

**The decision to transfer former President Charles Taylor
from the premises of the Special Court for Sierra Leone to the premises of the International
Criminal Court in the Netherlands should be as a last resort**

The Security Council must conduct a clear and transparent evaluation of the issues

Paris, The Hague, Monrovia 10 April 2006: The International Federation for Human Rights (FIDH) and its member organization, the Liberia Watch for Human Rights (LWHR), express their concern regarding the request made by the President of the Special Court for Sierra Leone (SCSL), to conduct the trial of former Liberian President Charles Taylor in the premises of the International Criminal Court (ICC) in The Hague, Netherlands.

The Security Council is currently considering this transfer (see the draft resolution annexed to this statement).

FIDH and LWHR are deeply concerned by some aspects of the Security Council draft resolution, in particular with regard to the consequences of conducting the trial in The Hague for the interests of justice and the interests of victims, and for the functioning and activities of the SCSL and ICC.

The surrender of Charles Taylor to the SCSL

The Special Court for Sierra Leone was created in 2002, to try those who bear the greatest responsibility for the crimes committed during the conflict in Sierra Leone. The SCSL has indicted 11 high responsible of crimes and has conducted trials in 9 cases. Based in Freetown in Sierra Leone, to be closest to the people of that country and to the victims of the horrendous crimes which divided it, the trials have a strong impact within Sierra Leone society and especially amongst victims.

FIDH and LWHR welcomed the arrest and the surrender of Charles Taylor, former President of Liberia, on 29 March 2006, from Nigeria to the SCSL. He has been , indicted by the SCSL on 11 charges of war crimes and crimes against humanity, carried out by the Revolutionary United Front and other armed forces under his direction and his support, as Liberian rebel leader and as President of Liberia.

The Security Council should evaluate the security situation in a transparent and consultative manner, to avoid the risk of undermining the interests of justice and the interests of victims

The SCSL's request to conduct the trial of Charles Taylor in The Hague has been justified on the basis of the security risks. The draft resolution of the Security Council "*determin[es] that the presence of former President Taylor in the sub-region is an impediment to stability and a threat to the peace of Liberia and of Sierra Leone and to international peace and security in the region*".

FIDH and LWHR urge the Security Council to conduct this evaluation in a transparent and consultative manner, and with due consideration to all relevant factors including the positive impact that conducting a trial locally may have in Sierra Leone and in the sub region. Currently the impression is being given that an informal political agreement to transfer the trial of Charles Taylor to the Hague had already taken place, which undermines the potentially positive impact.

The SCSL was established in Sierra Leone, where the crimes took place, within the society it aims to rebuild, and closeto the victims. FIDH and LWHR consider that the hybrid nature of the SLSC, an internationalized court established in **a local context, has already** fulfilled some of its objectives.

The justification for establishing the SCSL in Freetown was so that the tribunal would be more accessible and have a greater deterrent effect. Indeed, through its trials and outreach activities, the

SCSL has managed to effectively involve the population.

“Conducting trials in Sierra Leone has been crucial to facilitate to re-establishing the rule of law, to rebuilding the national justice system, and to ensuring that justice is done, and is seen to be done, by the victims and the people of Sierra Leone as a whole”, said Sidiki Kaba, president of FIDH.

“The SCSL has already conducted fair trials against high top leaders such as Foday Sankoh and Sam Hinga Norman. It has proved that it can manage security issues without creating more insecurity. Conducting fair trials in Sierra Leone can make a more significant contribution to future stability and to the transition to democracy and the rule of law in the sub region,” said Thompson Ade Bayor the president of LWHR.

To move the trial of Charles Taylor to Europe, without greater consideration of the issues, might undermine the credibility of the SCSL and its efforts to explain its role and objectives in Sierra Leone, affecting perceptions of its fairness and independence.

**The potential to undermine the functioning and activities of the SCSL and the ICC
The draft resolution of the Security Council recalls that all the costs of the trial in The Hague should be drawn from the SCSL budget.**

The duration of the trial at first instance and potentially on appeal, the transfer of SCSL staff (who will then be unavailable to other ongoing proceedings in Freetown), or the recruitment of new staff in The Hague, the transportation of witnesses and evidence, and detention in The Hague, will imply high costs and complications. *“Leaving the SCSL to assume alone the entire costs of the proceedings against Charles Taylor in The Hague might create another major financial crisis within the SCSL whose budget is made of voluntary contributions. It will be the responsibility of the members of the Security Council and the international community to support such necessary increase”,* said Sidiki Kaba..

The entire process of delivering justice before the SCSL, but also before the ICC, may be slowed down. Indeed the Security Council draft resolution seems to imply that the SCSL should use the premises of the ICC.

However, it should be noted that the existing space and the three court rooms at the interim premises of the ICC, are already insufficient to accommodate the increase in staff and activities of the ICC. They are unlikely to be able to support the staff and the trials of the SCSL.

The Security Council leaves this question to the Secretary General and the Netherlands, as host State, although neither of them are in a position to decide what facilities to provide in such a short space of time.

Transferring the seat of the SCSL to the premises of another international court necessitates an increase in the budget for communication and outreach of both courts. A clear distinction between their mandates should be explained to avoid a confusion and misinterpretation.

The Special Court of Sierra Leone will need to increase its outreach budget and activities to make sure that the trial of Charles Taylor Trial will be effectively accessible to the people of Sierra Leone, on a day-to-day basis. It will require more staff, equipment and programs. The Security

Council should not only request but also support the SCSL to implement its request to make trial proceedings accessible to the people of the sub-region.

The Security Council must not prohibit the jurisdiction of the Netherlands to prosecute Charles Taylor

The draft resolution of the Security Council states that “*the Special Court shall retain exclusive jurisdiction over former President Taylor during his presence in the Netherlands in respect of matters within the Statute of the Special Court, and that the Netherlands shall not exercise its jurisdiction over former President Taylor except by express agreement with the Special Court* »,

This statement creates a new condition to the exercise of the extraterritorial jurisdiction of the Netherlands over the crimes committed or encouraged by Charles Taylor, which would clearly be in violation of the international customary law and the jus cogens prohibition of crimes against humanity and war crimes,

ANNEX DRAFT RESOLUTION OF THE SECURITY COUNCIL CONCERNING THE LOCATION OF CRIMINAL PROCEEDINGS AGAINST CHARLES TAYLOR

The Security Council,

Recalling its previous resolutions and the statements of its President concerning Liberia, Sierra Leone, and West Africa, in particular its resolutions 1470 (2003) of 28 March 2003, 1508 (2003) of 19 September 2003, 1537 (2004) of 30 March 2004 and 1638 (2005) of 11 November 2005,

Recalling that the Special Court for Sierra Leone ("the Special Court") was established by Agreement between the United Nations and the Government of Sierra Leone on 16 January 2002 ("the Agreement") pursuant to its resolution 1315 (2000) of 14 August 2000,

Recalling Article 10 of the Agreement pursuant to which the Special Court may meet away from its seat if it considers it necessary for the efficient exercise of its functions, and recalling also Rule 4 of the Rules of Procedure and Evidence of the Special Court pursuant to which the President of the Special Court may authorise a Chamber or a Judge to exercise their functions away from the Seat of the Special Court,

Recalling the Council's determination to end impunity, establish the rule of law and promote respect for human rights and to restore and maintain international peace and security, in accordance with international law and the purposes and principles of the Charter,

Expressing its appreciation to Liberian President Johnson Sirleaf for her courageous decision to request the transfer of Charles Taylor in order that he may be tried at the Special Court ,

Expressing its appreciation to President Obasanjo of Nigeria on his decision to facilitate the transfer of Charles Taylor, and noting the role Nigeria has played in securing and promoting peace in Liberia and the wider sub-region, including President Obasanjo's decision in 2003 to facilitate the removal of Charles Taylor from Liberia which allowed the Comprehensive Peace Agreement to take effect,

Recognising that the proceedings in the Special Court in the case against Charles Taylor will contribute to achieving truth and reconciliation in Liberia and the wider sub-region,

Expressing that it remains committed to assisting the governments of Liberia and Sierra Leone in their efforts to a more stable, prosperous and just society,

Reiterating its appreciation for the essential work of the Special Court and its vital contribution to the establishment of the rule of law in Sierra Leone and the sub-region,

Welcoming the transfer of former President Taylor to the Special Court on 29 March 2006,

Noting that it is not feasible for the trial of Charles Taylor to be hosted at the premises of the International Criminal Tribunal for Rwanda due to its full engagement on the completion strategy, and that no immediate viable alternative for the trial of Charles Taylor can be made available in Africa,

Taking note of the exchange of letters between the President of the Special Court and the Minister of Foreign Affairs of the Kingdom of the Netherlands dated 29 March 2006 ("the exchange of letters dated 29 March 2006"),

Taking note also of the exchange of letters between the President of the Special Court and the President of the International Criminal Court dated XX 2006, ("the exchange of letters dated XX 2006")

Determining that the presence of former President Taylor in the sub-region is an impediment to stability and a threat to the peace of Liberia and of Sierra Leone and to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

Takes note of the intention of the President of the Special Court to authorise a Trial Chamber to exercise its functions away from the seat of the Special Court, and his request to the Government of the Netherlands to host the trial, including any appeal;

Welcomes the willingness of the Government of the Netherlands, as expressed in the exchange of letters dated 29 March 2006, to host the Special Court for the detention and trial of former President Taylor, including any appeal;

Welcomes also the willingness of the International Criminal Court, as expressed in the exchange of letters dated XX 2006 to allow the use of its premises for the detention and trial of former President Taylor by the Special Court, including any appeal;

Requests all States to co-operate to this end, in particular to ensure the appearance of former President Taylor in the Netherlands for purposes of his trial by the Special Court, and encourages all States as well to ensure that any evidence or witnesses are, upon the request of the Special Court for Sierra Leone, promptly made available to the Special Court for this purpose;

Requests the Secretary-General to assist, as a matter of priority, in the conclusion of all necessary legal and practical arrangements, including for the transfer of the former President to the Special Court in the Netherlands and for the provision of the necessary facilities for the conduct of the trial, in consultation with the Special Court, as well as the Government of the Netherlands;

Requests the Special Court, with the assistance of the Secretary General and relevant States, to

make the trial proceedings accessible to the people of the sub-region, including through video link;

Decides that the Special Court shall retain exclusive jurisdiction over former President Taylor during his presence in the Netherlands in respect of matters within the Statute of the Special Court, and that the Netherlands shall not exercise its jurisdiction over former President Taylor except by express agreement with the Special Court;

Decides further that the Government of the Netherlands shall facilitate the implementation of the decision of the Special Court for Sierra Leone to conduct the trial of former President Taylor in the Netherlands, in particular by:

Allowing the detention and the trial in the Netherlands of former President Taylor by the Special Court for Sierra Leone;

Facilitating the transport upon the request of the Special Court for Sierra Leone of former President Taylor within the Netherlands outside the areas under the authority of the Special Court for Sierra Leone;

Enabling the appearance of witnesses, experts and other persons required to be at the Special Court for Sierra Leone under the same conditions and according to the same procedures as applicable to the International Criminal Tribunal for the former Yugoslavia;

Decides to exempt former President Taylor for the purposes of his trial before the Special Court for Sierra Leone, as well as for the purpose of the execution of the judgment, and also to exempt any witnesses whose presence at the trial is required, from the travel ban in accordance with paragraph 4 (c) of resolution 1521 of 22 December 2003;

Recalls that the costs to be incurred as a result of the trial of former President Taylor in the Netherlands are expenses of the Special Court in the sense of article 6 of the Agreement;

Recalls the Secretary General's letter of xx March 2006 and reiterates its appeal to States to contribute generously to the Special Court;

Decides to remain seized of the matter.

Contacts

International Federation for Human Rights (FIDH)

In The Hague, Karine Bonneau + 31 6 38 31 06 41

In Paris, Karine Appy + 33 1 43 55 25 18