – reflected in Judgments of the Supreme Court of Nigeria Holden at Lagos on Friday the 5<sup>th</sup> of December, 1986 in the case between Ojo Ajao & 5 ors. – Appellants and Opoola Alao & 4 ors. – Respondents, p. 193 at page 229-230.

It is submitted that the question whether it is legally possible to contract out, OR waive performance of a Statutory duty as in this instant case Article 2(2)(c) to be found under the Schedule to the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone to wit (the Special Court Agreement, 2002 (Ratification) Act, 2002) will depend as always on the wording of the legislation. It is further submitted that the starting point must always be what the Act actually says. It is submitted that it is only where the Act is not clear that careful scrutiny of the wording would be necessary to glean Parliament’s implied intention.

As Lord Tenterden CJ said: “Where an Act creates an obligation, and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner”. Doe d Bishop of Rochester v Bridges (1831) 1 B & Ad.



847, at p. 859. See also *Stevens v Evans* (176) 2 Burr 1152, at p. 1157; *Stevens v. Jeacocke* (1848) 11 QB 731, at p. 741; *Wake v. Mayor of Sheffield* (1884) 12 QBD 145; *R v. County Court Judge of Essex* (1887) 18 QBD 704; at p. 707; *Clegg Parkinson & Co. v. Earby Gas Co.* (1896) 1 QB 592, at p. 595; *Wilkinson v. Barking Corpn* [1948] 1 KB 721, at p. 724; *Lonrho Ltd. V Shell Petroleum Co. Ltd* (1981) 2 All ER 456, at p. 461.

On the 3<sup>rd</sup> legal ground for a declaration to wit that the purported amendment to Rules 72(E) and (F) of the Rules of Procedure and Evidence of the said Special Court adopted at an alleged plenary meeting on 30<sup>th</sup> October 2003 a day before the actual commencement of the said hearing before the said Appeal Chamber of the said Motion of the 23<sup>rd</sup> day of July 2003 which was deemed to have retrospective effect, it is submitted that such a purported amendment is ultra vires, contrary to, and does violence to the provisions of the said Article 2(2)(c) contained under the Schedule referred to as the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone to wit (the Special Court Agreement, 2002 (Ratification) Act, 2002). Consequently it is further submitted that the said Appeals Chamber of the Special Court for Sierra Leone erred in law and acted in excess of jurisdiction when it proceeded as it did on both the 31<sup>st</sup> October and 1<sup>st</sup> November 2003 to hear, entertain and adjudicate upon the said Motion of the 23<sup>rd</sup> July 2003 referred to it by the said Trial Chamber pursuant to Rule 72 (E) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone in circumstances which most respectfully amount to “an abuse of power” and “abuse of process”.

It is further submitted that all powers have in built legal limitations and those limitations must be seen by the Courts as a security of legal protection of citizens rights and the observation of the rule of law. Furthermore it is submitted that judging from the entire purport of the said Article 2(2) (c) contained under the Schedule referred to as the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone to wit (the Special Court Agreement, 2002 (Ratification) Act, 2002), Parliament could NOT have intended to authorise actions which are contrary to the tenets of the Rule of Law.

It is further submitted that the said plenary meeting acted ultra vires their powers, in excess of their authority and in breach of the said Article 2(2) (c) contained under the Schedule referred to as the Agreement between the United Nations and the Government of Sierra

Leone on the establishment of a Special Court for Sierra Leone to wit (the Special Court Agreement, 2002 (Ratification) Act, 2002), in purporting to amend Rules 72(E) and (F) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.

Finally on the third issue, it is submitted that in interpreting a power conferring statute, the Court is entitled to inquire into the bona fide of a purported exercise of power under such a statute See: *Wilson v. A.G. of Bengal State* 1985 NWLR – 572 referred to at p. 135 paras. E.C.

### **ORDERS SOUGHT**

In the light of the afore-mentioned serious submissions, the Applicant herein requests that the Appeals Chamber of the Special Court for Sierra Leone to graciously grant the following Orders:-

1. That the Presiding Judge, His Honor Geoffrey Robertson Q.C. President of the Appeals Chamber of the Special Court for Sierra Leone do reclude himself up until the pending Ruling of the said Appeals Chamber in respect of the motion dated 23<sup>rd</sup> July 2003 already argued before that Court on the ground of bias and/OR an appearance of bias on his part in circumstances wherein he knew OR ought to have known that he had described Ex-President Charles Ghankay Taylor as a vicious warlord at page 466 of his book titled “CRIMES AGAINST HUMANITY – THE STRUGGLE FOR GLOBAL JUSTICE” under the subtitle Lesson From Sierra Leone, starting from page 465 onwards.
2. That the said Appeals Chamber of the Special Court for Sierra Leone lacked jurisdiction and/OR acted in excess of jurisdiction in circumstances wherein it proceeded to hear the arguments before it on the 31<sup>st</sup> October and 1<sup>st</sup> November 2003 respectively in respect of the said Motion of the 23<sup>rd</sup> July 2003 submitted to it by the Trial Chamber pursuant to Rule 72(E) of the Rules of Procedure and Evidence of the Special Court without the full complement of 5 Judges contrary to the said Article 2(2)(c) to be found under the Schedule to the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone to wit (the Special Court Agreement, 2002 (Ratification) Act, 2002).

3. Further and/OR in the alternative for a Declaration that the purported amendment to Rules 72(E) & (F) of the Rules of Procedure and Evidence of the said Special Court for Sierra Leone adopted at an alleged plenary meeting on 30<sup>th</sup> October 2003 a day before the actual commencement of the said hearing before the said Appeals Chamber of the said Motion of the 23<sup>rd</sup> day of July 2003 which was deemed to have retrospective effect is ultra vires, contrary to, and does violence to the provisions of Article 2(2)(c) contained under the Schedule referred to as the Agreement between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone to wit (the Special Court Agreement, 2002 (Ratification) Act, 2002), and that consequently the said Appeals Chamber of the Special Court of Sierra Leone erred in law and acted in excess of jurisdiction when it proceeded as it did on both the 31<sup>st</sup> October and 1<sup>st</sup> November 2003 to hear, entertain and adjudicate upon the said Motion of the 23<sup>rd</sup> July 2003 referred to it by the said Trial Chamber pursuant to Rule 72(E) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone without the full compliment of 5 Judges of the said Appeals Chamber .

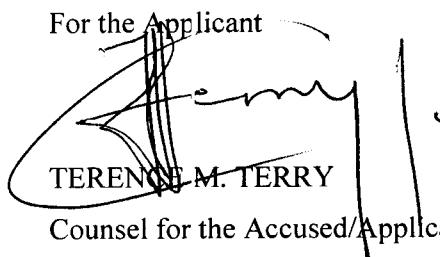
The Applicant herein requests the Appeals Chamber in its wisdom to grant an oral hearing of this Motion due to the fact that the Orders sought raise serious matters of public importance and the integrity and credibility of the Special Court for Sierra Leone.

**PRAYER**

In view of the foregoing the Applicant herein prays that the Appeals Chamber do graciously grant the above three (3) Orders as set out and sought in this Motion above.

Done at Freetown the 27<sup>th</sup> day of January 2004

For the Applicant

  
TERENCE M. TERRY  
Counsel for the Accused/Applicant herein

*Prosecutor Against CHARLES GHANKAY TAYLOR SCSL-2003-01-PT*

**APPLICANT'S INDEX OF ATTACHMENT**

1. Affidavit of Ayo Max-Dixon in support of Applicant's Motion sworn to at Freetown on the 27<sup>th</sup> day of January 2004 at 3:40 o'clock in the afternoon together with the attached exhibits.

# **INDEX OF ATTACHMENT**

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## **INDEX OF ATTACHMENT - 1**

**THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN – SIERRA LEONE**

**IN THE APPEALS CHAMBER**

Before: Judge Geoffrey Robertson, Q.C. President  
Judge Emmanuel O. Ayoola  
Judge Gelaga King  
Judge Renate Winter  
Judge.....

Registrar: Mr. Robin Vincent

Date filed:

**CASE NO. SCSL – 2003-01-PT**

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**AND**

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APPLICANT’S MOTION AGAINST THE UNWHOLESOME AND BIAS COMMENTS MADE BY THE PRESIDENT AND PRESIDING JUDGE OF THE APPEALS CHAMBER OF THE SPECIAL COURT FOR SIERRA LEONE GEOFFREY ROBERTSON Q.C. WHEN HE DESCRIBED EX-PRESIDENT CHARLES GHANKAY TAYLOR THE APPLICANT HEREIN AS A VICIOUS WARLORD AT PAGE 466 OF HIS BOOK ENTITLED CRIMES AGAINST HUMANITY – THE STRUGGLE FOR GLOBAL JUSTICE UNDER THE SUBTITLE – LESSONS FROM SIERRA LEONE STARTING FROM PAGE 465 ONWARDS AS WELL AS ON OTHER TWO GROUNDS WHICH GO TO JURISDICTION AND/OR EXCESS OF JURISDICTION

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**AFFIDAVIT IN SUPPORT**

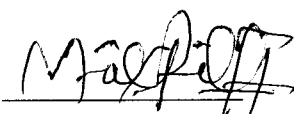
I, **AYO MAX-DIXON** of No. 25 Pownall Street, Freetown in the Western Area of the Republic of Sierra Leone Managing Clerk in the office of Terence Michael Terry Counsel for the Applicant herein make oath and say as follows:-

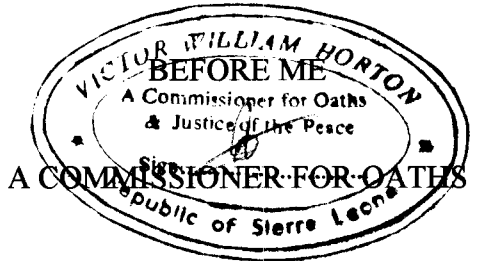
1. That I am the Managing Clerk in the office of Terence Michael Terry Counsel for the Applicant herein and I am duly authorized to make this affidavit for and on behalf of the Applicant herein.
2. That by a Power of Attorney dated the 22<sup>nd</sup> of July, 2003 registered as No. 223 at page 86 in Volume 75 in the Book of Powers of Attorney kept in the office of the Registrar-General in Freetown and duly signed by the Accused herein and subsequently filed in the Registry of the Special Court for Sierra Leone, the Applicant herein appointed Terence Michael Terry as his Defence Counsel at the Special Court for Sierra Leone and subsequently instructed him by letter dated the 6<sup>th</sup> January 2004. A photocopy each of both the Power of Attorney dated 22<sup>nd</sup> July, 2003 and the letter of instructions dated 6<sup>th</sup> January, 2004 respectively are exhibited hereto by me and marked Exhibits "A M D 1" & "AMD 2" respectively.
3. That on the 23<sup>rd</sup> day of July 2003 the said Counsel for the Applicant Charles Ghankay Taylor filed a motion under protest and without waiving of immunity accorded to him as the then President and Head of State of the Republic of Liberia before the Trial Chamber of the Special Court for Sierra Leone. A photocopy of the said Motion together with its attached annexures is exhibited hereto by me and marked Exhibit "A M D 3".
4. That I exhibit herewith the consequential Order of the Trial Chamber of the Special Court for Sierra Leone of the 19<sup>th</sup> of September 2003 as Exhibit "AMD 4".
5. That I am informed by Counsel for the Applicant herein Terence Michael Terry and I verily believe that a purported amendment to Rule 72(E) and (F) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone was adopted at an alleged plenary meeting on 30<sup>th</sup> October, 2003. A photocopy of the said amendment to Rule 72(E) and (F) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone is exhibited hereto by me and marked Exhibit "A M D 5".
6. That I exhibit herewith the 17 Count Indictment against the Applicant herein – a photocopy of which is exhibited hereto by me and marked Exhibit "AMD 6".



- 7. That I also exhibit herewith extracts from the book entitled "CRIMES AGAINST HUMANITY – THE STRUGGLE FOR GLOBAL JUSTICE" under the subtitle Lessons From Sierra Leone written by the President and Presiding Judge of the Appeals Chamber of the Special Court for Sierra Leone Geoffrey Robertson Q.C. starting from page 465 onwards but especially at page 466 where he described Ex-President Charles Ghankay Taylor the Applicant herein as a vicious warlord – as Exhibit "AMD 7".
- 8. That I am shown a letter dated 6<sup>th</sup> January, 2004 written by the Applicant herein addressed to His Excellency John Kufour, President of the Republic of Ghana and Chairman of ECOWAS – a photocopy of which said letter of the 6<sup>th</sup> January, 2004 together with its attached annexures is exhibited hereto by me and marked Exhibit "AMD 8".
- 9. That in the light of the foregoing matters, I am further informed by the Applicant's Counsel Terence Michael Terry and I verily believe that this is a proper case warranting the exercise of the discretion of the Appeals Chamber by graciously granting all the Orders prayed for in support of this Motion herein.
- 10. That I swear to this affidavit in support of all the Orders prayed for in support of this application by way of Motion.
- 11. That the contents of this affidavit are true to the best of my knowledge, information and belief.

SWORN TO AT THE LAW COURTS BUILDING  
 SIAKA STEVENS STREET, FREETOWN  
 ON THE 27<sup>th</sup> DAY OF January 2004  
 AT 3:00 O'CLOCK IN THE After NOON

  
 DEPONENT  
 AYO MAX-DIXON



THIS AFFIDAVIT IS FILED BY TERENCE MICHAEL TERRY OF 4<sup>TH</sup> FLOOR,  
 MARONG HOUSE, 11 CHARLOTTE STREET, FREETOWN SOLICITOR AND  
 COUNSEL FOR AND ON BEHALF OF THE APPLICANT HEREIN.

EXHIBIT "AMD 1"

THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN – SIERRA LEONE

2883

CASE NO. SCSL – 2003-01-PT

THE PROSECUTOR

Against

CHARLES GHANKAY TAYLOR also known as

CHARLES GHANKAY MACARTHUR DAPKANA TAYLOR – APPLICANT

AND

JUDGE GEOFFREY ROBERTSON, Q.C. PRESIDENT OF THE APPEALS CHAMBER OF  
THE SPECIAL COURT FOR SIERRA LEONE – RESPONDENT

---

APPLICANT'S MOTION AGAINST THE UNWHOLESOME AND BIAS COMMENTS MADE BY THE PRESIDENT AND PRESIDING JUDGE OF THE APPEALS CHAMBER OF THE SPECIAL COURT FOR SIERRA LEONE GEOFFREY ROBERTSON Q.C. WHEN HE DESCRIBED EX-PRESIDENT CHARLES GHANKAY TAYLOR THE APPLICANT HEREIN AS A VICIOUS WARLORD AT PAGE 466 OF HIS BOOK ENTITLED CRIMES AGAINST HUMANITY – THE STRUGGLE FOR GLOBAL JUSTICE UNDER THE SUBTITLE – LESSONS FROM SIERRA LEONE STARTING FROM PAGE 465 ONWARDS AS WELL AS ON OTHER TWO GROUNDS WHICH GO TO JURISDICTION AND/OR EXCESS OF JURISDICTION

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This is a photocopy of the Power of Attorney dated 22<sup>nd</sup> of July 2003 referred to in paragraph (2) of the affidavit of Ayo Max-Dixon sworn to at Freetown on the 27<sup>th</sup> day of January 2004 and marked Exhibit "A M D 1".

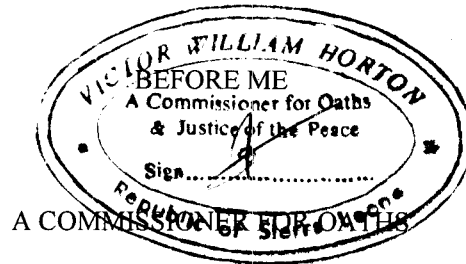
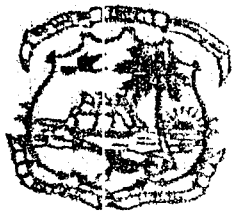


EXHIBIT '2884' AMD 1"

**POWER OF ATTORNEY**

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2885



REPUBLIC OF LIBERIA  
MINISTRY OF FOREIGN AFFAIRS  
MONROVIA, LIBERIA



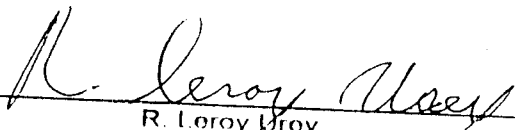
(Convention de la Haye 5 Octobre, 1961)

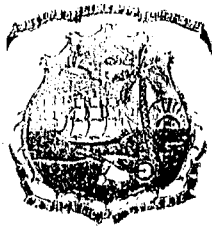
APOSTILLE

- 1. COUNTRY: REPUBLIC OF LIBERIA  
This public document "Copy of Instructions Appointing Counsel."
- 2. has been signed by MARY M. HOWE
- 3. acting in the capacity of NOTARY PUBLIC FOR MONTSERRADO COUNTY, REPUBLIC OF LIBERIA.
- 4. bearing the seal/stamp of the NOTARY PUBLIC FOR MONTSERRADO COUNTY, REPUBLIC OF LIBERIA.
- 5. attested by HIS EXCELLENCY CHARLES GHANKAY TAYLOR, PRESIDENT OF THE REPUBLIC OF LIBERIA.

CERTIFIED

- 6. at Monrovia, Montserrado County.
- 7. by order of the Minister of Foreign Affairs.
- 8. July 18, 2003
- 9. CLD/07/18/2003-118

  
 R. Leroy Urey  
 DEPUTY MINISTER/LEGAL COUNSELLOR

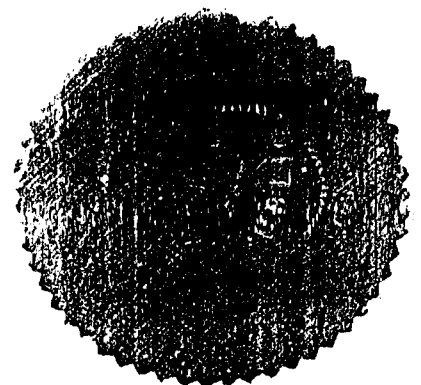


# REPUBLIC OF LIBERIA

EXECUTIVE MANSION

18 July 2003

Terence Terry  
Barrister-at-Law and Solicitor  
4<sup>th</sup> floor, Marong House  
11 Charlotte Street  
Freetown, Sierra Leone



## INSTRUCTIONS APPOINTING COUNSEL

I, the undersigned, Charles Ghankay Taylor, President and Head of State of the Republic of Liberia, hereby irrevocably appoint Terence Michael Terry, Barrister-At-Law and Solicitor of the High Court of the Republic of Sierra Leone, to act on my behalf and to represent me at all times in all matters and proceedings brought against my person as the lawful President and Head of State of Liberia within the jurisdiction of the Republic of Sierra Leone on the expressed understanding that any actions embark upon by him on my behalf do not in any way whatsoever subject me as President and Head of State of the Republic of Liberia to the jurisdiction of the Special Court for Sierra Leone.

I now authorize and empower the said Terence Michael Terry to take appropriate steps that will lead to him perusing the indictment and warrant of arrest which, I am reliably informed by third parties, were respectively approved and issued by Judge Bankole Thompson of the Special Court for Sierra Leone on the 7<sup>th</sup> of March, 2003 and till date NOT served on me.

I further authorize the said Terence Michael Terry after he has perused both the said indictment and the consequential warrant of arrest, to take steps after due consultations with me and if need be to enter a conditional appearance or an appearance under protest on my behalf, which in no way constitutes a waiving of absolute immunity accorded to me in international law as a sitting Head of State and lawful President of the Republic of Liberia.

In the event the stage is ever reached, at which the said Terence Michael Terry consider it appropriate to enter a conditional appearance or an appearance under protest in the proceedings referred to by me in the above mentioned preceding paragraph of this my Authority, the said conditional appearance or appearances under protest must be filed without prejudice and must be limited to him raising jurisdictional objections on my behalf which will go to the root of the criminal proceedings so set in motion before the Special Court for Sierra Leone, all of which actions on his part should be designed ultimately to seek an order to cancel, set aside and / or quash both the aforesaid indictment and warrant of arrest of the 7<sup>th</sup> March 2003 respectively approved and issued by the said Judge Bankole Thompson on the 7<sup>th</sup> March 2003 against my person as the lawful sitting President and Head of State of the Republic of Liberia, in circumstances wherein I am accordingly legally advised by counsel that the very Prosecutor of the Special Court for Sierra Leone, knew and / or ought to have known that at the time he was making his ex parte application before the said Judge Thompson on the 7<sup>th</sup> March 2003 for the necessary orders to approve the said indictment and grant the consequential warrant of arrest, I was at that material time the lawful elected President and Head of State of the Republic of Liberia.

I further hereby ratify all acts and things done on my behalf within the letter and expressed terms of this my aforesaid appointment of my above mentioned counsel and attorney as if I myself were physically present in the Republic of Sierra Leone.

Signed:

  
Charles Ghankay Taylor  
PRESIDENT AND HEAD OF STATE OF THE REPUBLIC OF LIBERIA



SUBSCRIBED AND SIGNED TO BE FORE THE  
this 18<sup>th</sup> day of July, A D 2003

MARY MAMIE HOWE  
NOTARY PUBLIC, MONTSERRADO CO  
REPUBLIC OF LIBERIA

2887



REPUBLIC OF LIBERIA  
MINISTRY OF FOREIGN AFFAIRS  
MONROVIA, LIBERIA

(Convention de la Haye 5 Octobre, 1961)

APOSTILLE

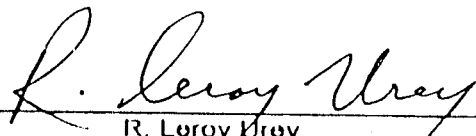
1. COUNTRY: REPUBLIC OF LIBERIA

This public document "Copy of Instructions to File Papers."

2. has been signed by MARY M. HOWE.
3. acting in the capacity of NOTARY PUBLIC FOR MONTSERRADO COUNTY, REPUBLIC OF LIBERIA.
4. bearing the seal/stamp of the NOTARY PUBLIC FOR MONTSERRADO COUNTY, REPUBLIC OF LIBERIA.
5. attested by HIS EXCELLENCY CHARLES GHANKAY TAYLOR, PRESIDENT OF THE REPUBLIC OF LIBERIA.

CERTIFIED

6. at Monrovia, Montserrado County.
7. by order of the Minister of Foreign Affairs.
8. July 18, 2003
9. CLD/07/18/2003-119



R. Leroy Gray

DEPUTY MINISTER/LEGAL COUNSELLOR



REPUBLIC OF LIBERIA  
MINISTRY OF FOREIGN AFFAIRS  
MONROVIA, LIBERIA

(Convention de la Haye 5 Octobre, 1961)

APOSTILLE

1. COUNTRY: REPUBLIC OF LIBERIA

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CERTIFIED

6. at Monrovia, Montserrado County.
7. by order of the Minister of Foreign Affairs.                      8. July 18, 2003
9. CI.D/07/18/2003-119

A handwritten signature in cursive script, reading 'R. Leroy Urey', written over a horizontal line.

R. Leroy Urey  
DEPUTY MINISTER/LEGAL COUNSELLOR

2889



EXECUTIVE BRANCH

# REPUBLIC OF LIBERIA

July 21, 2003

Terrence Terry  
Barrister-at-Law  
4<sup>th</sup> Floor, Marong Building  
11 Charlotte Street  
Freetown, Sierra Leone

## INSTRUCTIONS TO FILE LEGAL PAPERS

Pursuant to my power of attorney, which has been issued under separate cover, you are hereby instructed to file the legal papers immediately. The aforesaid papers will be filed with the expressed understanding that in so doing, I am not waiving my immunity as the sitting President and Head of State of the Republic of Liberia.

Signed:

Charles Ghankay Taylor

PRESIDENT AND HEAD OF STATE OF THE REPUBLIC OF LIBERIA

SWORN and SUBSCRIBED TO BEFORE ME  
this 21<sup>st</sup> day of July, A D 2003

MARY MAMIE HOWE  
NOTARY PUBLIC, MONTERRADO CO  
REPUBLIC OF LIBERIA





2890

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2/7/03

90481

SUB ACCOUNTANT

No. 223 / 90481 / 2003

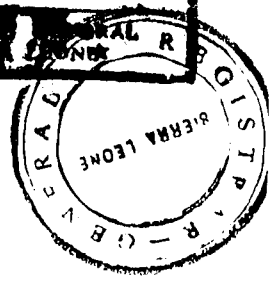
THIS INSTRUMENT WAS DELIVERED TO ME FOR REGISTRATION

BY Easton Nakui

OF 11 Charlotte St. Freeport

AT 12:18 CLOCK IN THE after NOON

ON THIS 22nd DAY OF July 2003



THIS INSTRUMENT IS REGISTERED AS: 223

AT PAGE 86 IN VOLUME 75 IN THE

BOOK OF Powers of Attorney IN

THE OFFICE OF THE REGISTRAR GENERAL FREEPORT

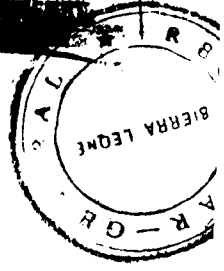


EXHIBIT 'AMD 2'

THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN – SIERRA LEONE

2891

CASE NO. SCSL – 2003-01-PT

THE PROSECUTOR

Against

CHARLES GHANKAY TAYLOR also known as  
CHARLES GHANKAY MACARTHUR DAPKANA TAYLOR – APPLICANT

AND

JUDGE GEOFFREY ROBERTSON, Q.C. PRESIDENT OF THE APPEALS CHAMBER OF  
THE SPECIAL COURT FOR SIERRA LEONE – RESPONDENT

---

APPLICANT'S MOTION AGAINST THE UNWHOLESOME AND BIAS COMMENTS MADE BY THE PRESIDENT AND PRESIDING JUDGE OF THE APPEALS CHAMBER OF THE SPECIAL COURT FOR SIERRA LEONE GEOFFREY ROBERTSON Q.C. WHEN HE DESCRIBED EX-PRESIDENT CHARLES GHANKAY TAYLOR THE APPLICANT HEREIN AS A VICIOUS WARLORD AT PAGE 466 OF HIS BOOK ENTITLED CRIMES AGAINST HUMANITY – THE STRUGGLE FOR GLOBAL JUSTICE UNDER THE SUBTITLE – LESSONS FROM SIERRA LEONE STARTING FROM PAGE 465 ONWARDS AS WELL AS ON OTHER TWO GROUNDS WHICH GO TO JURISDICTION AND/OR EXCESS OF JURISDICTION

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This is a photocopy of the Letter of Instructions dated 6<sup>th</sup> January 2004 referred to in paragraph (2) of the affidavit of Ayo Max-Dixon sworn to at Freetown on the 27<sup>th</sup> day of January 2004 and marked Exhibit "A M D 2".

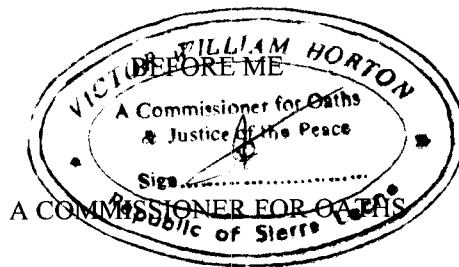


EXHIBIT "AMD" 2

2892

January 6, 2004

**TO: Barrister Terence M. Terry  
4<sup>th</sup> Floor, Marong House  
11 Charlotte Street  
Freetown**

**RE: Instruction to File a Motion before the Appeals Chamber  
Of the Special Court for Sierra Leone and if need be the  
Supreme Court of the Republic of Sierra Leone**

**Dear Barrister Terry:**

**You are hereby irrevocably instructed by me to institute proceedings by way of motion on my behalf before the Appeals Chamber of the Special Court for Sierra Leone and if need be the Supreme Court of the Republic of Sierra Leone, designed ultimately to seek two orders, namely:**

- 1. That the Presiding Judge, His Honor Geoffrey Robertson does reclude himself up until delivery of the Ruling of the said Appeals Chamber in respect of the motion dated 23<sup>rd</sup> July 2003 already argued before that Court on the ground that the said Presiding Judge Geoffrey Robertson described me as a vicious warlord at page 466 of his book "CRIMES AGAINST HUMANITY- THE STRUGGLE FOR GLOBAL JUSTICE" under the subtitle *Lesson From Sierra Leone*, starting from page 465, which clearly gives the appearance of an actual bias on his part; and**

.../2

2893

2. For an order that the Appeals Chamber of the Special Court for Sierra Leone lacks jurisdiction and/or acted in excess of jurisdiction when that Court proceeded to hear and adjudicate the said motion which was referred to it by the Trial Chambers of the Special Court of Sierra Leone in circumstances wherein only 4 Judges of the Appeals Chamber rather 5 Judges as required by the Special Court Act heard the said application.

Cordially yours,

  
Dr. Charles Ghankay Taylor

EXHIBIT "AMD 3"

THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN – SIERRA LEONE

D894

CASE NO. SCSL – 2003-01-PT

THE PROSECUTOR

Against

CHARLES GHANKAY TAYLOR also known as  
CHARLES GHANKAY MACARTHUR DAPKANA TAYLOR – APPLICANT

AND

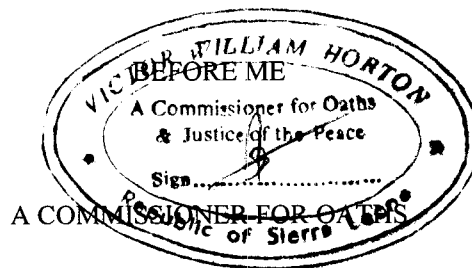
JUDGE GEOFFREY ROBERTSON, Q.C. PRESIDENT OF THE APPEALS CHAMBER OF  
THE SPECIAL COURT FOR SIERRA LEONE – RESPONDENT

---

APPLICANT'S MOTION AGAINST THE UNWHOLESOME AND BIAS COMMENTS MADE BY THE PRESIDENT AND PRESIDING JUDGE OF THE APPEALS CHAMBER OF THE SPECIAL COURT FOR SIERRA LEONE GEOFFREY ROBERTSON Q.C. WHEN HE DESCRIBED EX-PRESIDENT CHARLES GHANKAY TAYLOR THE APPLICANT HEREIN AS A VICIOUS WARLORD AT PAGE 466 OF HIS BOOK ENTITLED CRIMES AGAINST HUMANITY – THE STRUGGLE FOR GLOBAL JUSTICE UNDER THE SUBTITLE – LESSONS FROM SIERRA LEONE STARTING FROM PAGE 465 ONWARDS AS WELL AS ON OTHER TWO GROUNDS WHICH GO TO JURISDICTION AND/OR EXCESS OF JURISDICTION

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This is a photocopy of the Motion of the 23<sup>rd</sup> July 2003 together with its attached annexures referred to in paragraph (3) of the affidavit of Ayo Max-Dixon sworn to at Freetown on the 27<sup>th</sup> day of ~~JANUARY~~ 2004 and marked Exhibit "A M D 3".



018

EXHIBIT 'A' MD653  
SCSL-2003-017-01A MD653  
(65-112)

THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN - SIERRA LEONE

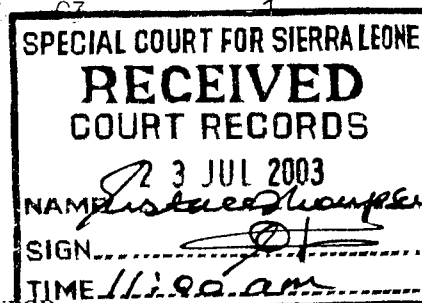
2895

Before: The Trial Chamber

Registrar: Robin Vincent

CASE NO. SCSL 07

Date Filed 23<sup>rd</sup> July 2003



THE PROSECUTOR

Against

CHARLES GHANKAY TAYLOR also known as

CHARLES GHANKAY MACARTHUR DAPKANA TAYLOR

AND

THE GOVERNMENT OF THE REPUBLIC OF LIBERIA AND PRESIDENT CHARLES TAYLOR (UNDER PROTEST AND WITHOUT WAIVING OF IMMUNITY ACCORDED TO THE LATTER AS HEAD OF STATE OF THE REPUBLIC OF LIBERIA - APPLICANTS

APPLICANTS MOTION MADE UNDER PROTEST AND WITHOUT WAIVING OF IMMUNITY accorded to a Head of State President Charles Ghankay Taylor requesting that the Trial Chamber do quash the said approved indictment of 7<sup>th</sup> March 2003 of Judge Bankole Thompson and that the aforesaid purported Warrant of Arrest and Order for transfer and detention of the same date issued by Judge Bankole Thompson of the Special Court for Sierra Leone, and all other consequential and related ORDER(S) granted thereafter by either the said Judge Bankole Thompson OR Judge Pierre Boutet on 12<sup>th</sup> June 2003 against the person of the said President Charles Ghankay Taylor be declared null and void, invalid at their inception and that they be accordingly cancelled and/OR set aside as a matter of Law.

Office of the Prosecutor

The Prosecutor,  
Luc Côté, Chief of Prosecutions  
Brenda J. Hollis, Senior Trial Counsel

Applicants' Counsel:

Terence Michael Terry

66<sup>1</sup>  
2896

THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN – SIERRA LEONE

CASE NO. SCSL-03- -1

THE PROSECUTOR

Against

CHARLES GHANKAY TAYLOR also known as

CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR

AND

THE GOVERNMENT OF THE REPUBLIC OF LIBERIA AND PRESIDENT CHARLES TAYLOR (UNDER PROTEST AND WITHOUT WAIVING OF IMMUNITY ACCORDED TO THE LATTER AS HEAD OF STATE - APPLICANTS

**APPLICANTS MOTION MADE UNDER PROTEST AND WITHOUT WAIVING OF IMMUNITY accorded to a Head of State President Charles Ghankay Taylor requesting that the Trial Chamber do quash the said approved indictment of 7<sup>th</sup> March 2003 of Judge Bankole Thompson and that the aforesaid purported Warrant of Arrest and Order for transfer and detention of the same date issued by Judge Bankole Thompson of the Special Court for Sierra Leone, and all other consequential and related ORDER(S) granted thereafter by either the said Judge Bankole Thompson OR Judge Pierre Boutet on the 12<sup>th</sup> June 2003 against the person of the said President Charles Ghankay Taylor be declared null and void, invalid at their inception and that they be accordingly cancelled and/OR set aside as a matter of Law.**

(1) (a) **INTRODUCTION:-**

Having regard to the provisions of Rules 47 and 54 respectively of the Rules of Procedure and Evidence of the Special Court for Sierra Leone and without in any way amounting to the WAIVING of ABSOLUTE IMMUNITY against criminal proceedings accorded to President Charles Ghankay Taylor in accordance with customary international law and the jurisprudence of the International Court of Justice in his capacity as Head of State of the Republic of Liberia since he was lawfully elected President of the Republic of Liberia in 1997, the applicants herein namely the Republic of Liberia and the said President Charles Ghankay Taylor hereby request for an Order quashing the indictment approved on the 7<sup>th</sup> March 2003 by Judge Bankole Thompson of the Special Court for Sierra Leone as well as for an Order canceling and/OR setting aside the purported Order and consequential Warrant of Arrest of the same date issued by the said Judge Bankole Thompson and all other consequential and related Order(s) granted thereafter by either the said Judge Bankole Thompson OR Judge Pierre Boutet on the 12<sup>th</sup> June 2003 against the person of the said President Charles Ghankay Taylor.

(2) **THE FACTUAL BASIS:**

- (i) On the 2<sup>nd</sup> August 1997 Charles Ghankay Taylor took his oath of office as the President and Head of State of the Republic of Liberia and held the position as the President of the Republic of Liberia following his election in 1997 and to date remains the lawful President and Head of State of the Republic of Liberia. A copy of his said oath of office duly sworn to by President Charles Ghankay Taylor is attached to this application and marked as **Appendix "A"**.
- (ii) On the 7<sup>th</sup> March 2003, the Honourable Judge Bankole Thompson, as a result of an ex parte application made before him by the Prosecutor and or his duly appointed officer(s) approved the said indictment against the person of the accused President Charles Ghankay Taylor, in which the latter was charged with alleged crimes against humanity, violations of Article 3 common to the Geneva Conventions and of Additional Protocol 11, and other serious violations of humanitarian law and containing a 17 Count Indictment contrary to Articles 2, 3 and 4 of the Statute of the Special Court Agreement 2002 Ratification Act 2002. The said approved indictment is attached hereto and referred to as **Appendix "B"**.
- (iii) A purported warrant of arrest, the transfer and consequential detention against the said accused President Charles Ghankay Taylor was issued by Judge Bankole Thompson on the 7<sup>th</sup> March 2003, and the said Judge Bankole Thompson then proceeded to make a further order in which he directed the Registrar of the Special Court for Sierra Leone in accordance with Rule 53 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone and after consultation with the Prosecutor, that there be no public disclosure of the Indictment or any part thereof or information pertaining to the Indictment, the Warrant of Arrest, the transfer and detention until further order by the said Special Court; and further directed that the Registrar (meaning the Registrar of the Special Court for Sierra Leone) in accordance with Rule 56 of the Rules of Procedure and Evidence to address the Decision and the Warrant of Arrest of the accused to the national authorities of such states, or to the relevant international body, including the International Criminal Police Organisation (INTERPOL) as may be indicated by the Prosecutor. The said purported Warrant of Arrest is attached to this application and marked as **Appendix "C"**.

Both the said indictment and the said purported Warrant of Arrest against the Person of President Charles Ghankay Taylor were kept under seal since the aforesaid order of Judge Bankole Thompson of the 7<sup>th</sup> of March 2003, and an order for the public disclosure of the approved indictment, the said purported warrant of arrest and the order for transfer and detention was only sought by the Prosecutor and eventually granted by Judge Pierre Boutet on the 12<sup>th</sup> June 2003, when the Prosecutor saw in President Charles Taylor's trip to Accra, Ghana an opportunity to get the authorities in Accra Ghana to apprehend him and to effect service on him of both the said Indictment, and the said purported Warrant of Arrest, during the time he was actually attending a Peace Conference along with his other African Heads of States, aimed at bringing to an end the ten year civil war in Liberia, although his efforts in that direction proved unsuccessful. The said Order of Judge Pierre Boutet of 12<sup>th</sup> June 2003 is attached here with and marked as **Appendix "D"**.

As events turned out both the said Indictment and the said purported Warrant of Arrest were served on the Ghanaian Authorities in Accra, Ghana in June 2003; but at no time whatsoever was President Charles Ghankay Taylor ever served with the said indictment and the said purported Warrant of Arrest either in Accra, Ghana or elsewhere for that matter and the position remains the same till date. However due to the apparent threat of service on him of both the said Indictment and the said purported Warrant of Arrest, President Charles Ghankay Taylor felt compelled to depart from Accra, Republic of Ghana prematurely where he was attending the said Peace Conference with his other African colleagues and returned to the Republic of Liberia and he was consequently prevented from carrying out the important tasks required of him as Head of State of the Republic of Liberia during



the holding of the said Conference in Accra, the Republic of Ghana. In this connection reference is herewith made to the Statement of David M. Crane Chief Prosecutor, Special Court for Sierra Leone captioned: "For immediate Release Freetown, 4<sup>th</sup> June 2003." The said statement is attached to this application and marked as **Appendix "E"**.

2898

The said approved indictment to wit Appendix "B" and the consequential said purported warrant of arrest preferred against President Charles Ghankay Taylor characterise the acts alleged therein as being crimes against humanity, violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and other serious violations of international humanitarian law. Also attached to this application is the Press Release from the Press and Public Affairs Office of the Special Court for Sierra Leone captioned: Press Release Rome, Italy, Friday, 18<sup>th</sup> July 2003 on World Day for International Justice Special Court requests assistance in arresting indicates marked as **Appendix "F"**.

(3) **ARGUMENT:**

It is submitted on behalf of both the Government of the Republic of Liberia and the President of the Republic of Liberia Charles Ghankay Taylor the Applicants herein that the Legal Grounds for this Motion are twofold in nature namely:-

- (i) Violation of the criminal immunity of the Head of the Sovereign State of the Republic of Liberia President Charles Ghankay Taylor contrary to customary international law and as recognised by the jurisprudence of the International Court of Justice.
- (ii) Violation of the principle that a State may not exercise (its' authority) on the territory of another State and of the principle of sovereign equality – among all members of the United Nations as laid down in Article 2, paragraph 1, of the Charter of the United Nations.

Both these aforementioned grounds are procedural in nature and go to jurisdiction in LIMINE of the Special Court for Sierra Leone and if indeed successfully upheld by the Trial Chamber will it is submitted put an end to these criminal proceedings against President Charles Ghankay Taylor.

1. The first ground for seeking the Orders herein relates to a violation of the criminal immunity of the Head of the Sovereign State of the Republic of Liberia President Charles Ghankay Taylor contrary to customary international law and as recognised by the jurisprudence of the International Court of Justice.

It is submitted that the Head of State Immunity is a derivative of the principle of State Immunity. The original concept of the immunity of a Head of State in customary international law in part arose from the fact that he OR she was a Monarch who by reason of personal dignity and respect ought not to be impleaded in a foreign state; it was linked no less to the idea that the Head of State was OR represented the state and that to sue him was tantamount to suing an independent state extra-territorially, something which the comity of nations did not allow. Moreover although the concepts of State Immunity and Sovereign Immunity have different origins, it is submitted that the latter is an attribute of the former and that both are essentially based on the principles of Sovereign independence and dignity. See for example SUCHARIKTUL in his report to the International Law Commission (1980) Vol. 11. Doc. A (LN4-331 and Add J) Marshall C.J. in the *Scheoner Exchange v. M. Faddon* 1812 11 US (7 Cranch) 116.

In the recent judgment of the International Court of Justice in the case concerning the Arrest Warrant of 11<sup>th</sup> April (The Congo v. Belgium) delivered on 14<sup>th</sup> February 2002 the International Court of Justice in making its findings logically inferred from the rationale behind the rules on personal immunities of senior state officials, such as Heads of States OR

2899  
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Governments OR diplomatic agents, that such immunities must perforce prevent any prejudice, to the 'effective performance' of their functions. They therefore bar any possible interference with the official activity of foreign Ministers OR Heads of State. It follows therefore that an incumbent Foreign Minister OR Head of State for that matter is immuned from Civil and Criminal jurisdiction, even when he is on a private visit OR acts in a private capacity while holding office. Clearly from the ICJ's reasoning not only the arrest and prosecution of such a Minister OR Head of State while on a private visit abroad, but also the mere issuance of an arrest warrant, may seriously hamper OR jeopardize the conduct of International affairs of the State for which that person acts as a Foreign Minister and by extension as Head of State. For an actual Head of State as said in *United States of America v. Noriega* 1990. 746. F. Supp. 1506 the reason was to ensure that "leaders are free to perform their Governmental duties without being subject to detention, arrest OR embarrassment in a foreign country's legal system. In sum, even when accused of international crimes a Head of State OR the State Agent entitled to personal immunities is INVOILABLE and Immune from prosecution on the strength of the international rules on such personal immunities: This proposition is supported by some case law (for instance See the Speech of Lord Browne -Wilkinson in *R v Bow Street Stipendiary Magistrate and Others ex parte Pinochet, Ugarte*, judgment of 24<sup>th</sup> March 1999, and *Fidel Castro in Spain (Sec. Auto)* of 4<sup>th</sup> March 1999 (No. 1999/2723) "which relate respectively to a former and an incumbent Head of State.")

It is submitted on behalf of both the Government of the Republic of Liberia and the President of the Republic of Liberia Charles Ghankay Taylor the Applicants herein that the said approved indictment and consequential said purported Order and Warrant of Arrest dated the 7<sup>th</sup> March 2003 of Judge Bankole Thompson against the person of President Charles Ghankay Taylor the President and Head of State of the Republic of Liberia are in violation of the absolute immunity accorded to the Head of the Sovereign State of the Republic of Liberia contrary to customary International Law and as recognized by the jurisprudence of the International Court of Justice.

*Furthermore as regards the violation of the Immunity from criminal suit of a Head of State of a Sovereign State, as Recognized by the Jurisprudence of the International Court of Justice (ICJ) and customary international law, Section 29 of the Special Court Agreement 2002, Ratification Act, 2002, is entitled "Official Position of the Accused No Bar to Arrest etc" and it provides that:*

"The existence of an immunity or special procedural rule attaching to the official capacity of any person shall not be a bar to the arrest and delivery of that person into custody of the Special Court."

The *non-recognition*, on the basis of section 29 of the *Special Court Agreement 2002, Ratification Act, 2002*, of immunities is contrary to international case-law (*P.C.I.J., 5 April 1933, Legal Status en Eastern Greenland, Pleadings, Series A, 1933*), to International customary law and to international courtesy, which accord High Government officials, the representative of the State on behalf of which he acts, diplomatic privileges and immunities.

That case-law finds support today in *Article 41, paragraph 2, of the Vienna Convention of 18 April 1961*, codifying diplomatic relations, which provides:

"All official business with the receiving State entrusted to the mission by the sending State shall be conducted with or through the Ministry of Foreign Affairs of the receiving State or such other ministry as may be agreed."

*Under this rule of international law as it stands today, to deny immunity from criminal prosecution to an incumbent head of State would be the very negation of such immunity. And that which is laid down by international law clearly cannot be displaced or rendered nugatory by the law of the State of Sierra Leone. Exceptions to diplomatic immunity can derive only from other rules of international law, as for example the Chapter VII Security Council resolutions. (For example see United Nations Security Council resolutions 827 of 25 May 1993 and 955 of 8 November 1994, establishing*

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*violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 and persons responsible for acts of genocide or other serious violations of international humanitarian law committed in 1994 in the territory of Rwanda on Rwandan citizens responsible for such violations committed in the territory of neighbouring States.)*

The Special Court for Sierra Leone was not set up by the Security Council under Chapter VII of the UN Charter. It is a judicial body established by Treaty between the United Nations and the Government of Sierra Leone. (*Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, January 16, 2002 (S/2000/915)*). In this connection reference is also made to the press Release from the Press and Public Affairs Office of the Special Court for Sierra Leone captioned: Press Release Freetown, Sierra Leone, 11<sup>th</sup> June 2003 Court President requests UN Security Council's Chapter Seven. This goes to confirm the contention on behalf of the Applicants that the Special Court for Sierra Leone was never given Chapter Seven powers at the time the Court came into existence by virtue of the passing into law of the Special Court Agreement 2002 (Ratification) Act No. 9 of 2002 and up till date. The said press Release from the Press and Public Affairs Office of the Special Court for Sierra Leone is attached to this application and marked as Appendix "G".

It is further submitted that the Special Court for Sierra Leone has the character of a bi-lateral cooperation agreement between the Government of Sierra Leone and the United Nations in which the United Nations promised technical and other *assistance* to the *domestic* legal process of Sierra Leone. This is illustrated in Security Council Resolution 1315 (2000):

*"Recognizing further the desire of the Government of Sierra Leone for assistance from the United Nations in establishing a strong and credible court that will meet the objectives of bringing justice and ensuring lasting peace.*

*Noting the report of the Secretary-General of 31 July 2000 (S/2000/751) and, in particular, taking note with appreciation of the steps already taken by the Secretary-General in response to the request of the Government of Sierra Leone to assist it in establishing the Special Court."*

It is clear that the assistance envisaged was intended to help the Government of the Republic of Sierra Leone establish its own court. The Special Court it is submitted is not one established by the United Nations, at least not in the sense that the International Criminal Tribunals for the Former Yugoslavia and Rwanda were established as judicial bodies imbued with Chapter VII authority. This is made clear in the Report of the Secretary General on the establishment of a Special Court for Sierra Leone, UN Doc S2000/915, Oct 4, 2000:

*"The legal nature of the Special Court, like that of any other legal entity, is determined by its constitutive instrument. Unlike either the International Tribunals for the Former Yugoslavia and for Rwanda, which were established by resolutions of the Security Council and constituted as subsidiary organs of the United Nations, or national courts established by law, the Special Court, as foreseen, is established by an Agreement between the United Nations and the Government of Sierra Leone and is therefore a treaty-based sui generis court of mixed jurisdiction and composition. Its implementation at the national level would require that the agreement is incorporated in the national law of Sierra Leone in accordance with constitutional requirements. Its applicable law includes international as well as Sierra Leonean law, and it is composed of both international and Sierra Leonean judges, prosecutors and administrative support staff. [...]*

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The Special Court for Sierra Leone has concurrent jurisdiction with the Sierra Leonean Courts and the position has been further canvassed that it may well have primacy over Sierra Leonean courts. Consequently, if that is the case, it has been argued by some jurists that it has the power to request at any stage of the proceedings that any national Sierra Leonean court defer to its jurisdiction (article 8, para. 2 of the Statute) only to the extent I submit that this particular provision does not in any way turn out to be inconsistent OR in conflict with the provisions of the 1991 Constitution of the Republic of Sierra Leone in which case the latter shall prevail. **The alleged primacy of the Special Court for Sierra Leone, however conceived is limited to the national courts of Sierra Leone and does not extend to the courts of third States. Lacking the power to assert its primacy over national courts in third States in connection with the crimes committed in Sierra Leone, it also lacks the power to request the surrender of an accused from any third State and to induce the compliance of its authorities with any such request.** Indeed on a true reading of one of the consequential Orders granted by Judge Bankole Thompson on the 7<sup>th</sup> March it is submitted that it lends support to the argument that the Special Court Agreement 2002 (Ratification) Act 2002 never contemplated extending arrest, search and transfer of any accused in accordance with Rule 58 without inviting states to enter into Agreements OR ad hoc agreements for that purpose. Furthermore in examining measures to enhance the deterrent powers of the Special Court, the Security Council has yet to consider endowing it with Chapter VII powers for the **specific purpose of requesting the surrender of an accused from outside the jurisdiction of the Court.**" (emphasis added)

The Security Council did not endow the Special Court with Chapter VII powers. Accordingly, the judicial orders originating from the Special Court have the quality of judicial orders from a State. This is recognized in the Special Court Agreement 2002, Ratification Act 2002. Article 20 is entitled *Orders of Special Court* and provides:

*For the purposes of execution, an order of the Special Court shall have the same force or effect as if it had been issued by a Judge, Magistrate or Justice of the Peace of a Sierra Leone court.*

Similarly, Article 23 of the Special Court Agreement 2002, Ratification Act 2002 entitled *Warrant of Arrest* provides:

*For the purposes of execution, a Warrant of Arrest issued by the Special Court shall have the same force or effect as if it had been issued by a Judge, Magistrate or Justice of the Peace of a Sierra Leone Court.*

The domestic legislation of the Republic of Sierra Leone, therefore makes it clear that the order for the arrest of President Charles Ghankay Taylor purportedly made by Judge Bankole Thompson on the 7<sup>th</sup> March 2003 would only have the same force or effect as any other order from any other part of the Sierra Leone legal system. Given that immunity from criminal suit of incumbent Heads of State is part of customary international law, it is clear that no domestic court could properly seek to indict or seek the arrest of President Charles Ghankay Taylor. The indictment and arrest warrant against President Charles Ghankay Taylor, an incumbent Head of State, should therefore be annulled and/OR cancelled forthwith and by extension, and indeed, *a fortiori* the reasoning of the Court in the *Case Concerning the Arrest Warrant of 11 April 2002 (D.R.C. v Belgium)*, *Judgement*, 14 February 2002 apply accordingly.

It is submitted further that the aforementioned indictment and the said purported warrant of arrest issued in Sierra Leone on 7 March 2003 by Judge Bankole Thompson against President Charles Taylor against a serving Head of State, for acts committed whilst he was Head of State with respect is a flagrant breach of customary international law and the immunities afforded to serving heads of State.

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In the United States case of *Tachiona v Mugabe* 169 F Supp. 2d 259 (SDNY 2001), President Robert Mugabe of Zimbabwe faced a class action suit alleging he had planned and executed a campaign of violence designed to intimidate and suppress his political opponents amounting contrary to various provisions of US law and "fundamental norms of international human rights law" (*Tachiona v Mugabe* 169 F Supp 2d 259 (SDNY 2001), at 264). Legal service was effected on President Mugabe whilst he was in the United States. The US State Department stated "permitting this action to proceed against the President... would be incompatible with the United States foreign policy interests (at 276). The US State Department urged dismissal of the claims based on Head of State immunity (at 268). After undertaking an extensive analysis of sovereign immunity the Court concluded that common law head of State immunity remained and that President Mugabe (and his Foreign Minister) were entitled to immunity from suit. *Tachiona v. Mugabe* 169 Fsupp 2d 296-7 (SDNY 2001).

The rationale for Head of State immunity is well established. As was explained in *Tachiona v Mugabe* 169 F Supp 2d 259 at 290-291 (SDNY 2001), given the unique sensibilities that attach to the person of the Head of State, there is greater potential for harm to diplomatic relations when a suit targets a Head of State than when it is lodged against a government entity, or the State as a whole. Secondly, the Head of State travels and should be given at least as much protection as is afforded to diplomats: *Tachiona v Mugabe* 169 F Supp 2d 259, at 291-2 (SDNY 2001).

In the Case concerning the Arrest Warrant of 11 April 2000 (*DRC v Belgium*), Judgment, 14 February 2002, the Court observed "that in international law it is firmly established that, as also diplomatic and consular agents, certain holders of high-ranking office in a State, such as the Head of State, head of Government and Minister of Foreign Affairs, enjoy immunities from jurisdiction in other States, both civil and criminal." (at para 51).

However it is submitted that the only Treaty that explicitly excludes the right to invoke OR rely upon personal immunities is the Statute of the International Criminal Court Article 27 (2). There is however a reluctance to embrace any new approach to international crime, but a preference instead to cling to old values such as respect for State Sovereignty and its corollary of immunity of State officials (Heads of State) OR diplomatic immunity. In the case of Major Tomas Ricardo Anderson Kohatsu, a retired official of Peru's notorious Army Intelligence Service, was alleged by the US State Department to have perpetrated 'horrendous crimes' in 1997. In early March 2000 the Peruvian authorities sent him to the USA to appear before a hearing of the Inter-American Commission on Human Rights in Washington. When he was about to leave the USA to return to Peru, FBI agents detained him, pursuant to the 1984 UN Convention Against Torture, duly ratified by the USA. However, a few hours later he was released following a decision by the Under-Secretary of State, Thomas Pickering. According to Pickering, Anderson was entitled to diplomatic immunity because he held a G-2 visa, granted to accredited members of the staff of the Peruvian Mission to the Organisation of American States. Consequently, he could not be arrested or prosecuted.

All this it is submitted applies to *incumbent* senior State officials. As soon as the State agent leaves office, he may no longer enjoy personal immunities and, in addition, he becomes liable to prosecution for any international crime he may have perpetrated while in office (or before taking office). This is rendered possible by the aforementioned customary international rule on international crimes that has evolved in the international community. The rule provides that, in case of perpetration by a State official of such international crimes as genocide, crimes against humanity, war crimes, torture, and serious crimes of international, State-sponsored terrorism, such acts, in addition to being imputed to the State of which the individual acts as an agent, also involved the criminal liability of the individual. In other words, for such crimes there may coexist State responsibility and individual criminal liability.

In flagrant disregard for the established rules of international customary law it is submitted that the Prosecutor for the Special Court for Sierra Leone seems to have timed the disclosure of the indictment to specifically prevent, thwart or otherwise hamper the Republic of Liberia's and its

President's legitimate conduct of its international affairs. The indictment against President Taylor was issued on 7 March 2003, and kept under seal until 4<sup>th</sup> June 2003, when the President of the Republic of Liberia, Mr. Charles Taylor, was in Ghana where he had gone for peace talks with the rebels to end the ten (10) year civil war. The Prosecutor was fully aware and intended that the indictment would hamper President Charles Taylor's desire to bring peace to Liberia. In a press statement released on 4<sup>th</sup> June 2003, the Prosecutor said, "the timing of this announcement was fully considered in light of the important peace process begun this week. To ensure the legitimacy of these negotiations, it is imperative that the attendees know that they are dealing with an indicted war criminal." (See again Appendix "E" above) As a direct consequence of the indictment, President Taylor left Ghana prematurely and was therefore hampered in the discharge of the responsibilities as Head of State.

- (2) The second legal ground relating to the Orders sought concern the violation of the principle that a State may not exercise (its authority) on the territory of another State and of the principle of Sovereign Equality among members of the United Nations as laid down in Article 2, paragraph 1 of the charter of the United Nations. It is submitted that the Universal Jurisdiction whether expressly or by necessary implication which the said Special Court has attributed to itself by its acts in its attempt to effect service of the said Indictment and purported Warrant on the Ghanaian authorities outside the jurisdiction of Sierra Leone woefully failed to reach OR be served on President Charles Taylor, a Liberian National and Head of State of Liberia who was out of the jurisdiction of Sierra Leone and to be precise in Ghana at the time contravenes the international jurisprudence established by the Judgement of the Permanent Court of International Justice (PCIJ) in the "LOTUS"-case (7<sup>th</sup> September 1927, Judgment No. 9, 1927 PCIJ, Series A, No. 10).

The (PCIJ) recognised at that time that territoriality is a principle of international law (while ruling that this principle is not absolute in that it cannot prevent a State from prosecuting acts done outside its territory if they had consequences on that territory, such as in that case on board a ship, flying the Turkish flag). According to the Judgement this principle means that a State may not exercise its authority on the territory of another State.

The rule of jurisprudence is indeed now corroborated by Article 2, paragraph 1 of the Chapter "of the United Nations which states: the Organisation is based on the principle of the sovereign equality and its members.

The only instances in which general international law allows exceptionally that a state may prosecute acts committed on the territory of another State by a foreigner are first cases involving violations of the security or dignity of the first State and second cases involving serious offences committed against its nationals.

The position is taken by some jurists that a number of multilateral conventions for the suppression of specifically defined offences (torture and other cruel, inhuman or degrading treatment or punishment, terrorism, breaches of rules on the physical protection of nuclear materials; unlawful acts against the safety of maritime navigation, unlawful seizure of aircraft, unlawful acts of violence at airports) provide for universal jurisdiction of the states parties to them. But and this is a crucial point, they make jurisdiction conditional on the perpetrator's presence on the territory of the prosecuting state. Such a state of affairs is not borne out by the facts of this instant case.

There are exceptional heads of jurisdiction which derive their compliance with international law solely from Treaties which provide for them. They are not part of general international law.

Doubtless certain States, in adopting laws, designed to bring their legislations into line with United Nations Security Council Resolutions 827 of 25<sup>th</sup> May 1993 and 955 of 8<sup>th</sup> November 1994, establishing international tribunals for prosecution of respectively persons responsible for serious

violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 and persons responsible for acts of genocide or serious violations of international humanitarian law committed in 1994 in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring states, extended their jurisdiction in respect of the crimes thus confined to cases other than those where either the persons responsible or the victims were their own nationals. However, such provisions are in no way materially comparable with what is envisaged under the said Special Court Agreement (Ratification) Act No. 9 of 2002.

Thus the above mentioned Security Council Resolution constitute interference in the affairs of Sovereign States whose sole justification is the mission of maintaining peace and international security vested in the United Nations, to which moreover the preamble to those resolutions expressly refers and which of course no State may usurp. However while the Security Council attributes to national courts jurisdiction concurrent with that of the international tribunals – subject to the primacy of the latter – to try the crimes which it defines, it lays down no criterion for such jurisdiction. It establishes no derogations from the rules of criminal jurisdiction recognized by international law.

Thus the above mentioned Security Council Resolutions cannot be invoked to justify under international law, in regard to offences punishable under those resolutions but limitatively defined by reference to their time and place of commission a law whereby a State claims unconditional jurisdiction to try such offences. A fortiori, those resolutions cannot be invoked to justify such a claim in relation to other offences, notwithstanding that they may be of the same character as those to which the resolutions relate but were committed in other places and at other times.

It should however be noted that nothing in the Rome Convention of 17<sup>th</sup> July 1998 authorises signatory States to attribute to themselves unconditional universal jurisdiction. Article 17 of the Convention which refers to a State which has jurisdiction [over the case] whereby in itself implies that every State does not necessarily have jurisdiction.

It follows that the provision under the Special Court Agreement 2002 Ratification Act 2002 and the accompanied Rules of Procedure and Evidence of the Special Court for Sierra Leone which were relied upon for purposes of the issue of the said Indictment and the said purported Warrant of Arrest by Judge Bankole Thompson of the 7<sup>th</sup> March 2003 pursuant to that law and its consequential Rules of Procedure and Evidence are ipso facto bad in law and in clear breach of customary international law.

### ORDERS SOUGHT

In the light of the aforementioned serious matters complained against by the Applicants herein, the Applicants herein request the Trial Chamber to issue the following Orders:

- (1) That the aforementioned indictment approved by Judge Bankole Thompson on the 7<sup>th</sup> March 2003 be accordingly quashed forthwith based on the aforesaid 2 legal grounds already canvassed above.
- (2) That the purported Warrant of Arrest also granted by Judge Bankole Thompson on the 7<sup>th</sup> of March 2003 be cancelled and/OR set aside based on the aforementioned legal grounds canvassed above.
- (3) That all other consequential and related Order(s) granted thereafter by either the said Judge Bankole Thompson OR Judge Pierre Boutet of the 12<sup>th</sup> June 2003 against the person of the said President Charles Ghankay Taylor be cancelled OR set aside forthwith.

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**REQUEST FOR INDICATION OF PROVISIONAL MEASURES**

Both The Republic of Liberia and President Charles Ghankay Taylor the Applicants herein request that the Court do grant the necessary interim injunctive relief restraining the service of the said approved indictment and the said purported warrant of arrest of the 7<sup>th</sup> March 2003 issued by Judge Bankole Thompson against the person of the President of Liberia Charles Ghankay Taylor in his capacity as Head of State of Liberia and to stay all other proceedings with the exception of the necessary provisional measures sought for herein by way of injunctive relief pending the hearing and determination of the primary orders sought above in this application.

Independently of the indication of provisional measures hereby requested by the Applicants herein the Republic of Liberia and President Charles Ghankay Taylor, it is submitted that the Court possesses inherent and related Powers to indicate provisional measures in appropriate cases whenever it considers the circumstances so require.

Both the Government of the Republic of Liberia and the President of the Republic of Liberia Charles Ghankay Taylor the Applicants herein reserve the right to argue further grounds of this Application and where necessary will seek leave to do so on jurisdictional grounds and without their actions in that respect to be construed as constituting a waiver of immunity accorded to a Head of State OR in any way be construed as submitting themselves to the jurisdiction of the Special Court for Sierra Leone.

**(4) PRAYER:-**

The Applicants herein namely the Government of the Republic of Liberia and the President of the Republic of Liberia Charles Ghankay Taylor request that the Trial Chamber do quash the said approved indictment of 7<sup>th</sup> March 2003 of Judge Bankole Thompson and that the aforesaid purported Warrant of Arrest and Order for transfer and detention of the same date issued by the said Judge Bankole Thompson of the Special Court for Sierra Leone, and all other consequential and related ORDER(S) granted thereafter by either the said Judge Bankole Thompson OR that of Judge Pierre Boutet of the 12<sup>th</sup> of June 2003 against the person of the said President Charles Ghankay Taylor be declared null and void, invalid at their inception and that they be accordingly cancelled and/OR set aside as a matter of Law based on the grounds canvassed above.

Furthermore both the Government of the Republic of Liberia and the President of the Republic of Liberia Charles Ghankay Taylor the Applicants herein further request that all interested persons and other relevant parties be accordingly notified of the final Order granted by the Special Court for Sierra Leone whether in the form of a declaration OR otherwise.

Dated at Freetown the 23<sup>rd</sup> day July 2003.

Signed

  
**Terence Michael Terry**  
Counsel for the Applicants herein



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THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN – SIERRA LEONE

THE PROSECUTOR

CASE NO. SCSL- 03-

-1

Against

CHARLES GHANKAY TAYLOR also known as

CHARLES GHANKAY MACARTHUR DAPKANA TAYLOR

AND

THE GOVERNMENT OF THE REPUBLIC OF LIBERIA AND PRESIDENT CHARLES  
TAYLOR (UNDER PROTEST AND WITHOUT WAIVING OF IMMUNITY ACCORDED TO  
THE LATTER AS HEAD OF STATE - APPLICANTS

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APPLICANTS MOTION MADE UNDER PROTEST AND WITHOUT  
WAIVING OF IMMUNITY accorded to a Head of State President Charles  
Ghankay Taylor requesting that the Trial Chamber do quash the said approved  
indictment of 7<sup>th</sup> March 2003 of Judge Bankole Thompson and that the aforesaid  
purported Warrant of Arrest and Order for transfer and detention of the same  
date by Judge Bankole Thompson of the Special Court for Sierra Leone, and all  
other consequential and related ORDER(S) granted thereafter by either the said  
Judge Bankole Thompson OR Judge Pierre Boutet on 12<sup>th</sup> June 2003 against the  
person of the said President Charles Ghankay Taylor be declared null and void,  
invalid at their inception and that they be accordingly cancelled and/OR set  
aside as a matter of Law.

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Office of the Prosecutor

The Prosecutor,  
Luc Côté, Chief of Prosecutions  
Brenda J. Hollis, Senior Trial Counsel

Applicants' Counsel:

Terence Michael Terry

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## APPLICANTS INDEX OF ATTACHMENTS

1. The Oath of office duly sworn to by President Charles Ghankay Taylor of the Republic of Liberia on the 2<sup>nd</sup> day of August, 1997.
2. The Indictment against the President of the Republic of Liberia Charles Ghankay Taylor approved on the 7<sup>th</sup> of March, 2003 by Judge Bankole Thompson of the Special Court for Sierra Leone.
3. The purported Warrant of Arrest issued against the President of the Republic of Liberia Charles Ghankay Taylor and the Order for transfer and detention both of the 7<sup>th</sup> March, 2003.
4. The Order of Judge Pierre Boutet of the Special Court for Sierra Leone of 12<sup>th</sup> June, 2003.
5. Statement of David M. Crane Chief Prosecutor, Special Court for Sierra Leone Captioned: For immediate Release Freetown, 4<sup>th</sup> June, 2003.
6. Press Release from the Press and Public Affairs office of the Special Court for Sierra Leone captioned: Press Release Rome, Italy, Friday, 18<sup>th</sup> July, 2003 on World Day for International Justice Special Court requests assistance in arresting indictees.
7. Press Release from the Press and Public Affairs office of the Special Court for Sierra Leone captioned: Press Release, Freetown, Sierra Leone. 11<sup>th</sup> June, 2003 Court President requests UN Security Council's Chapter Seven.

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**INDEX OF ATTACHMENTS**

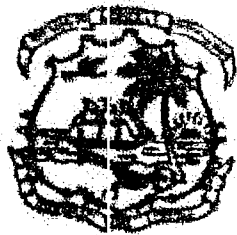
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INDEX OF ATTACHMENT 1

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REPUBLIC OF LIBERIA  
MINISTRY OF FOREIGN AFFAIRS  
MONROVIA, LIBERIA

(Convention de la Haye 5 Octobre, 1961)

APOSTILLE


1. COUNTRY: REPUBLIC OF LIBERIA

This public document "copy of Affidavit attesting to the OATH OF OFFICE OF THE PRESIDENT OF THE REPUBLIC OF LIBERIA, administered by Her Honor. Frances Johnson-Morris, CHIEF JUSTICE OF THE SUPREME COURT OF THE REPUBLIC OF LIBERIA, to His Excellency Charles Ghankay Dakpannah Taylor as President of the Republic of Liberia, in the city of Monrovia, Liberia, on 2<sup>nd</sup> August 1997."

2. has been signed by MARY M. HOWE.
3. acting in the capacity of NOTARY PUBLIC FOR MONTSERRADO COUNTY, REPUBLIC OF LIBERIA.
4. bearing the seal/stamp of the NOTARY PUBLIC FOR MONTSERRADO COUNTY, REPUBLIC OF LIBERIA.
5. attested by HON. TAMBAKAI A. JANGABA, ACTING MINISTER OF AFFAIRS/DEPONENT.

CERTIFIED

6. at Monrovia, Montserrado County.
7. by order of the Minister of Foreign Affairs.
8. July 18, 2003
9. CLD/07/18/2003-115

  
\_\_\_\_\_  
R. Leroy Urey  
DEPUTY MINISTER/LEGAL COUNSELLOR

Republic of Liberia  
Montserrado County

Office of the Notary Public  
Monrovia, Liberia

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# NOTARY CERTIFICATE

Personally Appeared Before Me in My Office within the City of  
Monrovia, Montserrado County, Republic of Liberia this  
13th day of JULY, A. D. 2003 duly  
qualified Notary Public for and in the County of Montserrado and in  
the Republic Aforesaid the Parties to the attached documents:-

AFFIDAVIT, COPY OF THE OATH OF OFFICE  
OF THE PRESIDENT OF THE REPUBLIC OF  
LIBERIA

and did in my presence and in the presence of each other execute and  
signed their genuine signatures on the said Instruments(s) to be the  
person(s) they represent and that the same was made in my presence  
and declared by each of them to be their voluntary acts and in their  
own hand writings.

Therefore, I, Mary Mamie Howe, Notary Public aforesaid, have  
attached my Official Signature Notary Seal to await when and where  
Necessary.

I have affixed my genuine Signature attesting to  
this transaction by the power vested in me this  
13th day of JULY, A. D. 2003.

  
— MARY MAMIE HOWE



REPUBLIC OF LIBERIA  
 MINISTRY OF FOREIGN AFFAIRS  
 MONROVIA, LIBERIA

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REPUBLIC OF LIBERIA )  
 MONTERRADO COUNTY)

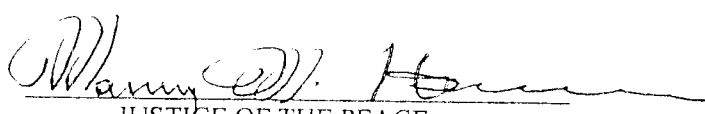
IN THE OFFICE OF THE JUSTICE OF THE PEACE  
 FOR AND IN MONTERRADO COUNTY,  
 MONROVIA, LIBERIA

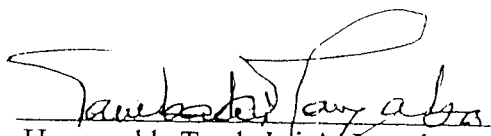
AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, the undersigned, a duly qualified Justice of the Peace, for and in Montserrado County, Republic of Liberia, at my Office in the City of Monrovia, County and Republic aforesaid, Honourable Tambakai A. Jangaba, Acting Minister of Foreign Affairs, who under Oath according to law deposes as follows:

1. That the attached document is the true and correct copy of the OATH OF OFFICE OF THE PRESIDENT-ELECT OF THE REPUBLIC OF LIBERIA, administered by Her Honour, Frances Johnson-Morris, Chief Justice of the Supreme Court of the Republic of Liberia, to His Excellency Charles Ghankay Dahkpanah Taylor as President-elect of the Republic of Liberia, in the City of Monrovia, Liberia; on 2<sup>nd</sup> August 1997 and that the said document was signed by the President of the Republic of Liberia, His Excellency Charles Ghankay Dahkpanah Taylor, on August 2, 1997.
2. That the signature which appears on the above-mentioned OATH OF OFFICE OF THE PRESIDENT is the genuine signature of His Excellency Charles Ghankay Dahkpanah Taylor, President of the Republic of Liberia.
3. That all and singular the averments of facts as are contained in the foregoing are true and correct to the best of his knowledge and belief.

Sworn and Subscribed to before me at my Office in the City of Monrovia, County and Republic aforesaid this 18th day of July, A.D. 2003.

  
 JUSTICE OF THE PEACE  
 MONTERRADO COUNTY  
 REPUBLIC OF LIBERIA

  
 Honourable Tambakai A. Jangaba  
 ACTING MINISTER OF FOREIGN  
 AFFAIRS/DEPONENT

\$5.00 Revenue stamp affixed to the original.

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JUDICIAL BRANCH  
SUPREME COURT OF LIBERIA

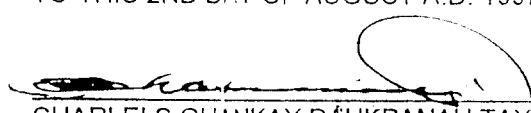


CHIEF JUSTICE'S CHAMBERS  
TEMPLE OF JUSTICE  
MONROVIA, LIBERIA

OATH OF OFFICE OF THE PRESIDENT - ELECT

I, CHARLES GHANKAY DAHKPANA TAYLOR, DO SOLEMNLY SWEAR THAT I WILL SUPPORT, UPHOLD, PROTECT, AND DEFEND THE CONSTITUTION AND LAWS OF THE REPUBLIC OF LIBERIA, BEAR TRUE FAITH AND ALLEGIANCE TO THE REPUBLIC, AND WILL FAITHFULLY, CONSCIENTIOUSLY AND IMPARTIALLY DISCHARGE THE DUTIES AND FUNCTIONS OF THE OFFICE OF THE PRESIDENT OF THE REPUBLIC OF LIBERIA TO THE BEST OF MY ABILITY. SO HELP ME GOD.

SWORN AND SUBSCRIBED  
TO THIS 2ND DAY OF AUGUST A.D. 1997

  
CHARLES GHANKAY DAHKPANA TAYLOR  
PRESIDENT, REPUBLIC OF LIBERIA.



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SCSL-2003-01-I  
7 MARCH 2003

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17 MAR 2003  
17.00 hrs.

002

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-03-

2915  
-I

THE PROSECUTOR

Against

CHARLES GHANKAY TAYLOR also known as  
CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR



INDICTMENT

The Prosecutor, Special Court for Sierra Leone, under Article 15 of the Statute of the Special Court for Sierra Leone (the Statute) charges:

CHARLES GHANKAY TAYLOR also known as  
(aka) CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR

with CRIMES AGAINST HUMANITY, VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II and OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW, in violation of Articles 2, 3 and 4 of the Statute as set forth below:

THE ACCUSED

1. CHARLES GHANKAY TAYLOR aka CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR (the ACCUSED) was born on or about 28 January 1948 at Arthington in the Republic of Liberia.

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## GENERAL ALLEGATIONS

2. At all times relevant to this Indictment, a state of armed conflict existed within Sierra Leone. For the purposes of this Indictment, organized armed factions involved in this conflict included the Revolutionary United Front (RUF), the Civil Defence Forces (CDF) and the Armed Forces Revolutionary Council (AFRC).
3. A nexus existed between the armed conflict and all acts or omissions charged herein as Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and as Other Serious Violations of International Humanitarian Law.
4. The organized armed group that became known as the RUF, led by FODAY SAYBANA SANKOH aka POPAY aka PAPA aka PA, was founded about 1988 or 1989 in Libya. The RUF, under the leadership of FODAY SAYBANA SANKOH, began organized armed operations in Sierra Leone in March 1991. During the ensuing armed conflict, the RUF forces were also referred to as "RUF", "rebels" and "People's Army".
5. The CDF was comprised of Sierra Leonean traditional hunters, including the Kamajors, Gbethis, Kapras, Tamaboros and Donsos. The CDF fought against the RUF and AFRC.
6. On 30 November 1996, in Abidjan, Ivory Coast, FODAY SAYBANA SANKOH and Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, signed a peace agreement which brought a temporary cessation to active hostilities. Thereafter, the active hostilities recommenced.
7. The AFRC was founded by members of the Armed Forces of Sierra Leone who seized power from the elected government of the Republic of Sierra Leone via a coup d'état on 25 May 1997. Soldiers of the Sierra Leone Army (SLA) comprised the majority of the AFRC membership. On that date JOHNNY PAUL KOROMA aka JPK became the leader and Chairman of the AFRC. The AFRC forces were also referred to as "Junta", "soldiers", "SLA", and "ex-SLA".
8. Shortly after the AFRC seized power, at the invitation of JOHNNY PAUL KOROMA, and upon the order of FODAY SAYBANA SANKOH, leader of the RUF, the RUF joined with the AFRC. The AFRC and RUF acted jointly thereafter. The AFRC/RUF

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Junta forces (Junta) were also referred to as “Junta”, “rebels”, “soldiers”, “SLA”, “ex-SLA” and “People’s Army”.

9. After the 25 May 1997 coup d’état, a governing body, the Supreme Council, was created within the Junta. The governing body included leaders of both the AFRC and RUF.
10. The Junta was forced from power by forces acting on behalf of the ousted government of President Kabbah about 14 February 1998. President Kabbah’s government returned in March 1998. After the Junta was removed from power the AFRC/RUF alliance continued.
11. On 7 July 1999, in Lomé, Togo, FODAY SAYBANA SANKOH and Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, signed a peace agreement. However, active hostilities continued.
12. The **ACCUSED** and all members of the organized armed factions engaged in fighting within Sierra Leone were required to abide by International Humanitarian Law and the laws and customs governing the conduct of armed conflicts, including the Geneva Conventions of 12 August 1949, and Additional Protocol II to the Geneva Conventions, to which the Republic of Sierra Leone acceded on 21 October 1986.
13. All offences alleged herein were committed within the territory of Sierra Leone after 30 November 1996.
14. All acts and omissions charged herein as Crimes Against Humanity were committed as part of a widespread or systematic attack directed against the civilian population of Sierra Leone.
15. The words civilian or civilian population used in this Indictment refer to persons who took no active part in the hostilities, or who were no longer taking an active part in the hostilities.

#### INDIVIDUAL CRIMINAL RESPONSIBILITY

16. Paragraphs 1 through 15 are incorporated by reference.

17. In the late 1980's **CHARLES GHANKAY TAYLOR** received military training in Libya from representatives of the Government of **MU'AMMAR AL-QADHAFI**. While in Libya the **ACCUSED** met and made common cause with **FODAY SAYBANA SANKOH**.
18. While in Libya, the **ACCUSED** formed or joined the National Patriotic Front of Liberia (NPFL). At all times relevant to this Indictment the **ACCUSED** was the leader of the NPFL and/or the President of the Republic of Liberia.
19. In December 1989 the NPFL, led by the **ACCUSED**, began conducting organized armed attacks in Liberia. The **ACCUSED** and the NPFL were assisted in these attacks by **FODAY SAYBANA SANKOH** and his followers.
20. To obtain access to the mineral wealth of the Republic of Sierra Leone, in particular the diamond wealth of Sierra Leone, and to destabilize the State, the **ACCUSED** provided financial support, military training, personnel, arms, ammunition and other support and encouragement to the RUF, led by **FODAY SAYBANA SANKOH**, in preparation for RUF armed action in the Republic of Sierra Leone, and during the subsequent armed conflict in Sierra Leone.
21. Throughout the course of the armed conflict in Sierra Leone, the RUF and the AFRC/RUF alliance, under the authority, command and control of **FODAY SAYBANA SANKOH**, **JOHNNY PAUL KOROMA** and other leaders of the RUF, AFRC and AFRC/RUF alliance, engaged in notorious, widespread or systematic attacks against the civilian population of Sierra Leone.
22. At all times relevant to this Indictment, **CHARLES GHANKAY TAYLOR** supported and encouraged all actions of the RUF and AFRC/RUF alliance, and acted in concert with **FODAY SAYBANA SANKOH** and other leaders of the RUF and AFRC/RUF alliance. **FODAY SAYBANA SANKOH** was incarcerated in Nigeria and Sierra Leone and subjected to restricted movement in Sierra Leone from about March 1997 until about April 1999. During this time the **ACCUSED**, in concert with **FODAY SAYBANA SANKOH**, provided guidance and direction to the RUF, including **SAM BOCKARIE** aka **MOSQUITO** aka **MASKITA**.

- 23. The RUF and the AFRC shared a common plan, purpose or design (joint criminal enterprise) which was to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas. The natural resources of Sierra Leone, in particular the diamonds, were to be provided to persons outside Sierra Leone in return for assistance in carrying out the joint criminal enterprise.
- 24. The joint criminal enterprise included gaining and exercising control over the population of Sierra Leone in order to prevent or minimize resistance to their geographic control, and to use members of the population to provide support to the members of the joint criminal enterprise. The crimes alleged in this Indictment, including unlawful killings, abductions, forced labour, physical and sexual violence, use of child soldiers, looting and burning of civilian structures, were either actions within the joint criminal enterprise or were a reasonably foreseeable consequence of the joint criminal enterprise.
- 25. The ACCUSED participated in this joint criminal enterprise as part of his continuing efforts to gain access to the mineral wealth of Sierra Leone and to destabilize the Government of Sierra Leone.
- 26. CHARLES GHANKAY TAYLOR, by his acts or omissions, is individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Indictment, which crimes the ACCUSED planned, instigated, ordered, committed or in whose planning, preparation or execution the ACCUSED otherwise aided and abetted, or which crimes were within a joint criminal enterprise in which the ACCUSED participated or were a reasonably foreseeable consequence of the joint criminal enterprise in which the ACCUSED participated.
- 27. In addition, or alternatively, pursuant to Article 6.3. of the Statute, CHARLES GHANKAY TAYLOR, while holding positions of superior responsibility and exercising command and control over his subordinates, is individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute. The ACCUSED is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so

and the **ACCUSED** failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

## CHARGES

28. Paragraphs 16 through 27 are incorporated by reference.
29. At all times relevant to this Indictment, members of the RUF, AFRC, Junta and/or AFRC/RUF forces (AFRC/RUF), supported and encouraged by, acting in concert with and/or subordinate to **CHARLES GHANKAY TAYLOR**, conducted armed attacks throughout the territory of the Republic of Sierra Leone, including, but not limited, to Bo, Kono, Kenema, Bombali and Kailahun Districts and Freetown. Targets of the armed attacks included civilians and humanitarian assistance personnel and peacekeepers assigned to the United Nations Mission in Sierra Leone (UNAMSIL), which had been created by United Nations Security Council Resolution 1270 (1999).
30. These attacks were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes – dead bodies, mutilated victims and looted and burnt property.
31. As part of the campaign of terror and punishment the AFRC/RUF routinely captured and abducted members of the civilian population. Captured women and girls were raped; many of them were abducted and used as sex slaves and as forced labour. Some of these women and girls were held captive for years. Men and boys who were abducted were also used as forced labour; some of them were also held captive for years. Many abducted boys and girls were given combat training and used in active fighting. AFRC/RUF also physically mutilated men, women and children, including amputating their hands or feet and carving “AFRC” and “RUF” on their bodies.

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COUNTS 1 – 2: TERRORIZING THE CIVILIAN POPULATION AND  
COLLECTIVE PUNISHMENTS

32. Members of the AFRC/RUF supported and encouraged by, acting in concert with and/or subordinate to **CHARLES GHANKAY TAYLOR** committed the crimes set forth below in paragraphs 33 through 58 and charged in Counts 3 through 13, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

**Count 1:** Acts of Terrorism, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.d. of the Statute;

And:

**Count 2:** Collective Punishments, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.b. of the Statute.

COUNTS 3 – 5: UNLAWFUL KILLINGS

33. Victims were routinely shot, hacked to death and burned to death. Unlawful killings included, but were not limited to, the following:

Bo District

34. Between 1 June 1997 and 30 June 1997, AFRC/RUF attacked Tikonko, Telu, Sembahun, Gerihun and Mamboma, unlawfully killing an unknown number of civilians;

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Kenema District

35. Between about 25 May 1997 and about 19 February 1998, in locations including Kenema town, members of AFRC/RUF unlawfully killed an unknown number of civilians;

Kono District

36. About mid February 1998, AFRC/RUF fleeing from Freetown arrived in Kono District. Between about 14 February 1998 and 30 June 1998, members of AFRC/RUF unlawfully killed several hundred civilians in various locations in Kono District, including Koidu, Tombodu, Foindu, Willifeh, Mortema and Biaya;

Bombali District

37. Between about 1 May 1998 and 31 July 1998, in locations including Karina, members of AFRC/RUF unlawfully killed an unknown number of civilians;

Freetown

38. Between 6 January 1999 and 31 January 1999, AFRC/RUF conducted armed attacks throughout the city of Freetown. These attacks included large scale unlawful killings of civilian men, women and children at locations throughout the city, including the State House, Parliament building, Connaught Hospital, and the Kissy, Fourah Bay, Uppun, Calaba Town and Tower Hill areas of the city.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

**Count 3:** Extermination, a **CRIME AGAINST HUMANITY**, punishable under Article 2.b. of the Statute;

In addition, or in the alternative:

**Count 4:** Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 2.a. of the Statute;

In addition, or in the alternative:

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**Count 5:** Violence to life, health and physical or mental well-being of persons, in particular murder, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute.

### COUNTS 6 – 8: SEXUAL VIOLENCE

39. Widespread sexual violence committed against civilian women and girls included brutal rapes, often by multiple rapists. Acts of sexual violence included, but were not limited to, the following:

#### Kono District

40. Between about 14 February 1998 and 30 June 1998, members of AFRC/RUF raped hundreds of women and girls at various locations throughout the District, including Koidu, Tomboju, Kissi-town (or Kissi Town), Foendor (or Foendu), Tomendeh, Fokoiya, Wondedu and AFRC/RUF camps such as “Superman camp” and Kissi-town (or Kissi Town) camp. An unknown number of women and girls were abducted from various locations within the District and used as sex slaves;

#### Bombali District

41. Between about 1 May 1998 and 31 July 1998, members of AFRC/RUF raped an unknown number of women and girls in locations such as Mandaha. In addition, an unknown number of abducted women and girls were used as sex slaves;

#### Kailahun District

42. At all times relevant to this Indictment, an unknown number of women and girls in various locations in the District were subjected to sexual violence. Many of these victims were captured in other areas of the Republic of Sierra Leone, brought to AFRC/RUF camps in the District, and used as sex slaves;

#### Freetown

43. Between 6 January 1999 and 31 January 1999, members of AFRC/RUF raped hundreds of women and girls throughout the Freetown area, and abducted hundreds of women and girls and used them as sex slaves.

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By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

**Count 6:** Rape, a **CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;

And:

**Count 7:** Sexual slavery and any other form of sexual violence, a **CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;

In addition, or in the alternative:

**Count 8:** Outrages upon personal dignity, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.e. of the Statute.

#### COUNTS 9 – 10: PHYSICAL VIOLENCE

44. Widespread physical violence, including mutilations, was committed against civilians. Victims were often brought to a central location where mutilations were carried out. These acts of physical violence included, but were not limited to, the following:

##### Kono District

45. Between about 14 February 1998 and 30 June 1998, AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including Tombodu, Kaima (or Kayima) and Wonedu. The mutilations included cutting off limbs and carving “AFRC” and “RUF” on the bodies of the civilians;

##### Freetown

46. Between 6 January 1999 and 31 January 1999, AFRC/RUF mutilated an unknown number of civilian men, women and children in various areas of Freetown, including the northern and eastern areas of the city, and the Kissy area, including the Kissy mental hospital. The mutilations included cutting off limbs.

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By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

**Count 9:** Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute;

In addition, or in the alternative:

**Count 10:** Other inhumane acts, a **CRIME AGAINST HUMANITY**, punishable under Article 2.i. of the Statute.

**COUNT 11: USE OF CHILD SOLDIERS**

47. At all times relevant to this Indictment, throughout the Republic of Sierra Leone, AFRC/RUF routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities. Many of these children were first abducted, then trained in AFRC/RUF camps in various locations throughout the country, and thereafter used as fighters.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

**Count 11:** Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.c. of the Statute.

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COUNT 12: ABDUCTIONS AND FORCED LABOUR

48. At all times relevant to this Indictment, AFRC/RUF engaged in widespread and large scale abductions of civilians and use of civilians as forced labour. Forced labour included domestic labour and use as diamond miners. The abductions and forced labour included, but were not limited to, the following:

Kenema District

49. Between about 1 August 1997 and about 31 January 1998, AFRC/RUF forced an unknown number of civilians living in the District to mine for diamonds at Cyborg Pit in Tongo Field;

Kono District

50. Between about 14 February 1998 and 30 June 1998, AFRC/RUF forces abducted hundreds of civilian men, women and children, and took them to various locations outside the District, or to locations within the District such as AFRC/RUF camps, Tombodu, Kcidu, Wonedu, Tomendeh. At these locations the civilians were used as forced labour, including domestic labour and as diamond miners in the Tombodu area;

Bombali District

51. Between about 1 May 1998 and 31 July 1998, in Bombali District, AFRC/RUF abducted an unknown number of civilians and used them as forced labour;

Kailahun District

52. At all times relevant to this Indictment, captured civilian men, women and children were brought to various locations within the District and used as forced labour;

Freetown

53. Between 6 January 1999 and 31 January 1999, in particular as the AFRC/RUF were being driven out of Freetown, the AFRC/RUF abducted hundreds of civilians, including a large number of children, from various areas within Freetown, including Peacock Farm and Calaba Town. These abducted civilians were used as forced labour.

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By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

**Count 12:** Enslavement, a **CRIME AGAINST HUMANITY**, punishable under Article 2.c. of the Statute.

### COUNT 13: LOOTING AND BURNING

54. At all times relevant to this Indictment, AFRC/RUF engaged in widespread unlawful taking and destruction by burning of civilian property. This looting and burning included, but was not limited to, the following:

#### Bo District

55. Between 1 June 1997 and 30 June 1997, AFRC/RUF forces looted and burned an unknown number of civilian houses in Telu, Sembahun, Mamboma and Tikonko;

#### Kono District

56. Between about 14 February 1998 and 30 June 1998, AFRC/RUF engaged in widespread looting and burning in various locations in the District, including Tombodu, Foindu and Yardu Sando, where virtually every home in the village was looted and burned;

#### Bombali District

57. Between 1 March 1998 and 30 June 1998, AFRC/RUF forces burned an unknown number of civilian buildings in locations such as Karina;

#### Freetown

58. Between 6 January 1999 and 31 January 1999, AFRC/RUF forces engaged in widespread looting and burning throughout Freetown. The majority of houses that were destroyed were in the areas of Kissy and eastern Freetown: other locations included the Foirah Bay, Uppun, State House and Pademba Road areas of the city.

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By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

**Count 13:** Pillage, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.f. of the Statute.

**COUNTS 14 – 17: ATTACKS ON UNAMSIL PERSONNEL**

59. Between about 15 April 2000 and about 15 September 2000, AFRC/RUF engaged in widespread attacks against UNAMSIL peacekeepers and humanitarian assistance workers within the Republic of Sierra Leone, including, but not limited to locations within Bombali, Kailahun, Kambia, Port Loko, and Kono Districts. These attacks included unlawful killing of UNAMSIL peacekeepers, and abducting hundreds of peacekeepers and humanitarian assistance workers who were then held hostage.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

**Count 14:** Intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.b. of the Statute;

In addition, or in the alternative:

**Count 15:** For the unlawful killings, Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 2.a. of the Statute;

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In addition, or in the alternative:

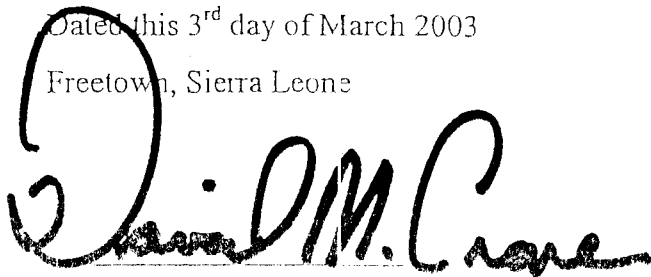
**Count 16:** Violence to life, health and physical or mental well-being of persons, in particular murder, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute;

In addition, or in the alternative:

**Count 17:** For the abductions and holding as hostage, Taking of hostages, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.c. of the Statute.

Dated this 3<sup>rd</sup> day of March 2003

Freetown, Sierra Leone



David M. Crane

The Prosecutor



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**SPECIAL COURT FOR SIERRA LEONE**

JOMIC KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

Before: Judge Bankole Thompson

Registry: Mr. Robin Vincent

Decision of: 07 March 2003

**THE PROSECUTOR**

Against

**CHARLES GHANKAY TAYLOR** also known as  
**CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR**

CASE NO. SCSL - 2003 - 01 - I

**WARRANT OF ARREST AND ORDER FOR TRANSFER  
AND DETENTION**

To: The Governments of all States.

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**THE SPECIAL COURT FOR SIERRA LEONE (the "Special Court"),**

**SITTING AS** Judge Thompson, designated by the President of the Special Court according to Rule 23 of the Rules of Procedure and Evidence ("the Rules");

**CONSIDERING** that the Indictment against CHARLES GHANKAY TAYLOR also known as CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR a citizen of Liberia, born 28 January 1948 at Arthington in the Republic of Liberia, who is accused of Crimes against Humanity, violations of Article 3 common to the Geneva Conventions and of Additional Protocol II, and other Serious Violations of International Humanitarian Law ("the Accused"), was reviewed and approved by the Special Court on 7 March 2003,

**CONSIDERING** that an Order for the Non-Disclosure was granted on 7 March 2003;

**HEREBY ORDERS THE REGISTRAR OF THE SPECIAL COURT**

(A) to address this Warrant of Arrest, Decision Approving the Indictment, the Approved Indictment of the accused and a Statement of the Rights of the Accused to the national authorities of such States, or to the relevant international body, including the International Criminal Police Organisation (INTERPOL), as may be indicated by the Prosecutor in accordance with Rule 56;

(B) to invite such States to enter into Agreements or ad hoc arrangements which may facilitate the **SEARCH, ARREST AND TRANSFER** to the Special Court of the Accused in accordance with Rule 58;

(C) to cause to be served on the Accused, at the time of his arrest, or as soon as is practicable immediately following his arrest, in English or have read to him in a language he understands, a certified copy of the Warrant of Arrest, a certified copy of the Indictment, a statement of the rights of the Accused and to caution the Accused that any statement made by him shall be recorded and may be used as evidence against him in coordination with the National Authorities of the State concerned;

(D) to remand the Accused, into the custody of the Special Court Detention Facility or such other Detention Facility as determined by the President in accordance with Rule 57.

**HEREBY REQUESTS ALL STATES CONCERNED**

(A) to assist and facilitate the Office of the Prosecutor of the Special Court, at any location, in the search for and seizure of all evidence related to the crimes alleged to have been committed by the Accused;

(B) to promptly notify the Registrar of the Special Court of the arrest of the Accused in accordance with Rule 57, for the purposes of effectuating his transfer to the custody of

the Special Court, or to such other place as the President may decide, and to surrender the Accused to the Special Court without delay. The transfer shall be arranged by the State authorities concerned, in liaison with the authorities of the host country and the Registrar of the Special Court;

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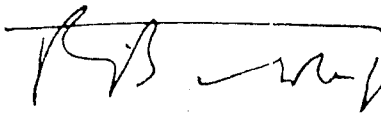
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(C) to identify and locate assets owned by the Accused located within the territory of any State and adopt provisional measures to freeze such assets without prejudice to the rights of third parties;

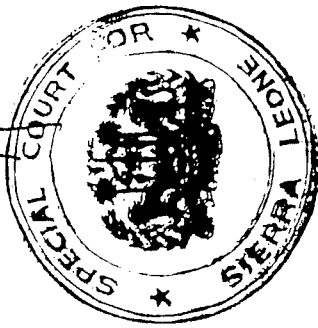
(D) not disclose to the public, including the media or any public record, the existence of the Indictment and this Warrant of Arrest, or any part thereof or information pertaining to the Indictment and this Warrant for Arrest until further order of the Court or at the direction of the Prosecutor;

A Member of the Office of the Prosecutor may be present from the time of arrest.

Done in London, this 7<sup>th</sup> day of March 2003.



Signed Judge Bankole Thompson  
Presiding Judge of the Trial Chamber



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SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

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FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

THE TRIAL CHAMBER

Before: Judge Pierre Boutet  
Designated Judge Pursuant to Rule 28 of the Rules

Registrar: Robin Vincent

Date: 12<sup>th</sup> June 2003

The Prosecutor Against:

Charles Ghankay Taylor  
aka Charles Ghankay Macarthur Dapkpana Taylor  
(Case No. SCSL-2003-01-1)

ORDER FOR THE DISCLOSURE OF THE INDICTMENT, THE WARRANT OF ARREST  
AND ORDER FOR TRANSFER AND DETENTION AND THE DECISION APPROVING  
THE INDICTMENT AND ORDER FOR NON-DISCLOSURE

Office of the Prosecutor:  
David Crane, The Prosecutor  
Luc Côté, Chief of Prosecution

J.O. Nyang  
12-June 03

HSShand

THE SPECIAL COURT FOR SIERRA LEONE ("the Court")

SITTING AS Judge Pierre Boutet, designated pursuant to Rule 28 of the Rules of Procedure and Evidence ("the Rules");

CONSIDERING that the Indictment against Charles Ghankay Taylor ("the Accused") was reviewed and approved by Judge Bankole Thompson on the 7<sup>th</sup> of March 2003;

CONSIDERING that the Warrant of Arrest and Order for Transfer and Detention of the Accused was issued on the 7<sup>th</sup> of March 2003;

CONSIDERING the Decision Approving the Indictment of the 7<sup>th</sup> of March 2003;

CONSIDERING the Order for Non-Disclosure of the 7<sup>th</sup> of March 2003;

HAVING RECEIVED on the 7<sup>th</sup> of June 2003 a request from the Prosecutor for the public disclosure of the Indictment against the Accused, the Warrant of Arrest and Order for Transfer and Detention and the Decision Approving the Indictment and Order for Non-Disclosure;

CONSIDERING that it would be in the public interest to now proceed with such disclosure;

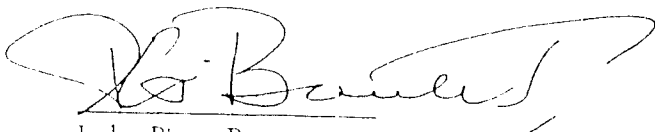
NOW THEREFORE,

PURSUANT to Rules 53 and 54 of the Rules,

HEREBY ORDERS the public disclosure of the Indictment against the Accused, the Warrant of Arrest and Order for Transfer and Detention and the Decision Approving the Indictment and Order for Non-Disclosure;

The additional material supporting the Indictment shall not be disclosed to the public until further order of the Special Court.

Done at Freetown, Sierra Leone this 12<sup>th</sup> day of June 2003.



Judge Pierre Boutet  
Designated Judge

Seal of the Special Court

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SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR

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FOR IMMEDIATE RELEASE

Freetown, 4 June 2003

*Statement of David M. Crane  
Chief Prosecutor, Special Court for Sierra Leone*

Today, on behalf of the people of Sierra Leone and the international community, I announce the indictment of Charles Ghankay Taylor, also known as Charles Gharaj Macarthur Dapkpana Taylor.

The indictment accuses Taylor of "bearing the greatest responsibility" for war crimes, crimes against humanity, and serious violations of international humanitarian law within the territory of Sierra Leone since 30 November 1996. The indictment was judicially approved on March 7<sup>th</sup> and until today, was sealed on my request to the Court.

My office was given an international mandate by the United Nations and the Republic of Sierra Leone to follow the evidence impartially wherever it leads. It has led us unequivocally to Taylor.

Upon learning that Taylor was travelling to Ghana, the Registrar of the Special Court served the outstanding warrant for his arrest on Ghanaian authorities and transmitted the arrest warrant to INTERPOL. This is the first time that his presence outside of Liberia has been publicly confirmed. The Registrar was doing his duty by carrying out the order of the Court.

Furthermore, the timing of this announcement was carefully considered in light of the important peace process begun this week. To ensure the legitimacy of these negotiations, it is imperative that the attendees know they are dealing with an indicted war criminal. These negotiations can still move forward, but they must do so without the involvement of this indictee. The evidence upon which this indictment was approved raises serious questions about Taylor's suitability to be a guarantor of any deal, let alone a peace agreement.

I am aware that many members of the international community have invested a great deal of energy in the current peace talks. I want to make it clear that in reaching my decision to make the indictment public, I have not consulted with any state. I am acting as an independent prosecutor and this decision was based solely on the law.

I also want to send a clear message to all factions fighting in Liberia that they must respect international humanitarian law. Commanders are under international legal obligation to prevent their members from violating the laws of war and committing crimes against humanity.

In accordance with Security Council resolutions 1315, 1470, and 1478, now is the time for all nations to reinforce their commitments to international peace and security. West Africa will not know true peace until those behind the violence answer for their actions. This office now calls upon the international community to take decisive action to ensure that Taylor is brought to justice.

Thank you.

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**Special Court for Sierra Leone**  
Press and Public Affairs Office

**PRESS RELEASE**

Rome, Italy, Friday, 18 July 2003

**On World Day for International Justice, Special Court Requests Assistance in Arresting Indictees**

The President of the Special Court Justice Geoffrey Robertson asked for assistance from the international community on Thursday in securing the cooperation of governments in bringing indicted war criminals to justice. In June the Special Court had unsealed a seventeen-count indictment against the president of Liberia, Charles Taylor.

Speaking in Rome's Capital Hill at the fifth anniversary of the Rome conference at which 120 countries agreed to create a permanent criminal court for serious crimes under international law, Justice Robertson called the ICC the Special Court's 'big brother'. "At a time when we are having difficulties arresting indictees and transferring prisoners, I hope we can work together to secure the cooperation of states."

Justice Robertson hailed the decision five years ago to create the ICC and noted the legacy of the Nuremberg trials following the Second World War. He hoped that the ICC would use its powers to hold trials in areas ravaged by war. "It is often important that judges sit where the crimes took place."

Sierra Leone's Ambassador to the UN, Allieu I. Kanu, also spoke at the anniversary event in his capacity as the Vice-President of the Assembly of States Parties of the ICC. In referring to the Special Court for Sierra Leone, he said: "Accounting for our past and attributing individual criminal liability to those who bear the greatest responsibility for the atrocities is the one sure way the international community and the Government of Sierra Leone have devised for the attainment of peace and stability in our country."

#END

INFORMATION FOR MEDIA - NOT FOR ADVERTISING

Produced by the  
Press and Public Affairs Office  
Special Court for Sierra Leone  
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Email: [SCSL\\_pressoffice@un.org](mailto:SCSL_pressoffice@un.org)

Visit our website at [www.sc-sl.org](http://www.sc-sl.org)

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**Special Court for Sierra Leone**  
Press and Public Affairs Office

**PRESS RELEASE**

Freetown, Sierra Leone, 11 June 2003

**Court President Requests UN Security Council's Chapter Seven**

In the wake of the Special Court's recent attempt to arrest Liberia's president Charles Ghankay Taylor on charges of crimes against humanity, the President of Court, Justice Geoffrey Robertson, has written a letter to the Secretary General of the United Nations Kofi Annan. The letter asks the Secretary General to recommend that the UN Security Council pass a resolution under Chapter Seven of the UN Charter calling on member states to abide by the orders of the Court.

Governments would then be obligated to make arrests were the Special Court to issue a warrant. There are currently outstanding warrants for three indictees, President Taylor, Johnny Paul Koroma and Sam Bockerie, although his alleged body is currently being examined by the Court to verify the identity.

Having Chapter Seven powers could also strengthen the Special Court in other areas. The Court may need to call on governments to help in tracking down witnesses or to allow detainees to enter their territories for medical examinations and treatment. The Court may also decide to ask governments to incarcerate persons who the judges of the Court have found guilty. ~END

INFORMATION FOR MEDIA - NOT FOR ADVERTISING

Produced by the  
Press and Public Affairs Office  
Special Court for Sierra Leone  
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Email: [SCSL-press@scg.un.org](mailto:SCSL-press@scg.un.org)

Visit our website at [www.scs-ctg.org](http://www.scs-ctg.org)

EXHIBIT "AMD 4"  
2943

**THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN – SIERRA LEONE**

**CASE NO. SCSL – 2003-01-PT**

**THE PROSECUTOR**

**Against**

**CHARLES GHANKAY TAYLOR also known as  
CHARLES GHANKAY MACARTHUR DAPKANA TAYLOR – APPLICANT**

**AND**

**JUDGE GEOFFREY ROBERTSON, Q.C. PRESIDENT OF THE APPEALS CHAMBER OF  
THE SPECIAL COURT FOR SIERRA LEONE – RESPONDENT**

---

APPLICANT'S MOTION AGAINST THE UNWHOLESOME AND BIAS COMMENTS MADE BY THE PRESIDENT AND PRESIDING JUDGE OF THE APPEALS CHAMBER OF THE SPECIAL COURT FOR SIERRA LEONE GEOFFREY ROBERTSON Q.C. WHEN HE DESCRIBED EX-PRESIDENT CHARLES GHANKAY TAYLOR THE APPLICANT HEREIN AS A VICIOUS WARLORD AT PAGE 466 OF HIS BOOK ENTITLED CRIMES AGAINST HUMANITY -- THE STRUGGLE FOR GLOBAL JUSTICE UNDER THE SUBTITLE -- LESSONS FROM SIERRA LEONE STARTING FROM PAGE 465 ONWARDS AS WELL AS ON OTHER TWO GROUNDS WHICH GO TO JURISDICTION AND/OR EXCESS OF JURISDICTION

---

This is a photocopy of the Order of the Trial Chamber of the Special Court for Sierra Leone of the 19<sup>th</sup> September 2003 referred to in paragraph (4) of the affidavit of Ayo Max-Dixon sworn to at Freetown on the 27<sup>th</sup> day of January 2004 and marked Exhibit "A M D 4".



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EXHIBIT 'AMD 4' 272

SCSL-2003-01-I-027

(272-275)

2944



**SPECIAL COURT FOR SIERRA LEONE**

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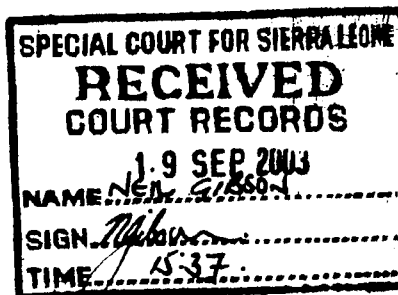
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**THE TRIAL CHAMBER**

Before: Judge Bankole Thompson, Presiding Judge  
Judge Pierre Boutet  
Judge Benjamin Mutanga Itoe

Registrar: Robin Vincent

Date: 19<sup>th</sup> of September 2003



The Prosecutor against

Charles Ghankay Taylor  
(Case No.SCSL-2003-01-I)

**ORDER PURSUANT TO RULE 72 (E)**

**DEFENCE MOTION TO QUASH THE INDICTMENT AND TO DECLARE THE  
WARRANT OF ARREST AND ALL OTHER CONSEQUENTIAL ORDERS NULL  
AND VOID**

Office of the Prosecutor:  
Mr. Luc Côté, Chief of Prosecutions

Defence Counsel:  
Mr. Terence Michael Terry

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SCSL-2003-01-1

**THE SPECIAL COURT FOR SIERRA LEONE ("the Special Court")**

**SITTING** as the Trial Chamber ("the Chamber"), composed of Judge Bankole Thompson, Presiding Judge, Judge Pierre Boutet, and Judge Benjamin Mutanga Itoe;

**CONSIDERING**, that an Indictment against "the Accused" has been reviewed and approved on the 7<sup>th</sup> day of March 2003;

**SEIZED** of the Applicants Motion Requesting that the Trial Chamber Do Quash the Said Approved Indictment of the 7<sup>th</sup> March 2003 of Judge Bankole Thompson and that the Aforesaid Purported Warrant of Arrest and Order for Transfer and Detention of the Same Date Issued by Judge Bankole Thompson of the Special Court for Sierra Leone, and All Other Consequential and Related Order(s) Granted Thereafter by Either the Said Judge Bankole Thompson or Judge Pierre Boutet on the 12<sup>th</sup> June 2003 Against the Person of the Said President Charles Ghankay Taylor be Declared Null and Void, Invalid at their Inception and that They be Accordingly Cancelled and/or Set Aside as a Matter of Law of the 23<sup>rd</sup> day of July 2003 ("The Motion to Quash the Indictment and to Declare the Warrant of Arrest and All Other Consequential Orders Null and Void") filed by **Charles Ghankay Taylor** ("the Accused") and by the Government of the Republic of Liberia in relation to the charges against "the Accused";

**NOTING** that "the Motion to Quash the Indictment and to Declare the Warrant of Arrest and All Other Consequential Orders Null and Void" is made "Under Protest and Without Waiving of Immunity Accorded to Head of State President Charles Ghankay Taylor";

**CONSIDERING** the Prosecution's Response to "the Motion to Quash the Indictment and to Declare the Warrant of Arrest and All Other Consequential Orders Null and Void" of the 28<sup>th</sup> day of July 2003 ("the Response") and the Defence Reply thereto dated the 30<sup>th</sup> day of July 2003 ("the Reply");

**CONSIDERING** that the Defence "Motion to Quash the Indictment and to Declare the Warrant of Arrest and All Other Consequential Orders Null and Void" is deemed to have been filed as a preliminary motion pursuant to Rule 72 of the Rules of Procedure and Evidence ("The Rules");

**CONSIDERING** that the same Indictment has then been issued against "the Accused" personally and not against the Government of the Republic of Liberia;

**CONSIDERING** the entire provisions of Rule 72 of "the Rules";

**CONSIDERING**, in particular, the provisions of Rule 72 (E) of "the Rules" which provide that "the Chamber" shall refer to the Appeals Chamber for a determination as soon as practicable any preliminary motion which raises a serious issue relating to jurisdiction;

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SCSL-2003-01-I

CONSIDERING that the Defence "Motion to Quash the Indictment and to Declare the Warrant of Arrest and All Other Consequential Orders Null and Void" objects to the jurisdiction of "the Special Court" to try "the Accused" on all the charges contained in the Indictment;

CONSIDERING that the Indictment charges "the Accused" on several counts for Crimes Against Humanity, punishable under Article 2 of the Statute of the Special Court ("The Statute"), Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3 of "the Statute", and of Other Serious Violations of International Humanitarian Law, punishable under Article 4 of "the Statute";

CONSIDERING that "the Accused" submits that the Special Court Agreement, 2002 (Ratification) Act, 2002 and "the Rules" are *ipso facto* bad in law and in clear breach of customary international law;

CONSIDERING, in particular, that "the Accused" submits that the alleged primacy of "the Special Court" is limited to the national courts of the Republic of Sierra Leone and lacks the power to assert its primacy over national court of any third States as well as to request the surrender of an accused from any third State;

AND

GIVEN that "the Accused", in light of the above, argues that the Indictment, the Warrant of Arrest and all other consequential Orders issued against him by "the Special Court" are in violation of the criminal immunity of the Head of the Sovereign State of the Republic of Liberia and contrary to the principles of customary international law and the jurisprudence of the International Court of Justice;

GIVEN, furthermore, that "the Accused" argues that the Indictment, the Warrant of Arrest and all other consequential Orders issued against him by "the Special Court" are in violation of the principle that a State may not exercise its authority on the territory of another State and the principle of sovereign equality among all Member States of the United Nations as laid down in Article 2, paragraph 1 of the Charter of the United Nations.

GIVEN that "the Accused" also argues that the aforementioned grounds are procedural in nature and go to jurisdiction *in limine* of the "Special Court";

THE CHAMBER

FINDS that the Government of the Republic of Liberia has no *locus standi* to file such a preliminary motion nor to be a party to such a motion;

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AND, FURTHERMORE,

FINDS that the foregoing submissions raise a serious issue relating to the jurisdiction of "the Special Court" to try "the Accused" on all the counts of the Indictment that has been preferred against him;

AND THEREFORE, PURSUANT TO RULE 72 (E) OF THE RULES,

REFERS the Defence "Motion to Quash the Indictment and to Declare the Warrant of Arrest and All Other Consequential Orders Null and Void", together with the Prosecution "Response" and the Defence "Reply" thereto, to the Appeals Chamber of "the Special Court" for determination;

ORDERS that the reference of this Motion to the Appeals Chamber shall not operate as a stay of the trial of "the Accused";

Done in Free town, this 19<sup>th</sup> of September 2003

The Trial Chamber

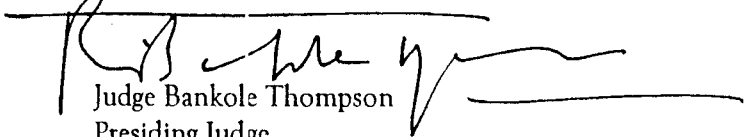
  
Judge Bankole Thompson  
Presiding Judge



EXHIBIT A MD 5

THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN – SIERRA LEONE

CASE NO. SCSL – 2003-01-PT

THE PROSECUTOR

Against

2948

CHARLES GHANKAY TAYLOR also known as  
CHARLES GHANKAY MACARTHUR DAPKANA TAYLOR – APPLICANT

AND

JUDGE GEOFFREY ROBERTSON, Q.C. PRESIDENT OF THE APPEALS CHAMBER OF  
THE SPECIAL COURT FOR SIERRA LEONE – RESPONDENT

---

APPLICANT'S MOTION AGAINST THE UNWHOLESOME AND BIAS COMMENTS MADE BY THE PRESIDENT AND PRESIDING JUDGE OF THE APPEALS CHAMBER OF THE SPECIAL COURT FOR SIERRA LEONE GEOFFREY ROBERTSON Q.C. WHEN HE DESCRIBED EX-PRESIDENT CHARLES GHANKAY TAYLOR THE APPLICANT HEREIN AS A VICIOUS WARLORD AT PAGE 466 OF HIS BOOK ENTITLED CRIMES AGAINST HUMANITY – THE STRUGGLE FOR GLOBAL JUSTICE UNDER THE SUBTITLE – LESSONS FROM SIERRA LEONE STARTING FROM PAGE 465 ONWARDS AS WELL AS ON OTHER TWO GROUNDS WHICH GO TO JURISDICTION AND/OR EXCESS OF JURISDICTION

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This is a photocopy of the Amendment to Rule 72(E) and (F) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone referred to in paragraph (5) of the affidavit of Ayo Max-Dixon sworn to at Freetown on the 27<sup>th</sup> day of January 2004 and marked Exhibit "A M D 5".

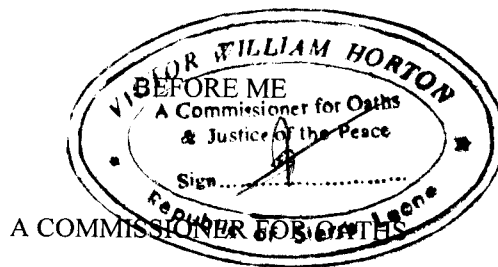


EXHIBIT "AMD 5"



SPECIAL COURT FOR SIERRA LEONE

2949

AMENDMENT TO RULE 72(E) AND (F) ADOPTED AT A PLENARY MEETING ON 30 OCTOBER 2003

Section 5: Preliminary Motions

Rule 72: Preliminary Motions

- (A) Preliminary motions by either party shall be brought within 21 days following disclosure by the Prosecutor to the Defence of all the material envisaged by Rule 66(A)(i).
- (B) Preliminary motions by the accused are:
- (i) Objections based on lack of jurisdiction;
  - (ii) Objections based on defects in the form of the indictment;
  - (iii) Applications for severance of crimes joined in one indictment under Rule 49, or for separate trials under Rule 82 (B);
  - (iv) Objections based on the denial of request for assignment of counsel; or
  - (v) Objections based on abuse of process.
- (C) Objections to the form of the indictment, including an amended indictment, shall be raised by a party in one motion only, unless otherwise allowed by the Trial Chamber.
- (D) The Trial Chamber shall, except as provided by Sub-Rules (E) and (F) below, dispose of preliminary motions before the trial, and its decisions thereon shall not be subject to interlocutory appeal.
- (E) Preliminary motions made in the Trial Chamber prior to the Prosecutor's opening statement which raise a serious issue relating to jurisdiction shall be referred to a bench of at least three Appeals Chamber Judges, where they will proceed to a determination as soon as practicable.
- (F) Preliminary motions made in the Trial Chamber prior to the Prosecutor's opening statement which, in the opinion of the Trial Chamber, raise an issue that would significantly affect the fair and expeditious conduct of the proceedings or the outcome of a trial shall be referred to a bench of at least three Appeals Chamber Judges, where they will proceed to a determination as soon as practicable.
- (G) Where the Trial Chamber refers a motion to the Appeals Chamber pursuant to Sub-Rules (E) or (F) above,
- (i) the party who filed the motion shall file any additional written submission within 14 days of the date of the reference to the Appeals Chamber;
  - (ii) any response to submissions filed under Sub Paragraph (i) above shall be filed within 14 days;
  - (iii) any reply to the response shall be filed within 7 days.
- Any extension of time may be granted by the Appeals Chamber.
- (H) References by the Trial Chamber pursuant to Sub-Rules (E) and (F) above shall not operate as a stay of proceedings. Such references shall not operate as a stay of the trial itself unless the Trial or Appeal Chamber so orders.
- (I) This Rule shall be deemed to have entered into force on the 7<sup>th</sup> of March, 2003.

EXHIBIT "AMD 6"

THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN – SIERRA LEONE

CASE NO. SCSL – 2003-01-PT

THE PROSECUTOR

Against

2950

CHARLES GHANKAY TAYLOR also known as  
CHARLES GHANKAY MACARTHUR DAPKANA TAYLOR – APPLICANT

AND

JUDGE GEOFFREY ROBERTSON, Q.C. PRESIDENT OF THE APPEALS CHAMBER OF  
THE SPECIAL COURT FOR SIERRA LEONE – RESPONDENT

---

APPLICANT'S MOTION AGAINST THE UNWHOLESOME AND BIAS COMMENTS MADE BY THE PRESIDENT AND PRESIDING JUDGE OF THE APPEALS CHAMBER OF THE SPECIAL COURT FOR SIERRA LEONE GEOFFREY ROBERTSON Q.C. WHEN HE DESCRIBED EX-PRESIDENT CHARLES GHANKAY TAYLOR THE APPLICANT HEREIN AS A VICIOUS WARLORD AT PAGE 466 OF HIS BOOK ENTITLED CRIMES AGAINST HUMANITY – THE STRUGGLE FOR GLOBAL JUSTICE UNDER THE SUBTITLE – LESSONS FROM SIERRA LEONE STARTING FROM PAGE 465 ONWARDS AS WELL AS ON OTHER TWO GROUNDS WHICH GO TO JURISDICTION AND/OR EXCESS OF JURISDICTION

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This is a photocopy of the 17 Count Indictment against the Applicant herein referred to in paragraph (6) of the affidavit of Ayo Max-Dixon sworn to at Freetown on the 27<sup>th</sup> day of ~~January~~ 2004 and marked Exhibit "A M D 6".

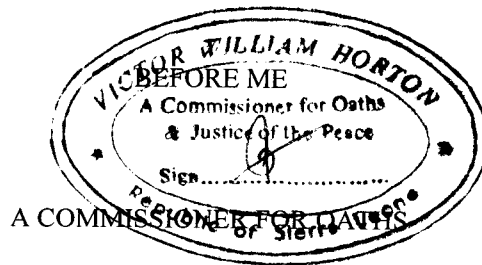


EXHIBIT  
SCSL - 2003 - 03 - 1  
7 MARCH 2003

AMD  
17.00 hrs  
MARCH 2003

002

THE SPECIAL COURT FOR SIERRA LEONE

2951

CASE NO. SCSL - 03 - 1

THE PROSECUTOR

Against



CHARLES GHANKAY TAYLOR also known as  
CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR

INDICTMENT

The Prosecutor, Special Court for Sierra Leone, under Article 15 of the Statute of the Special Court for Sierra Leone (the Statute) charges:

CHARLES GHANKAY TAYLOR also known as  
(aka) CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR

with CRIMES AGAINST HUMANITY, VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II and OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW, in violation of Articles 2, 3 and 4 of the Statute as set forth below:

THE ACCUSED

1. CHARLES GHANKAY TAYLOR aka CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR (the ACCUSED) was born on or about 28 January 1948 at Arthington in the Republic of Liberia

Handwritten initials or mark in the bottom right corner.

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GENERAL ALLEGATIONS

2. At all times relevant to this Indictment, a state of armed conflict existed within Sierra Leone. For the purposes of this Indictment, organized armed factions involved in this conflict included the Revolutionary United Front (RUF), the Civil Defence Forces (CDF) and the Armed Forces Revolutionary Council (AFRC)
3. A nexus existed between the armed conflict and all acts or omissions charged herein as Violations of Article 3 common to the Geneva Conventions and of Additional Protocol II and as Other Serious Violations of International Humanitarian Law.
4. The organized armed group that became known as the RUF, led by FODAY SAYBANA SANKOH aka POPAY aka PAPA aka PA, was founded about 1988 or 1989 in Libya. The RUF, under the leadership of FODAY SAYBANA SANKOH, began organized armed operations in Sierra Leone in March 1991. During the ensuing armed conflict, the RUF forces were also referred to as "RUF", "rebels" and "People's Army".
5. The CDF was comprised of Sierra Leonean traditional hunters, including the Kamajors, Gbethis, Kapras, Tamaboros and Donsos. The CDF fought against the RUF and AFRC.
6. On 30 November 1996, in Abidjan, Ivory Coast, FODAY SAYBANA SANKOH and Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, signed a peace agreement which brought a temporary cessation to active hostilities. Thereafter, the active hostilities recommenced.
7. The AFRC was founded by members of the Armed Forces of Sierra Leone who seized power from the elected government of the Republic of Sierra Leone via a coup d'état on 25 May 1997. Soldiers of the Sierra Leone Army (SLA) comprised the majority of the AFRC membership. On that date JOHNNY PAUL KOROMA aka JPK became the leader and Chairman of the AFRC. The AFRC forces were also referred to as "Junta", "soldiers", "SLA", and "ex-SLA".
8. Shortly after the AFRC seized power, at the invitation of JOHNNY PAUL KOROMA, and upon the order of FODAY SAYBANA SANKOH, leader of the RUF, the RUF joined with the AFRC. The AFRC and RUF acted jointly thereafter. The AFRC/RUF

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Junta forces (Junta) were also referred to as "Junta", "rebels", "soldiers", "SLA", "ex-SLA" and "People's Army".

9. After the 25 May 1997 coup d'état, a governing body, the Supreme Council, was created within the Junta. The governing body included leaders of both the AFRC and RUF.
10. The Junta was forced from power by forces acting on behalf of the ousted government of President Kabbah about 14 February 1998. President Kabbah's government returned in March 1998. After the Junta was removed from power the AFRC/RUF alliance continued.
11. On 7 July 1999, in Lomé, Togo, FODAY SAYBANA SANKOH and Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, signed a peace agreement. However, active hostilities continued.
12. The **ACCUSED** and all members of the organized armed factions engaged in fighting within Sierra Leone were required to abide by International Humanitarian Law and the laws and customs governing the conduct of armed conflicts, including the Geneva Conventions of 12 August 1949, and Additional Protocol II to the Geneva Conventions, to which the Republic of Sierra Leone acceded on 21 October 1986.
13. All offences alleged herein were committed within the territory of Sierra Leone after 30 November 1996.
14. All acts and omissions charged herein as Crimes Against Humanity were committed as part of a widespread or systematic attack directed against the civilian population of Sierra Leone.
15. The words civilian or civilian population used in this Indictment refer to persons who took no active part in the hostilities, or who were no longer taking an active part in the hostilities.

#### INDIVIDUAL CRIMINAL RESPONSIBILITY

16. Paragraphs 1 through 15 are incorporated by reference.



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17. In the late 1980's CHARLES GHANKAY TAYLOR received military training in Libya from representatives of the Government of MU'AMMAR AL-QADHAFI. While in Libya the ACCUSED met and made common cause with FODAY SAYBANA SANKOH.
  18. While in Libya, the ACCUSED formed or joined the National Patriotic Front of Liberia (NPFL). At all times relevant to this Indictment the ACCUSED was the leader of the NPFL and/or the President of the Republic of Liberia.
  19. In December 1989 the NPFL, led by the ACCUSED, began conducting organized armed attacks in Liberia. The ACCUSED and the NPFL were assisted in these attacks by FODAY SAYBANA SANKOH and his followers.
  20. To obtain access to the mineral wealth of the Republic of Sierra Leone, in particular the diamond wealth of Sierra Leone, and to destabilize the State, the ACCUSED provided financial support, military training, personnel, arms, ammunition and other support and encouragement to the RUF, led by FODAY SAYBANA SANKOH, in preparation for RUF armed action in the Republic of Sierra Leone, and during the subsequent armed conflict in Sierra Leone.
  21. Throughout the course of the armed conflict in Sierra Leone, the RUF and the AFRC/RUF alliance, under the authority, command and control of FODAY SAYBANA SANKOH, JOHNNY PAUL KOROMA and other leaders of the RUF, AFRC and AFRC/RUF alliance, engaged in notorious, widespread or systematic attacks against the civilian population of Sierra Leone.
  22. At all times relevant to this Indictment, CHARLES GHANKAY TAYLOR supported and encouraged all actions of the RUF and AFRC/RUF alliance, and acted in concert with FODAY SAYBANA SANKOH and other leaders of the RUF and AFRC/RUF alliance. FODAY SAYBANA SANKOH was incarcerated in Nigeria and Sierra Leone and subjected to restricted movement in Sierra Leone from about March 1997 until about April 1999. During this time the ACCUSED, in concert with FODAY SAYBANA SANKOH, provided guidance and direction to the RUF, including SAM BOCKARIE aka MOSQUITO aka MASKITA

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- 23. The RUF and the AFRC shared a common plan, purpose or design (joint criminal enterprise) which was to take any actions necessary to gain and exercise political power and control over the territory of Sierra Leone, in particular the diamond mining areas. The natural resources of Sierra Leone, in particular the diamonds, were to be provided to persons outside Sierra Leone in return for assistance in carrying out the joint criminal enterprise.
- 24. The joint criminal enterprise included gaining and exercising control over the population of Sierra Leone in order to prevent or minimize resistance to their geographic control, and to use members of the population to provide support to the members of the joint criminal enterprise. The crimes alleged in this Indictment, including unlawful killings, abductions, forced labour, physical and sexual violence, use of child soldiers, looting and burning of civilian structures, were either actions within the joint criminal enterprise or were a reasonably foreseeable consequence of the joint criminal enterprise.
- 25. The **ACCUSED** participated in this joint criminal enterprise as part of his continuing efforts to gain access to the mineral wealth of Sierra Leone and to destabilize the Government of Sierra Leone.
- 26. **CHARLES GHANKAY TAYLOR**, by his acts or omissions, is individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Indictment, which crimes the **ACCUSED** planned, instigated, ordered, committed or in whose planning, preparation or execution the **ACCUSED** otherwise aided and abetted, or which crimes were within a joint criminal enterprise in which the **ACCUSED** participated or were a reasonably foreseeable consequence of the joint criminal enterprise in which the **ACCUSED** participated.
- 27. In addition, or alternatively, pursuant to Article 6.3. of the Statute, **CHARLES GHANKAY TAYLOR**, while holding positions of superior responsibility and exercising command and control over his subordinates, is individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute. The **ACCUSED** is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so

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and the ACCUSED failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

CHARGES

- 28. Paragraphs 16 through 27 are incorporated by reference.
- 29. At all times relevant to this Indictment, members of the RUF, AFRC, Junta and/or AFRC/RUF forces (AFRC/RUF), supported and encouraged by, acting in concert with and/or subordinate to CHARLES GHANKAY TAYLOR, conducted armed attacks throughout the territory of the Republic of Sierra Leone, including, but not limited, to Bo, Kono, Kenema, Bombali and Kailahun Districts and Freetown. Targets of the armed attacks included civilians and humanitarian assistance personnel and peacekeepers assigned to the United Nations Mission in Sierra Leone (UNAMSIL), which had been created by United Nations Security Council Resolution 1270 (1999).
- 30. These attacks were carried out primarily to terrorize the civilian population, but also were used to punish the population for failing to provide sufficient support to the AFRC/RUF, or for allegedly providing support to the Kabbah government or to pro-government forces. The attacks included unlawful killings, physical and sexual violence against civilian men, women and children, abductions and looting and destruction of civilian property. Many civilians saw these crimes committed; others returned to their homes or places of refuge to find the results of these crimes – dead bodies, mutilated victims and looted and burnt property.
- 31. As part of the campaign of terror and punishment the AFRC/RUF routinely captured and abducted members of the civilian population. Captured women and girls were raped; many of them were abducted and used as sex slaves and as forced labour. Some of these women and girls were held captive for years. Men and boys who were abducted were also used as forced labour; some of them were also held captive for years. Many abducted boys and girls were given combat training and used in active fighting. AFRC/RUF also physically mutilated men, women and children, including amputating their hands or feet and carving “AFRC” and “RUF” on their bodies.

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COUNTS 1 - 2: TERRORIZING THE CIVILIAN POPULATION AND COLLECTIVE PUNISHMENTS

32. Members of the AFRC/RUF supported and encouraged by, acting in concert with and/or subordinate to **CHARLES GHANKAY TAYLOR** committed the crimes set forth below in paragraphs 33 through 58 and charged in Counts 3 through 13, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone, and did terrorize that population. The AFRC/RUF also committed the crimes to punish the civilian population for allegedly supporting the elected government of President Ahmed Tejan Kabbah and factions aligned with that government, or for failing to provide sufficient support to the AFRC/RUF.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 1: Acts of Terrorism, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.d. of the Statute;

And:

Count 2: Collective Punishments, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.b. of the Statute.

COUNTS 3 - 5: UNLAWFUL KILLINGS

33. Victims were routinely shot, hacked to death and burned to death. Unlawful killings included, but were not limited to, the following:

Bo District

34. Between 1 June 1997 and 30 June 1997, AFRC/RUF attacked Tikonko, Telu, Sembeun, Gerihun and Mamboma, unlawfully killing an unknown number of civilians:

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Kenema District

35. Between about 25 May 1997 and about 19 February 1998, in locations including Kenema town, members of AFRC/RUF unlawfully killed an unknown number of civilians;

Kono District

36. About mid February 1998, AFRC/RUF fleeing from Freetown arrived in Kono District. Between about 14 February 1998 and 30 June 1998, members of AFRC/RUF unlawfully killed several hundred civilians in various locations in Kono District, including Koidu, Tombodu, Foindu, Willifeh, Mortema and Biaya;

Bombali District

37. Between about 1 May 1998 and 31 July 1998, in locations including Karina, members of AFRC/RUF unlawfully killed an unknown number of civilians;

Freetown

38. Between 6 January 1999 and 31 January 1999, AFRC/RUF conducted armed attacks throughout the city of Freetown. These attacks included large scale unlawful killings of civilian men, women and children at locations throughout the city, including the State House, Parliament building, Connaught Hospital, and the Kissy, Fourah Bay, Ujgun, Calaba Town and Tower Hill areas of the city.

By his acts or omissions in relation, but not limited to these events, CHARLES GHANKAY TAYLOR, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 3: Extermination, a CRIME AGAINST HUMANITY, punishable under Article 2.b. of the Statute;

In addition, or in the alternative:

Count 4: Murder, a CRIME AGAINST HUMANITY, punishable under Article 2.a. of the Statute;

In addition, or in the alternative:

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Count 5. Violence to life, health and physical or mental well-being of persons, in particular murder, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3 a. of the Statute.

### COUNTS 6 – 8: SEXUAL VIOLENCE

39. Widespread sexual violence committed against civilian women and girls included brutal rapes, often by multiple rapists. Acts of sexual violence included, but were not limited to, the following:

#### Kono District

40. Between about 14 February 1998 and 30 June 1998, members of AFRC/RUF raped hundreds of women and girls at various locations throughout the District, including Koi lu, Tombodu, Kissi-town (or Kissi Town), Foendor (or Foendu), Tomendeh, Fokpiya, Woundedu and AFRC/RUF camps such as “Superman camp” and Kissi-town (or Kissi Town) camp. An unknown number of women and girls were abducted from various locations within the District and used as sex slaves;

#### Bombali District

41. Between about 1 May 1998 and 31 July 1998, members of AFRC/RUF raped an unknown number of women and girls in locations such as Mandaha. In addition, an unknown number of abducted women and girls were used as sex slaves;

#### Kailahun District

42. At all times relevant to this Indictment, an unknown number of women and girls in various locations in the District were subjected to sexual violence. Many of these victims were captured in other areas of the Republic of Sierra Leone, brought to AFRC/RUF camps in the District, and used as sex slaves;

#### Freetown

43. Between 6 January 1999 and 31 January 1999, members of AFRC/RUF raped hundreds of women and girls throughout the Freetown area, and abducted hundreds of women and girls and used them as sex slaves.

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By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

Count 6: Rape, a **CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;

And:

Count 7: Sexual slavery and any other form of sexual violence, a **CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;

In addition, or in the alternative:

Count 8: Outrages upon personal dignity, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.e. of the Statute.

#### COUNTS 9 – 10: PHYSICAL VIOLENCE

44. Widespread physical violence, including mutilations, was committed against civilians. Victims were often brought to a central location where mutilations were carried out. These acts of physical violence included, but were not limited to, the following:

##### Kono District

45. Between about 14 February 1998 and 30 June 1998, AFRC/RUF mutilated an unknown number of civilians in various locations in the District, including Tombodu, Kaima (or Kayima) and Wonedu. The mutilations included cutting off limbs and carving "AFRC" and "RUF" on the bodies of the civilians;

##### Freetown

46. Between 6 January 1999 and 31 January 1999, AFRC/RUF mutilated an unknown number of civilian men, women and children in various areas of Freetown, including the northern and eastern areas of the city, and the Kissy area, including the Kissy mental hospital. The mutilations included cutting off limbs.

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By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR** pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

**Count 9:** Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute;

In addition, or in the alternative:

**Count 10** Other inhumane acts, a **CRIME AGAINST HUMANITY**, punishable under Article 2.j of the Statute.

**COUNT 11: USE OF CHILD SOLDIERS**

47. At all times relevant to this Indictment, throughout the Republic of Sierra Leone, AFRC/RUF routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities. Many of these children were first abducted, then trained in AFRC/RUF camps in various locations throughout the country, and thereafter used as fighters.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

**Count 1 :** Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.c. of the Statute.



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COUNT 12: ABDUCTIONS AND FORCED LABOUR

48. At all times relevant to this Indictment, AFRC/RUF engaged in widespread and large scale abductions of civilians and use of civilians as forced labour. Forced labour included domestic labour and use as diamond miners. The abductions and forced labour included, but were not limited to, the following:

Kenema District

49. Between about 1 August 1997 and about 31 January 1998, AFRC/RUF forced an unknown number of civilians living in the District to mine for diamonds at Cyborg Pit in Tongo Field;

Kono District

50. Between about 14 February 1998 and 30 June 1998, AFRC/RUF forces abducted hundreds of civilian men, women and children, and took them to various locations outside the District, or to locations within the District such as AFRC/RUF camps, Tombocu, Koidu, Wonedu, Tomendeh. At these locations the civilians were used as forced labour, including domestic labour and as diamond miners in the Tombodu area;

Bombali District

51. Between about 1 May 1998 and 31 July 1998, in Bombali District, AFRC/RUF abducted an unknown number of civilians and used them as forced labour;

Kailahun District

52. At all times relevant to this Indictment, captured civilian men, women and children were brought to various locations within the District and used as forced labour;

Freetown

53. Between 6 January 1999 and 31 January 1999, in particular as the AFRC/RUF were being driven out of Freetown, the AFRC/RUF abducted hundreds of civilians, including a large number of children, from various areas within Freetown, including Peacock Farm and Calaba Town. These abducted civilians were used as forced labour.

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By his acts or omissions in relation, but not limited to these events, CHARLES GHANKAY TAYLOR, pursuant to Article 6.1. and, or alternatively, Article 6.3 of the Statute, is individually criminally responsible for the crimes alleged below:

Count 2: Enslavement, a CRIME AGAINST HUMANITY, punishable under Article 2.c. of the Statute.

COUNT 13: LOOTING AND BURNING

54. At all times relevant to this Indictment, AFRC/RUF engaged in widespread unlawful looting and destruction by burning of civilian property. This looting and burning included, but was not limited to, the following:

Bo District

55. Between 1 June 1997 and 30 June 1997, AFRC/RUF forces looted and burned an unknown number of civilian houses in Telu, Sembahun, Mamboma and Tikonko;

Kono District

56. Between about 14 February 1998 and 30 June 1998, AFRC/RUF engaged in widespread looting and burning in various locations in the District, including Fombedu, Foindu and Yardu Sando, where virtually every home in the village was looted and burned;

Bombali District

57. Between 1 March 1998 and 30 June 1998, AFRC/RUF forces burned an unknown number of civilian buildings in locations such as Karina;

Freetown

58. Between 6 January 1999 and 31 January 1999, AFRC/RUF forces engaged in widespread looting and burning throughout Freetown. The majority of houses that were destroyed were in the areas of Kissy and eastern Freetown; other locations included the Fourah Bay, Ugun, State House and Pademba Road areas of the city.

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By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

**Count 13: Pillage, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.f. of the Statute.

**COUNTS 14 – 17: ATTACKS ON UNAMSIL PERSONNEL**

59. Between about 15 April 2000 and about 15 September 2000, AFRC/RUF engaged in widespread attacks against UNAMSIL peacekeepers and humanitarian assistance workers within the Republic of Sierra Leone, including, but not limited to locations within Bombali, Kailahun, Kambia, Port Loko, and Kono Districts. These attacks included unlawful killing of UNAMSIL peacekeepers, and abducting hundreds of peacekeepers and humanitarian assistance workers who were then held hostage.

By his acts or omissions in relation, but not limited to these events, **CHARLES GHANKAY TAYLOR**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

**Count 14: Intentionally directing attacks against personnel involved in a humanitarian assistance or peacekeeping mission, an OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.b. of the Statute;

In addition, or in the alternative:

**Count 15: For the unlawful killings, Murder, a CRIME AGAINST HUMANITY**, punishable under Article 2.a. of the Statute;

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In addition, or in the alternative:

Count 16 Violence to life, health and physical or mental well-being of persons, in particular murder, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.a. of the Statute;

In addition, or in the alternative:

Count 17: For the abductions and holding as hostage, Taking of hostages, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.c. of the Statute.

Dated this 3<sup>rd</sup> day of March 2003  
Freetown, Sierra Leone



David M. Crane  
The Prosecutor



EXHIBIT 'AMD 7'

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**THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN – SIERRA LEONE**

**CASE NO. SCSL – 2003-01-PT**

**THE PROSECUTOR**

**Against**

**CHARLES GHANKAY TAYLOR also known as  
CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR – APPLICANT**

**AND**

**JUDGE GEOFFREY ROBERTSON, Q.C. PRESIDENT OF THE APPEALS CHAMBER OF  
THE SPECIAL COURT FOR SIERRA LEONE – RESPONDENT**

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APPLICANT’S MOTION AGAINST THE UNWHOLESOME AND BIAS COMMENTS MADE BY THE PRESIDENT AND PRESIDING JUDGE OF THE APPEALS CHAMBER OF THE SPECIAL COURT FOR SIERRA LEONE GEOFFREY ROBERTSON Q.C. WHEN HE DESCRIBED EX-PRESIDENT CHARLES GHANKAY TAYLOR THE APPLICANT HEREIN AS A VICIOUS WARLORD AT PAGE 466 OF HIS BOOK ENTITLED CRIMES AGAINST HUMANITY – THE STRUGGLE FOR GLOBAL JUSTICE UNDER THE SUBTITLE – LESSONS FROM SIERRA LEONE STARTING FROM PAGE 465 ONWARDS AS WELL AS ON OTHER TWO GROUNDS WHICH GO TO JURISDICTION AND/OR EXCESS OF JURISDICTION

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This is a photocopy of the Extracts from the book entitled “CRIMES AGAINST HUMANITY – THE STRUGGLE FOR GLOBAL JUSTICE UNDER THE SUBTITLE – LESSONS FROM SIERRA LEONE” written by the President and Presiding Judge of the Appeal Chamber of the Special Court for Sierra Leone Geoffrey Robertson Q.C. referred to in paragraph (7) of the affidavit of Ayo Max-Dixon sworn to at Freetown on the 27<sup>th</sup> day of January 2004 and marked Exhibit “A M D 7”.



EXHIBIT 'A' AND 2'

APPENDIX 'A'

NEW EDITION

GEOFFREY ROBERTSON QC



# CRIMES AGAINST HUMANITY

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## THE STRUGGLE FOR GLOBAL JUSTICE

'A FINE WORK OF SCHOLARLY AND PASSIONATE'





The second edition of this mastery work explains why the 11 September attack on America was a crime against humanity. It shows that the trial of Milosevic and the overthrow of the Taliban are further evidence for an historic shift from appeasement to justice, in international relations.

First used at Nuremberg to condemn the Nazi rulers, the concept of crimes against humanity gave universal recognition to the need to hold political leaders accountable for the wars, genocides and torture which disfigure our world.

The arrest of heads of state like Pinochet and Milosevic, and allied action over Kosovo, East Timor and Sierra Leone, are witness to the gathering strength of the human rights movement. But it must continue to struggle against the weaknesses of the UN system and the isolationist tendencies of the Bush administration. Cautiously optimistic but unsparingly critical of the politicians and diplomats who cling to national state sovereignty, Robert O'Connell

explains why we are on the brink of a new era for human rights - the age of accountability.

An essential guide for all those who want to understand the central role of human rights in law and politics today, this is a formidable achievement.

David P. Forsgren, *Observer*

His arguments are exceptionally clear and comprehensible, and all complexities are rendered into simple and factual prose.

Alexandra Palmer, *Sunday Telegraph*

Millions will be reading this book in the months to come if we are serious in our desire to stop these massacres.

*Observer*

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ISBN 0 00 711111 1

international justice has been illuminating. They have made no secret of their fears of suffering the fate of Pinochet, or of the indignity that would attend their appearance in uniform in the Hague dock.<sup>37</sup> What appears to have exercised them most was the humiliation of being tried in another country, under the world's gaze, rather than in their own courts. If this fear of suffering the *indignity* of international criminal justice is widely shared in military circles, and if it infects political leaders as well, then the prospect of trial at The Hague can have a real deterrent effect. The army and the militias behaved like nervous murderers, transporting the corpses, at great inconvenience, long distances to bury them across the West Timor border. The advent of international criminal law, for all the pot luck of its enforcement, had at least made them afraid of retribution for their crimes against humanity.

#### LESSONS FROM SIERRA LEONE

Pinochet, Kosovo, East Timor and Lockerbie occupied the world's attention in 1999, that *annus mirabilis* for international human rights law. But these steps forward were accompanied by one barely noticed backslide in the treacherous minefield of a small and turbulent African state. The Lomé Peace Agreement, brokered by the UN, with UK and US support, purchased peace at a most extraordinary price. The democratically elected government was forced to share power with rebels who were pardoned for the most grotesque crimes against humanity, and their leader, liberated from prison, was made Deputy Prime Minister in charge of the nation's diamond resources, the very object of his ruthless campaign. As it happened, not even this capitulation could satisfy Foday Sankoh: his renewed attacks on a ragtag army of UN peacekeepers obliged the former colonial power, Great Britain, to return in force, much to the relief of the populace. The case of Sierra Leone provides object lessons in:

- i) the counter-productivity of amnesties for crimes against humanity;
- ii) the impossibility of UN peacekeepers maintaining neutrality in a civil war where one side is given to committing such crimes;

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- iii) the need for a standing UN 'rapid reaction' force;
- iv) the potential for legitimate use of mercenaries, and
- v) the prospects for 'hybrid' war crimes courts, comprising both local and international judges and prosecutors.

When Sierra Leone, a West African coastal state, was granted independence from Great Britain in 1961, its population of 4.5 million had enjoyed comparative peace and prosperity, largely thanks to its diamond mines. Corruption soon took its toll of elected politicians and a series of army coups were interspersed with raids on the diamond mines by a breakaway Sierra Leone army faction led by Corporal Foday Sankoh, operating from neighbouring Liberia. Styled the Revolutionary United Front (RUF), it recruited gangs of violent, dispossessed youths and armed them with AK47s for their missions of pillage, rape and diamond-heisting. The RUF had no political agenda: its sponsor was Charles Taylor, Liberia's vicious warlord. But when, in 1995, the RUF threatened to attack Sierra Leone's capital Freetown, the military government paid a South African mercenary force, Executive Outcomes, to protect the city and 're-train' the government army. They did well enough for elections to be held again in 1996, which returned Ahmed Kabbah, a former UN official. By this time, the RUF had perfected its special contribution to the chamber of war horrors: the practice of 'chopping' the limbs of innocent civilians. It was a means of spreading terror, especially to deter voters in the elections which the RUF opposed: their anti-election slogan, 'Don't vote or don't write', came true for thousands of citizens, forced to lay their right hand on RUF chopping-blocks after they had chosen to vote. Mutilation worked, as a means of terrifying the population, and so the RUF devised more devilish tortures, such as lopping off a leg as well as an arm, sewing up vaginas with fishing lines, and padlocking mouths.<sup>38</sup> Given their level of barbarism, how could Sankoh and the RUF leadership ever have been invited by Western diplomats to share power?

The UN and the Western countries which had supervised the 1996 elections did not stay around to help President Kabbah, and in 1998 some RUF-inclined army officers staged another coup. Kabbah retained a new mercenary company, Sandline, to help his return to

power although this was in fact achieved by Nigerian forces acting through a regional OAU grouping (ECOMOG). It is ironic that Sani Abacha, the villainous Nigerian dictator who killed Ken Saro-Wiwa, looted \$5 billion and denied his own country democracy should restore it in Sierra Leone, but that he did, with grudging support (there being no alternative) from the UN. He arrested Foday Sankoh, who was tried by a jury in Freetown and sentenced to death for treason. In June 1998 the UN passed resolution 1181 pursuant to which it sent in a token force of 'blue berets' to stabilize the situation, but they were wholly inadequate to stop the renewed fighting between the RUF and the governmental armies (whose members often swapped sides at night). Discredit for the Lomé Peace Agreement belongs principally to the Reverend Jesse Jackson, whose role as 'comforter and confessor' to President Clinton over the Lewinsky affair had in some bizarre way led to his appointment as Presidential envoy to stop the wars of West Africa. Jackson chummed up with Charles Taylor and expressed admiration for the imprisoned Foday Sankoh, likening him to Nelson Mandela (who was not a psychopath given to mutilating civilians). Jackson's ignorance and moral blindness does not excuse the Western and UN diplomats who agreed to release Sankoh from prison, bestow upon him an apparently valid amnesty, and hand him the only prize in Sierra Leone worth having – control of the diamond mines. Kabbah signed the Lomé Agreement in July 1999 under intense pressure, his protest symbolized by the companion he brought to the signing ceremony, a child whose arm had been chopped by the RUF. Kofi Annan, feeling queasy about the amnesty, instructed his representative to make one reservation, to the effect that it would not cover 'grave breaches' of the Geneva Conventions.

The amnesty certainly covers crimes Sankoh and the RUF have committed under Sierra Leone law, like murder and grievous bodily harm (i.e. mutilation). Whether it covers the same offences when characterized – through their widespread and systematic nature – as crimes against humanity, will be a matter for the court at Sankoh's eventual trial. At least it cannot extend to forgiveness of crimes committed after July 1999 (on the Privy Council authority of *AG Trinidad v. Lemox Phillip* – see p. 275). The RUF, programmed to kill and pillage and mutilate, continued to do so after Lomé, so the

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UN sent in another 'peacekeeping' mission, a ragtag army of ragbag Zambians (they arrived without kit), insubordinate Jordanians and disorganized Kenyans, and put them all under the command of an unpopular Indian Major General, whose orders they routinely disobeyed. After Sankoh's forces had taken 500 Zambian hostages and were about to overrun Freetown, it was Britain that saved the day. It did not, sensibly enough, rely on any UN mandate, but intervened at the invitation of the elected government and for the initial purpose of safely evacuating British nationals from Freetown.<sup>39</sup> The continuing presence of British forces proved necessary to provide some stability and to frighten the RUF (when one of its gangs kidnapped British soldiers, the ensuing SAS rescue wiped out twenty-four gang members). The British Prime Minister, in a notable speech at his party's conference, in October 2001, boasted of British action in Sierra Leone as a precedent for the defeat of terrorism in Afghanistan. The latter has proved a much more difficult prospect, but the British/UN occupation of Sierra Leone has at least ended a ten-year civil war which lost 50,000 lives and hundreds of thousands of limbs.

Although British intervention did not solve the country's intractable problems, it produced sufficient peace for plans to proceed for the trial of the re-imprisoned Foday Sankoh and some captured RUF leaders, while the more reasonable elements of that group are actually to contest an election in 2002 in a country which now has a large (and finally, effective) force of UN peacekeepers. A special court has been established pursuant to Security Council Resolution 1315, which records an agreement between the UN and Sierra Leone to try 'those who bear the greatest responsibility' for crimes against humanity, and for disrupting the peace process. It will have jurisdiction to deal with crimes committed after 1996, subject to rulings on the scope of the Lomé Agreement, which in any event cannot protect Sankoh from punishment for any crimes he committed after July 1999. The court is a hybrid, staffed by local and international UN personnel. Its trial chamber has 2 judges (and 3 appeal judges) appointed by the UN Secretary General and one judge (2 appeal judges) appointed by the government. There is an international prosecutor, working mainly with local lawyers, and the rules of evidence and procedure will be those of the Rwandan Tribunal. The most difficult ethical question

how to deal with atrocities committed by boy soldiers: many of the worst mutilations were committed by brutal and aggressive 16- and 17-year-olds, and the populace demanded that they be punished. Kofi Annan took the forgiving line of most NGOs, that these youths were in fact 'victims of psychological and physical abuse' and pursuant to the Convention on the Rights of the Child they should not be made accountable for their criminal acts. The treaty between the UN and Sierra Leone which establishes the court reaches an uneasy compromise: soldiers under the age of fifteen at the time of their crime will not be prosecuted, whilst those who were sixteen or seventeen will not go to jail if convicted. The deliberate use of child soldiers for terrorist atrocities in Africa (pioneered by CIA-backed Holden Roberto - see p. 217) and the ethical objections to punishing them makes it crucial for customary international law to recognize their recruitment as a war crime entailing individual responsibility - a development which has been helped by the inclusion of the recruitment of child soldiers as a crime in Article 8 of the ICC statute.

Sierra Leone is a small state that loomed large in the UN's latest department, which is optimistically called its 'Lessons Learned Unit'. The primary lesson was spelled out in the report produced for the millennium summit by a panel of experts chaired by Lakhdar Brahimi: it concluded that the UN's fundamental peacekeeping failure had been its 'reluctance to distinguish victim from aggressor': adherence to the traditional principles of impartiality and use of force only in self-defence had resulted in the UN's 'complicity with evil'. This referred to the Lomé Agreement, which set free the RUF leader and gave him a half share in the nation's political power and resource wealth. Henceforth, said Brahimi, Security Council mandates must permit military action by bigger and better forces, directed against 'spoilers' - parties like the RUF which break peace agreements - and include as targets their accomplice arms suppliers, drug and gem traders and parasitic crime syndicates.

So much for hindsight: a warring faction guilty of atrocities on a scale that amounts to a crime against humanity must never again be forgiven sufficiently to be accorded a slice of power: on the contrary, its leaders deserve to be captured and put on trial. Foday Sankoh embodies that proposition, and the hybrid special court devised to try

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him may provide a useful precedent for states which remain in disarray after UN intervention. It gives a predominant role to experienced international judges and prosecutors, but ensures the involvement of local lawyers who will be educated and (hopefully) inspired by participating. (Since the local court system in failed and transitional states is invariably degraded, a hybrid court is one means of assisting in its renewal.) Sierra Leone provides an awkward postscript to the human rights advances at the end of the twentieth century: a warning of how easily retribution for crimes against humanity can be overlooked by diplomats and UN careerists who want 'a deal at any cost'.

The first nation to quake at the prospect of human rights law enforcement was, ironically enough, representative of the race whose history has made it necessary. Israel refused to support NATO's action against Serbia, because its right-wing government worried about Arab demands for a Kosovo-style 'autonomy' for Galilee. Shimon Peres was ashamed: 'For the first time after the Nazi Holocaust, when the world does not stand by, we do not know what to say?' But in NATO, too, Kosovo was an awkward precedent – certainly for Spain, which has used state terror against Basque separatists, and for Turkey, engaged in a war with its Kurds (which they had tactically suspended in an effort to save the life of Ocalan, their captured leader). It was precisely the fear of opening cans of ethnic worms which caused NATO's rhetoric to emphasize the humanitarian emergency and to avoid mention of Kosovo's right to self-determination, which was at the heart of the whole matter. By failing to adopt this goal as a war aim and a principle of peace, NATO and the UN face a constitutionally confusing (and very long) future in the province. In East Timor, by contrast, the future is clear and optimistic: nation-building begins apace for a people the protection of whose post-plebiscite right to self-determination was the acknowledged reason for the intervention. The KLA and Falintil were both fighting for control of a discrete patch of earth where the great majority were suffering under a brutal, militarized state, and international law was on their side. It should have been declared to be on their side – in the Dayton Accords and in the judgments of the *East Timor Case*. But the West long ago developed a kneejerk hostility to the right of self-determination.

because it was asserted first by colonial rebels and later by communist-backed liberation groups. But the lesson of Kosovo and East Timor is that in an age of human rights enforcement it should no longer be necessary for peoples to fight and die for their international law rights: the world must develop an enforcement system which will do this for them. Until international law clearly confronts the problem of secession, and lays down some ground rules for its exercise – including the existence of cast-iron guarantees for dissenters and minorities in the new seceded state – liberation struggles will be endless, and some great power claims, e.g. over Chechnya, New Caledonia and (most dangerously) Taiwan, will continue to trouble the peace of the world.

Kosovo, East Timor and Sierra Leone demonstrate the rudimentary nature of the human rights enforcement system at the turn into the twenty-first century. There is a world court, full of judges determined to save states from embarrassment by refusing to rule on the legality of NATO's war in former Yugoslavia or of Indonesia's annexation of East Timor. There is a world government, its executive unable to act without the support of the five most powerful nations of 1945, only one of which has prospered greatly since. It has no 'rapid reaction' force to parachute in when genocide is underway; Senator Jesse Helms has seen to that, threatening US withdrawal whenever the idea of the UN's own army is mentioned. So the East Timorese were butchered for two weeks because one Security Council member refused to act other than by invitation of the state whose army was committing the butchery, and Sierra Leone was sent an undisciplined rabble of 'blue berets' that proved no match for the rebels. Human rights lessons are easy to teach, but politicians and diplomats show little inclination to learn.

Kosovo and East Timor were both depicted in the media as 'ethnic conflicts' underlain by blood hatreds between races and religions: the Catholic Serbs against the Muslim Albanians; the Catholic East Timorese against the Muslim Indonesians. This analysis is simplistic, and essentially false. As historian Noel Malcolm points out in respect to Kosovo, 'It ignored the primary role of politicians (above all, the Serbian nationalist-communist Milošević) in creating conflict at a political level . . . between low-level prejudices on the one hand and a military conflict, concentration camps, and mass murder on the other,

CRIMES AGAINST HUMANITY

there lies a very long road: it was the political leaders who propelled the people down that road, and not vice-versa.<sup>40</sup> The East Timorese have never hated the Indonesians as a people or as Muslims: leaders like Gusmao and Ramos-Horta always talked of both peoples sharing a common enemy in the form of the corrupt para-political generals of the Indonesian army. What emerges starkly from both situations is the criminal responsibility of political and military leaders for preparing and permitting crimes against humanity. The actual killers were soldiers and mad-dog militias, but criminal responsibility lay indelibly with commanders who had long before built their power upon racism and nationalism, in the course of which they offered impunity to the killers they inspired. Milošević and Suharto, and their respective army commanders now in boltholes in Belgrade and Jakarta, provide a convincing argument in favour of developing a system of international criminal justice which has power to humiliate and incarcerate the commanders of crimes against humanity.

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EXHIBIT "AMD" 8<sup>th</sup>

THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN – SIERRA LEONE

CASE NO. SCSL – 2003-01-PT

THE PROSECUTOR

Against

2977

CHARLES GHANKAY TAYLOR also known as

CHARLES GHANKAY MACARTHUR DAPKPANA TAYLOR – APPLICANT

AND

JUDGE GEOFFREY ROBERTSON, Q.C. PRESIDENT OF THE APPEALS CHAMBER OF  
THE SPECIAL COURT FOR SIERRA LEONE – RESPONDENT

---

APPLICANT'S MOTION AGAINST THE UNWHOLESOME AND BIAS COMMENTS MADE BY THE PRESIDENT AND PRESIDING JUDGE OF THE APPEALS CHAMBER OF THE SPECIAL COURT FOR SIERRA LEONE GEOFFREY ROBERTSON Q.C. WHEN HE DESCRIBED EX-PRESIDENT CHARLES GHANKAY TAYLOR THE APPLICANT HEREIN AS A VICIOUS WARLORD AT PAGE 466 OF HIS BOOK ENTITLED CRIMES AGAINST HUMANITY – THE STRUGGLE FOR GLOBAL JUSTICE UNDER THE SUBTITLE – LESSONS FROM SIERRA LEONE STARTING FROM PAGE 465 ONWARDS AS WELL AS ON OTHER TWO GROUNDS WHICH GO TO JURISDICTION AND/OR EXCESS OF JURISDICTION

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This is a photocopy of the letter dated 6<sup>th</sup> January 2004 written by Applicant herein addressed to His Excellency John Kufuor, President of the Republic of Ghana and Chairman of ECOWAS referred to in paragraph (8) of the affidavit of Ayo Max-Dixon sworn to at Freetown on the 17<sup>th</sup> day of January 2004 and marked Exhibit "A M D 8".

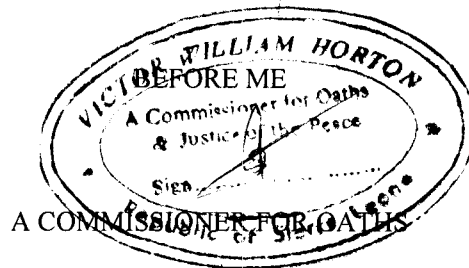




EXHIBIT "A MD 8"

Dr. Charles Mensungu Taylor, Accra

January 6, 2004

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**His Excellency John Kufuor  
President of the Republic of Ghana  
And Chairman of ECOWAS  
Accra, Ghana**

*My Friend & Brother:*

I have the honor to present you my sincere compliments and to apprise you, Mr. Chairman, of developments relative the indictment and the arrest warrant issued against my person by the Special Court for Sierra Leone.

It may please Your Excellency that I retained Counsel in Freetown prior to my departure as President to represent the interest of the Republic of Liberia without prejudice, reference the aforesaid Special Court. To this date I have challenged the jurisdiction of the Special Court and have in addition, gathered evidence sufficient to question the impartiality, especially of the Appeals Chamber of said Special Court for Sierra Leone.

Essentially I have, by way of my Counsel, raised issues that go to the jurisdiction of the Special Court for Sierra Leone and in consequence to the root of the proceedings before that Court which are presently sub-judice. That being the case, I have accordingly instructed my Counsel, Terrence Michael Terry, to institute proceedings by way of a motion before the Appeals Chamber soonest by invoking both the Court's inherent jurisdiction and under the relevant rules of procedure designed ultimately to raise the below mentioned jurisdictional and related issues.

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After oral argument before the Appeals Chamber of the Special Court for Sierra Leone which took place on the 31<sup>st</sup> October and 1<sup>st</sup> November 2003 respectively, I have had the opportunity of speaking to my Counsel, Mr. Terrence Terry, who briefed me about all pertinent matters while he was in Calabar in the Republic of Nigeria. He also provided me with videocassette recordings relating to the aforesaid oral proceedings before the Appeals Chamber of the Special Court for Sierra Leone covering the 31<sup>st</sup> October and 1<sup>st</sup> November respectively.

I note that the President of the Appeals Chamber of the Special Court for Sierra Leone Geoffrey Robertson QC in error mentioned the appointment of Judge Oda by the Secretary General of the United Nations to the Appeals Chamber of the Special Court for Sierra Leone. I now understand from reliable sources that the Secretary General of the U. N. appointed Judge ODEAR a Ugandan Citizen and not Judge Oda who formed part of the dissenting judgment in the celebrated case of Democratic Republic of Congo vs. Belgium in which the issue of criminal immunity accorded to Heads of State and Foreign Ministers under customary international law fell for consideration by the International Court of Justice.

I have also noted with great concern that the hearings on 31<sup>st</sup> October and 1<sup>st</sup> November 2003 respectively were allowed to proceed despite the fact that my Counsel Terrence Terry took pains to point out in open Court that the Appeals Chamber was not properly constituted. Indeed I find it rather bizarre that the Appeals Chamber of the Special Court for Sierra Leone in circumstances that with respect can only amount to indecent haste decided to proceed with only 4 Judges sitting rather than 5 required Judges as provided for under the Special Court Agreement 2002, (Ratification) Act, 2002.

I also understand from my said Counsel, that the President of the Appeals Chamber Geoffrey Robertson Q.C. stated at the outset in open Court that, in the event the Appeals Chamber finds itself divided in its Ruling on the matter falling for determination, the 5<sup>th</sup> Judge ( Judge Oda) would then be brought on board and the matter will be then heard and argued afresh – once again Judge Oda wrongly mentioned by Geoffrey Robertson Q.C. as the 5<sup>th</sup> appointed Judge of the said Appeals Chamber by the President of the Appeals Chamber Geoffrey Robertson Q.C.

I have also had the opportunity recently and only after the close of the said hearings of the Appeals Chamber on the 31<sup>st</sup> October and 1<sup>st</sup> November 2003 to have read carefully and painstakingly perused the book entitled “CRIME AGAINST HUMANITY- THE STRUGGLE FOR GLOBAL JUSTICE;” written by Geoffrey Robertson Q.C. (President of the Appeals Chamber) from page 465 second paragraph under the sub-topic: “Lesson From Sierra Leone.”

Excerpt of this book referred to herein as APPENDIX “A”, in which the Presiding Judge Geoffrey Robertson stated, inter alia, at page 466:

*“When Sierra Leone, a West African coastal state, was granted independence from Great Britain in 1961, its population of 4.5 million had enjoyed comparative peace and prosperity, largely thanks to its diamond mines. Corruption soon took its toll of elected politicians and series of army coups were interspersed with raids on the diamond mines by a breakaway Sierra Leone army faction led by Corporal Foday Sankoh, operating from neighboring Liberia. Styled the Revolutionary United Front (RUF), it recruited gangs of violent, dispossessed youths and armed them with AK47s for their missions of pillage, rape, and diamond heisting. The RUF had nonpolitical agenda: its sponsor was Charles Taylor, Liberia’s vicious warlord.”*

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It may well be noted that the reference made to me and the RUF in the paragraph quoted supra presupposes Judge Robertson's extra-judicial opinion of prejudgment that:

1. I sponsored RUF to commit the crimes of pillage, rape, diamond heisting, etc. as later charged in the indictment against me; and
2. I am guilty of being Liberia's vicious warlord.

My attention has also been drawn to an Order of the Appeals Chamber dated the 20<sup>th</sup> day of November 2003 duly signed by His Honor Judge Gelaga King for the President of the Appeals Chamber Geoffrey Robertson Q.C. which is exhibited to this my letter as Appendix B. My reading of that order to wit Appendix B is that the African Bar Association was granted leave by the Appeals Chamber to file an amicus curiae brief even after argument had been concluded before that body. That is to say the least wholly unfortunate and with respect, inappropriate in whatever way you choose to look at it. But what in my respectful view has compounded the error and caused me considerable disquiet is the apparent failure of the Appeals Chamber to give an opportunity to either the Prosecutor and/OR my Counsel by the grant of a consequential order to enable them to respond to the amicus curiae brief which was filed on behalf of the African Bar Association.

I am also reliably informed by my Counsel Terrence Michael Terry and I verily believe that one Mr. STAKER on behalf of the Prosecution during the proceedings before the Appeals Chamber indicated to the latter body that the Prosecutor at ICTY one Carla De Ponte could not file an amicus curiae brief in the time before the hearings commenced at the Appeals Chamber on the 31<sup>st</sup> October 2003 in respect of the above jurisdictional argument forwarded to the latter by the Trial Chamber of the Special Court for Sierra Leone.

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But yet the Prosecutor saw it fit to produce a letter dated the 30<sup>th</sup> day of October 2003 which they attached to the additional submission of the Prosecutor as an Appendix when they very well knew that Counsel of the Applicant could not in those circumstances have possibly responded to the serious issues raised in the letter of Carla de Ponte as the matter had been properly adjourned for Ruling by the Appeals Chamber. The said letter written by the aforesaid Carla de Ponte is attached to this my letter and referred to as APPENDIX "C".

You will perhaps now understand that for the foregoing reasons I most respectfully take the view that the "fons et origo" of those proceedings before the Appeals Chamber of the Special Court for Sierra Leone on the 30<sup>th</sup> October and 1<sup>st</sup> of November 2003 respectively have been tainted and I dare say, so is the "flux." Little wonder therefore if I feel a sense of apprehension at the impending 'terminus.' However as a layman that is as far as I can go, and it is only proper for me to leave the lawyers, the Prosecutor and the Judges of the Appeals Chamber at the appropriate time to work out the detail that hopefully will not prejudice my position in any way whatsoever at the end of the day.

It will be deeply appreciated therefore if you would be gracious enough to forward this my letter to the Judges of the Appeals Chamber for their perusal and particularly to give an opportunity to the President of the Appeals Chamber, Judge Geoffrey Robertson Q. C. for him to decide one way or the other whether the above allegations of apparent bias and/OR actual bias against his person as aforementioned do warrant him reclusing himself up until the delivery of the Ruling which I understand is scheduled for sometime in early January 2004 OR thereabout.

To summarize therefore and in the light of the aforementioned serious lapses complained about by me, I hope no one will fault me as I venture to state from a distance that this whole case with the greatest respect can best be described as a "mid summer's night dream" replete with a series of comedy of errors committed at every twist and turn which started from the moment the indictment and consequential Warrant of Arrest was issued against my person on the 7<sup>th</sup> March 2003, and thereafter followed by the botched service of the Registrar of the Special Court for Sierra Leone on the authorities in Ghana in Circumstances that not only constitute both "an abuse of power" and abuse of process but also in clear violation of a number of provisions of the very Special Court Agreement 2002, (Ratification) Act, 2002 assuming the latter said Act was validly brought into force by the 1991 Constitution of the Republic of Sierra Leone. I shudder, however, to think who can properly be now considered to be the guards to guard the guards.

Certainly Judge Robertson Q. C. President of the Appeals Chamber cannot now with the greatest respect to him perform that role for reasons of apparent bias on his part already alluded to by me above. To that extent I can only say "thy will be done" and with a heavy heart – AMEN!

Evidently, considering these avoidable irregularities and the apparent continued acts of bias on the part of the Special Court for Sierra Leone, I entertain the conviction that its proceedings are primarily designed to obstruct the ongoing efforts of ECOWAS and the African Union for the restoration of peace in Liberia. Beyond all reasonable doubts, the daring harassment of my person by Sierra Leone through the Court is to sustain a climate of insecurity in the sub-region and to that effect undermine the resolve of the leaders of our sub-region and the African continent regarding the Liberian situation. This is dangerous!

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In view of this development, I pray the Authority of the Heads of State and Government to be seized of the matter and bring this to an end.

Cordially yours

  
Dr. Charles Ghankay Taylor

- Cc:
- (1) **The Chairman of the African Union**
  - (2) **The Secretary General of the United Nations  
United Nations Plaza  
New York, United States of America**
  - (3) **His Excellency Chief Olusegun Obasanjo,  
President of the Federal Republic of Nigeria  
Abuja, Nigeria**
  - (4) **Excellency Thabo Mbeki  
President of the Republic of South Africa  
Pretoria, South Africa**
  - (5) **Government of the Republic of Sierra Leone  
C/O Attorney General and Minister of Justice  
Guma Valley Building  
Lamina Sankoh Street  
Freetown**
  - (6) **The Registrar of the Special Court for Sierra Leone  
Jomo Kenyatta Road  
New England  
Freetown**
  - (7) **Judge Geoffrey Robertson Q.C. President of the Appeals Chamber of  
The Special Court for Sierra Leone, Jomo Kenyatta Road  
New England  
Freetown**

- (8) **Judge Emmanuel A Ayoola Judge of the Appeals Chamber for the Special Court for Sierra Leone**  
New England  
Freetown
- (9) **Judge Gelaga King Judge of the Appeals Chamber for the Special Court for Sierra Leone**  
New England  
Freetown
- (10) **Judge Renater Winter Judge of the Appeals Chamber for the Special Court for Sierra Leone**  
New England  
Freetown
- (11) **The Secretary-General of the United Nations**
- (12) **The Prosecutor of the Special Court for Sierra Leone**  
Jomo Kenyatta Road  
New England  
Freetown
- (13) **Barrister Terence M. Terry**  
4<sup>th</sup> Floor, Marong House  
11 Charlotte Street  
Freetown
- (14) **Cllr. Francis Y. Galawolo**  
Galawolo & Associates  
Capitol Hill,  
Monrovia, Liberia



# APPENDICES

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# APPENDIX A

APPENDIX A



REVIEWED BY  
GEOFFREY ROBERTSON QC

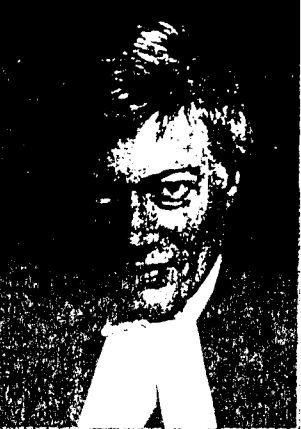
# CRIMES AGAINST HUMANITY

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## THE STRUGGLE FOR GLOBAL JUSTICE

A BILLY WOODS LEGAL CARE AND EDUCATION PROJECT





The second edition of this mastery work explains why the 11 September attack on America was a crime against humanity. It shows that the trial of Milosevic and the overthrow of the Taliban are further evidence for an historic shift, from appeasement to justice, in international relations.

First used at Nuremberg to condemn the Nazi rulers, the concept of crimes against humanity has universal recognition for the need to hold political leaders accountable for genocide, war crimes and crimes which outrage the conscience of humanity.

The arrest of heads of state, including Bin Laden, Milosevic, and allied leaders, and the strengthening of the human rights movement. But it understands the strength of the human rights movement. But it understands the weakness of the UN system and the failure of the United States administration, particularly the weakness of the Bush administration, to hold them accountable, but unapologetically critical of the political and diplomatic who cling to national state government and the United Nations.

Explains why we are on the brink of a new era for human rights - the era of appeasement.

An essential guide for all those who want to understand the concept of human rights in law and politics and how to bring them to life in our own lives.

His arguments are exceptionally clear and comprehensible, and all complexities are rendered into simple and lucid prose.

Millions will be reading this book in the coming years. It is a serious in our to stop the massacre.

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# APPENDIX - A

## THE GUIRNICA PARADOX: BOMBING FOR HUMANITY

international justice has been illuminating. They have made no secret ~~of their fears of suffering the fate of Pinochet, or of the indignity that~~ would attend their appearance in uniform in the Hague dock.<sup>1</sup> What appears to have exercised them most was the humiliation of being tried in another country, under the world's gaze, rather than in their own courts. If this fear of suffering the *indignity* of international criminal justice is widely shared in military circles, and if it infects political leaders as well, then the prospect of trial at The Hague can have a real deterrent effect. The army and the militias behaved like nervous murderers, transporting the corpses, at great inconvenience, long distances to bury them across the West Timor border. The advent of international criminal law, for all the pot luck of its enforcement, had at least made them afraid of retribution for their crimes against humanity.

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## LESSONS FROM SIERRA LEONE

Pinochet, Kosovo, East Timor and Lockerbie occupied the world's attention in 1999, that *annus mirabilis* for international human rights law. But these steps forward were accompanied by one barely noticed backslide in the treacherous minefield of a small and turbulent African state. The Lomé Peace Agreement, brokered by the UN, with UK and US support, purchased peace at a most extraordinary price. The democratically elected government was forced to share power with rebels who were pardoned for the most grotesque crimes against humanity, and their leader, liberated from prison, was made Deputy Prime Minister in charge of the nation's diamond resources, the very object of his ruthless campaign. As it happened, not even this capitulation could satisfy Foday Sankoh: his renewed attacks on a ragtag army of UN peacekeepers obliged the former colonial power, Great Britain, to return in force, much to the relief of the populace. The case of Sierra Leone provides object lessons in:

- i) the counter-productivity of amnesties for crimes against humanity;
- ii) the impossibility of UN peacekeepers maintaining neutrality in a civil war where one side is given to committing such crimes.

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- iii) the need for a standing UN 'rapid reaction' force;
- iv) the potential for legitimate use of mercenaries, and
- v) the prospects for 'hybrid' war crimes courts, comprising both local and international judges and prosecutors.

When Sierra Leone, a West African coastal state, was granted independence from Great Britain in 1961, its population of 4.5 million had enjoyed comparative peace and prosperity, largely thanks to its diamond mines. Corruption soon took its toll of elected politicians and a series of army coups were interspersed with raids on the diamond mines by a breakaway Sierra Leone army faction led by Corporal Foday Sankoh, operating from neighbouring Liberia. Styled the Revolutionary United Front (RUF), it recruited gangs of violent, dispossessed youths and armed them with AK47s for their missions of pillage, rape and diamond-heisting. The RUF had no political agenda: its sponsor was Charles Taylor, Liberia's vicious warlord. But when, in 1995, the RUF threatened to attack Sierra Leone's capital Freetown, the military government paid a South African mercenary force, Executive Outcomes, to protect the city and 're-train' the government army. They did well enough for elections to be held again in 1996, which returned Ahmed Kabbah, a former UN official. By this time, the RUF had perfected its special contribution to the chamber of war horrors: the practice of 'chopping' the limbs of innocent civilians. It was a means of spreading terror, especially to deter voters in the elections which the RUF opposed: their anti-election slogan, 'Don't vote or don't write', came true for thousands of citizens, forced to lay their right hand on RUF chopping-blocks after they had chosen to vote. Mutilation worked, as a means of terrifying the population, and so the RUF devised more devilish tortures, such as lopping off a leg as well as an arm, sewing up vaginas with fishing lines, and padlocking mouths.<sup>38</sup> Given their level of barbarism, how could Sankoh and the RUF leadership ever have been invited by Western diplomats to share power?

The UN and the Western countries which had supervised the 1996 elections did not stay around to help President Kabbah, and in 1998 some RUF-inclined army officers staged another coup. Kabbah retained a new mercenary company, Sandline, to help his return to

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power although this was in fact achieved by Nigerian forces acting through a regional OAU grouping (ECOMOG). It is ironic that Sani Abacha, the villainous Nigerian dictator who killed Ken Saro-Wiwa, looted \$5 billion and denied his own country democracy should restore it in Sierra Leone, but that he did, with grudging support (there being no alternative) from the UN. He arrested Foday Sankoh, who was tried by a jury in Freetown and sentenced to death for treason. In June 1998 the UN passed resolution 1181 pursuant to which it sent in a token force of 'blue berets' to stabilize the situation, but they were wholly inadequate to stop the renewed fighting between the RUF and the governmental armies (whose members often swapped sides at night). Discredit for the Lomé Peace Agreement belongs principally to the Reverend Jesse Jackson, whose role as 'comforter and confessor' to President Clinton over the Lewinsky affair had in some bizarre way led to his appointment as Presidential envoy to stop the wars of West Africa. Jackson chummed up with Charles Taylor and expressed admiration for the imprisoned Foday Sankoh, likening him to Nelson Mandela (who was not a psychopath given to mutilating civilians). Jackson's ignorance and moral blindness does not excuse the Western and UN diplomats who agreed to release Sankoh from prison, bestow upon him an apparently valid amnesty, and hand him the only prize in Sierra Leone worth having – control of the diamond mines. Kabbah signed the Lomé Agreement in July 1999 under intense pressure, his protest symbolized by the companion he brought to the signing ceremony, a child whose arm had been chopped by the RUF. Kofi Annan, feeling queasy about the amnesty, instructed his representative to make one reservation, to the effect that it would not cover 'grave breaches' of the Geneva Conventions.

The amnesty certainly covers crimes Sankoh and the RUF have committed under Sierra Leone law, like murder and grievous bodily harm (i.e. mutilation). Whether it covers the same offences when characterized – through their widespread and systematic nature – as crimes against humanity, will be a matter for the court at Sankoh's eventual trial. At least it cannot extend to forgiveness of crimes committed after July 1999 (on the Privy Council authority of *AG Trinidad v. Lennox Phillip* – see p. 275). The RUF, programmed to kill and pillage and mutilate, continued to do so after Lomé, so the



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UN sent in another 'peacekeeping' mission, a ragtag army of ragbag  
Zambians (they arrived without kit), insubordinate Jordanians and  
disorganized Kenyans, and put them all under the command of an  
unpopular Indian Major General, whose orders they routinely dis-  
obeyed.' After Sankoh's forces had taken 500 Zambian hostages  
and were about to overrun Freetown, it was Britain that saved the  
day. It did not, sensibly enough, rely on any UN mandate, but  
intervened at the invitation of the elected government and for the  
initial purpose of safely evacuating British nationals from Freetown.<sup>39</sup>  
The continuing presence of British forces proved necessary to provide  
some stability and to frighten the RUF (when one of its gangs kid-  
napped British soldiers, the ensuing SAS rescue wiped out twenty-four  
gang members). The British Prime Minister, in a notable speech at his  
party's conference, in October 2001, boasted of British action in Sierra  
Leone as a precedent for the defeat of terrorism in Afghanistan. The  
latter has proved a much more difficult prospect, but the British/UN  
occupation of Sierra Leone has at least ended a ten-year civil war  
which lost 50,000 lives and hundreds of thousands of limbs.

Although British intervention did not solve the country's intractable  
problems, it produced sufficient peace for plans to proceed for the  
trial of the re-imprisoned Foday Sankoh and some captured RUF  
leaders, while the more reasonable elements of that group are actually  
to contest an election in 2002 in a country which now has a large (and  
finally, effective) force of UN peacekeepers. A special court has been  
established pursuant to Security Council Resolution 1315, which  
records an agreement between the UN and Sierra Leone to try 'those  
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government. There is an international prosecutor, working mainly  
with local lawyers, and the rules of evidence and procedure will be  
those of the Rwandan Tribunal. The most difficult ethical question



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... how to deal with atrocities committed by boy soldiers: many of the worst mutilations were committed by brutal and aggressive 16- and 17-year-olds, and the populace demanded that they be punished. Kofi Annan took the forgiving line of most NGOs, that these youths were in fact 'victims of psychological and physical abuse' and pursuant to the Convention on the Rights of the Child they should not be made accountable for their criminal acts. The treaty between the UN and Sierra Leone which establishes the court reaches an uneasy compromise: soldiers under the age of fifteen at the time of their crime will not be prosecuted, whilst those who were sixteen or seventeen will not go to jail if convicted. The deliberate use of child soldiers for terrorist atrocities in Africa (pioneered by CIA-backed Holden Roberto - see p. 217) and the ethical objections to punishing them makes it crucial for customary international law to recognize their recruitment as a war crime entailing individual responsibility - a development which has been helped by the inclusion of the recruitment of child soldiers as a crime in Article 8 of the ICC statute.

Sierra Leone is a small state that loomed large in the UN's latest department, which is optimistically called its 'Lessons Learned Unit'. The primary lesson was spelled out in the report produced for the millennium summit by a panel of experts chaired by Lakhdar Brahimi: it concluded that the UN's fundamental peacekeeping failure had been its 'reluctance to distinguish victim from aggressor': adherence to the traditional principles of impartiality and use of force only in self-defence had resulted in the UN's 'complicity with evil'. This referred to the Lomé Agreement, which set free the RUF leader and gave him a half share in the nation's political power and resource wealth. Henceforth, said Brahimi, Security Council mandates must permit military action by bigger and better forces, directed against 'spoilers' - parties like the RUF which break peace agreements - and include as targets their accomplice arms suppliers, drug and gem traders and parasitic crime syndicates.

So much for hindsight: a warring faction guilty of atrocities on a scale that amounts to a crime against humanity must never again be forgiven sufficiently to be accorded a slice of power: on the contrary, its leaders deserve to be captured and put on trial. Foday Sankoh embodies that proposition, and the hybrid special court devised to try

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him may provide a useful precedent for states which remain in disarray after UN intervention. It gives a predominant role to experienced international judges and prosecutors, but ensures the involvement of local lawyers who will be educated and (hopefully) inspired by participating. (Since the local court system in failed and transitional states is invariably degraded, a hybrid court is one means of assisting in its renewal.) Sierra Leone provides an awkward postscript to the human rights advances at the end of the twentieth century: a warning of how easily retribution for crimes against humanity can be overlooked by diplomats and UN careerists who want 'a deal at any cost'.

The first nation to quake at the prospect of human rights law enforcement was, ironically enough, representative of the race whose history has made it necessary. Israel refused to support NATO's action against Serbia, because its right-wing government worried about Arab demands for a Kosovo-style 'autonomy' for Galilee. Shimon Peres was ashamed: 'For the first time after the Nazi Holocaust, when the world does not stand by, we do not know what to say?' But in NATO, too, Kosovo was an awkward precedent – certainly for Spain, which has used state terror against Basque separatists, and for Turkey, engaged in a war with its Kurds (which they had tactically suspended in an effort to save the life of Ocalan, their captured leader). It was precisely the fear of opening cans of ethnic worms which caused NATO's rhetoric to emphasize the humanitarian emergency and to avoid mention of Kosovo's right to self-determination, which was at the heart of the whole matter. By failing to adopt this goal as a war aim and a principle of peace, NATO and the UN face a constitutionally confusing (and very long) future in the province. In East Timor, by contrast, the future is clear and optimistic: nation-building begins apace for a people the protection of whose post-plebiscite right to self-determination was the acknowledged reason for the intervention. The KLA and Falintil were both fighting for control of a discrete patch of earth where the great majority were suffering under a brutal militarized state, and international law was on their side. It should have been declared to be on their side – in the Dayton Accords and in the judgments of the *East Timor Case*. But the West long ago developed a kneejerk hostility to the right of self-determination.

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because it was asserted first by colonial rebels and later by communist-backed liberation groups. But the lesson of Kosovo and East Timor is that in an age of human rights enforcement it should no longer be necessary for peoples to fight and die for their international law rights: the world must develop an enforcement system which will do this for them. Until international law clearly confronts the problem of secession, and lays down some ground rules for its exercise - including the existence of cast-iron guarantees for dissenters and minorities in the new seceded state - liberation struggles will be endless, and some great power claims, e.g. over Chechnya, New Caledonia and (most dangerously) Taiwan, will continue to trouble the peace of the world.

Kosovo, East Timor and Sierra Leone demonstrate the rudimentary nature of the human rights enforcement system at the turn into the twenty-first century. There is a world court, full of judges determined to save states from embarrassment by refusing to rule on the legality of NATO's war in former Yugoslavia or of Indonesia's annexation of East Timor. There is a world government, its executive unable to act without the support of the five most powerful nations of 1945, only one of which has prospered greatly since. It has no 'rapid reaction' force to parachute in when genocide is underway; Senator Jesse Helms has seen to that, threatening US withdrawal whenever the idea of the UN's own army is mentioned. So the East Timorese were butchered for two weeks because one Security Council member refused to act other than by invitation of the state whose army was committing the butchery, and Sierra Leone was sent an undisciplined rabble of 'blue berets' that proved no match for the rebels. Human rights lessons are easy to teach, but politicians and diplomats show little inclination to learn.

Kosovo and East Timor were both depicted in the media as 'ethnic conflicts' underlain by blood hatreds between races and religions: the Catholic Serbs against the Muslim Albanians; the Catholic East Timorese against the Muslim Indonesians. This analysis is simplistic, and essentially false. As historian Noel Malcolm points out in respect to Kosovo, 'It ignored the primary role of politicians (above all, the Serbian nationalist-communist Milošević) in creating conflict at a political level . . . between low-level prejudices on the one hand and a military conflict, concentration camps, and mass murder on the other,

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there lies a very long road: it was the political leaders who propelled the people down that road, and not vice-versa.<sup>40</sup> The East Timorese have never hated the Indonesians as a people or as Muslims: leaders like Gusmao and Ramos-Horta always talked of both peoples sharing a common enemy in the form of the corrupt para-political generals of the Indonesian army. What emerges starkly from both situations is the criminal responsibility of political and military leaders for preparing and permitting crimes against humanity. The actual killers were soldiers and mad-dog militias, but criminal responsibility lay indelibly with commanders who had long before built their power upon racism and nationalism, in the course of which they offered impunity to the killers they inspired. Milošević and Suharto, and their respective army commanders now in boltholes in Belgrade and Jakarta, provide a convincing argument in favour of developing a system of international criminal justice which has power to humiliate and incarcerate the commanders of crimes against humanity.

# APPENDIX B

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SPECIAL COURT FOR SIERRA LEONE  
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IN THE APPEALS CHAMBER

Before: Justice Robertson, Presiding  
Justice Ayoola  
Justice King  
Justice Winter

Registrar: Mr Robin Vincent

Date: 20<sup>th</sup> day of November 2003

The Prosecutor Against  
(PROSECUTION)

Charles Ghankay Taylor  
(RESPONDENT)

African Bar Association  
(APPLICANT)

Case No. SCSL-2003-01-AR72(E)

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DECISION ON APPLICATION BY THE AFRICAN BAR ASSOCIATION FOR  
LEAVE TO FILE *AMICUS CURIAE* BRIEF

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Office of the Prosecutor:  
Luc Coré, Chief of Prosecutions  
Desmond de Silva, Deputy Prosecutor

Defence Counsel:  
Terence Michael Terry

Applicant:  
Femi Falana

SPECIAL COURT FOR SIERRA LEONE  
**RECEIVED**  
COURT RECORDS  
21 NOV 2003  
NAME: Mitok Essi Saito  
SIGN: [Signature]  
TIME: 11:20

THE APPEALS CHAMBER OF THE SPECIAL COURT FOR SIERRA LEONE ("the Special Court")

BEING SEISED OF an Application by the African Bar Association to appear as an *amicus curiae* in the Prosecutor vs. Charles Ghankay Taylor filed on 18 November 2003 relating to the Preliminary Motion "made under protest and without waiving of immunity accorded to a Head of State requesting that the Trial Chamber quash the indictment and declare null and void the warrant of arrest and order of transfer and detention" filed on 23 July 2003 and in relation to which oral arguments were heard on 31 October and 1 November 2003;

CONSIDERING the submissions of the Applicant, in particular as to why the application was made out of the time permitted by Article 5 of the Practice Direction on filing documents under Rule 72 of the Rules of Procedure and Evidence before the Appeals Chamber of the Special Court for Sierra Leone dated 22 September 2003;

CONSIDERING the principles enunciated in the Decision on Application by the Redress Trust, Lawyers Committee for Human Rights and the International Commission of Jurists for Leave to File Amicus Curiae Brief in the case of *Prosecutor v Morris Kallon* of 4 November 2003;

HEREBY DECIDES to grant leave to the Applicant to appear in writing as an *amicus curiae*, and

ORDERS that the written brief submitted by the Applicant to the Special Court in anticipation of this Decision be filed and distributed to the parties.

Done at Freetown

This twentieth day of November 2003

Justice Robertson, Presiding



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# APPENDIX C



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for the former Yugoslavia

pour l'ex-Yougoslavie

OFFICE OF THE PROSECUTOR

BUREAU DU PROCUREUR

Thursday, 30 October 2003

Ref: OTP/O/6650

Dear Mr. Crane,

Please accept this letter as official expression of support for the position taken by the Office of the Prosecutor for the Sierra Leone Special Court in the matter of *Prosecutor v. Charles Ghankay Taylor*. I am aware that your office has set forth its opposition to the relief sought by the fugitive accused. The issues raised by your office in its filings are of grave significance to the appropriate enforcement of international humanitarian law both procedurally and substantively. Unfortunately the short time available does not allow me to seek leave of your court to appear as an Amicus Curiae in support of your position as I would otherwise have done. In the absence of a more formal intervention, you are fully authorised to express the position of the Prosecutor for the ICTY in your submissions before the SCSL Appeals Chamber. On this matter the OTP for the ICTY has always been consistent with the position taken by your office in the Taylor matter.


In this regard it is my understanding that the procedural history of the Taylor matter is that: On 19 September 2003, the SCSL Trial Chamber issued an order in which it ruled that the motion filed on behalf of the accused Charles Ghankay Taylor "is deemed to have been filed as a preliminary motion pursuant to Rule 72 of the Rules of Procedure and Evidence." The Trial Chamber further considered that the Defence Motion "objects to the jurisdiction of the Special Court to try the Accused on all the charges contained in the Indictment." On that basis, the Trial Chamber referred the Defence Motion to the Appeals Chamber for determination, pursuant to Rule 72(E) of the Rules of Procedure and Evidence. The Prosecution has essentially objected on the grounds of standing.

The Honorable David Crane  
Prosecutor, Special Court for Sierra Leone

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The ICTY has addressed similar issues in at least three cases; namely, *Prosecutor v. Karadžić*, *Prosecutor v. Bobetko*, and *Prosecutor v. Milošević*. In *Prosecutor v. Karadžić*, in the context of the ICTY's Rule 61 proceedings – frequently referred to (erroneously) as a variant of a trial *in absentia* – the ICTY Trial Chamber did not cede standing to an absent accused. In *Prosecutor v. Bobetko* in which the Republic of Croatia attempted to quash the indictment issued against the accused before his surrender the Court would not entertain submissions made by an accused person or by counsel who seek to speak on behalf of the accused prior to his appearance before the Tribunal. In *Prosecutor v. Milošević*, the accused purported to challenge the jurisdiction of the ICTY against him on numerous grounds, including immunity on the basis of his being a Head of State. However, the accused was nevertheless by this point present before the Trial Chamber and filed motions before it.

Please be assured of the cooperation and support of my office in further matters of mutual interest.

  
Carla Del Ponte  
Prosecutor