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Special Court for Sierra Leone

Issues for consideration regarding the location of the trial of Charles Taylor

Introduction

The surrender of Charles Taylor to the Special Court of Sierra Leone (Special Court) on 29 March 2006 marks a major step forward in the Special Court's work to bring to justice some of those responsible for the tens of thousands of crimes committed in Sierra Leone.

The United Nations Security Council is currently considering whether to adopt a resolution to transfer Charles Taylor's case outside Sierra Leone. The initiative reflects a request by the Special Court to move the case to the International Criminal Court facilities in The Hague. Security concerns have been cited as a reason to move the trial. There are a number of positive elements in the draft resolution (annexed to this paper) now under consideration by the Security Council, including statements in the Preamble recalling the Security Council's "determination to end impunity, establish the rule of law and promote and encourage respect for human rights" and "[r]ecognizing that Charles Taylor facing the charges against him in the Special Court for Sierra Leone will contribute to achieving truth and reconciliation in Liberia and the wider sub-region". However, Amnesty International has a number of concerns about this draft resolution. The organization is urging Security Council members to resolve these concerns before they decide whether to authorize the Special Court to transfer the criminal proceedings to The Hague.

I. The transfer of criminal proceedings should take place if, and only if the international community cannot provide effective security for proceedings in Sierra Leone.

Amnesty International is not in a position to determine the severity of the threat to the security of proceedings if they continue to be conducted in Sierra Leone. Amnesty International, however, notes that the location of the Special Court in the country where the crimes were committed is an important and deliberate characteristic which forms part of broader initiatives to re-establish the rule of law in Sierra Leone, rebuild the national justice system and to ensure that justice is accessible and visible for the Sierra Leonean people. Amnesty International recognizes that conducting trials in Sierra Leone ensures that justice is witnessed by all sectors of the population who have been affected by the crimes and acts as a deterrent

to future crimes. The organization believes that moving the trial would have the negative effect of distancing the justice process from the Sierra Leonean people who have suffered directly as a result of the crimes for which Charles Taylor is indicted. In deciding this issue, the Security Council is urged to first of all consider whether effective security can be provided to enable the trial to continue in Freetown, and not to consider other political issues. It appears as if the Security Council has not conducted a comprehensive review of the security situation and what possible security measures could be taken to ensure that the proceedings could take place in Sierra Leone.

Amnesty International urges the Security Council to conduct this review and to decide to move the trial if, and only if, it is satisfied that the security concerns cannot be addressed by other measures – including greater investment in the existing security systems. Indeed, it is likely that Charles Taylor may need to remain in Freetown for some time until a transfer of the case is organized and a review of the effectiveness of the existing security arrangements should be taken into account in the Security Council's consideration. The security situation should also be kept under constant review. If the case is moved and the security risk subsequently diminishes, the trial should be returned to Freetown. The draft resolution does not address these concerns.

II. If a change of venue is necessary, the Security Council should consider other venues in Africa.

Amnesty International encourages the Security Council to consider whether there are alternative locations for the trial other than The Hague which can provide secure facilities to conduct the trial. The organization recognizes that locating the trial within Africa would have a number of positive elements, in particular, it would reinforce that the Special Court for Sierra Leone is an African court, which has been created by African states to address crimes against African people. Given the symbolism of moving the criminal proceedings out of Africa, any transfer should only be taken after the most careful scrutiny in accordance with strictly neutral criteria and after determining that there is no other courtroom available closer to the scene of the crimes. Amnesty International understands that the International Criminal Tribunal for Rwanda has been consulted and that it does not have a free courtroom, but it is not clear whether any African governments have been contacted to see if they have courtroom facilities that would be effective alternatives.

III. If the venue is changed, steps must be taken to minimize delays in transferring the case.

The process of allowing the Special Court to operate in another state must be expedited. In order to function effectively and without hindrance in another state, the Special Court will need to enter into a host state agreement with the state to which the trial will be transferred. Such an agreement should be consistent with the basic principles concerning a headquarters agreement for the International Criminal Court and the headquarters agreement of the International Criminal Tribunal for the former Yugoslavia. The draft resolution fails to address this issue fully merely requiring (in operative paragraph 6) that “the Netherlands shall facilitate the implementation of the decision of the Special Court for Sierra Leone to conduct the trial of former President Charles Taylor in the Netherlands” by taking a number of specified steps, including “[e]nabling the appearance of witnesses, experts and other persons required to be at 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”.

The government of the state must also grant a full range of privileges and immunities allowing the Special Court and its staff, as well as defence lawyers, representatives of victims and non-governmental organizations to work, without hindrance, in that country. A number of other agreements on detention facilities and other technical issues will need to be adopted without delay. Ensuring the prompt adoption of these measures will require the full support of the United Nations and the fullest cooperation of the venue state. The draft resolution does not address these concerns.

In addition, as set out below, the Special Court will require a significant increase in its budget to transfer the trial promptly and effectively to another state. It is essential that the Special Court does not encounter the same financial problems it has experienced throughout its history arising from states failing to make voluntary contributions. Amnesty International recommends that an increased budget to meet the expenses should be made available at the same time as a decision is made to transfer the case. Instead of doing so, the draft resolution (operative paragraph 8) merely “[r]ecalls 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 for Sierra Leone in the sense of article 6 of the Agreement and that no additional cost shall be incurred by the United Nations or the Netherlands without their consent”.

Moving the trial will no doubt delay it. There is the potential that this delay could be a substantial amount of time. Delays must be minimized to ensure Charles Taylor’s right to a fair trial. Apart from the encouragement to all states (in operative paragraph 3) “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”, there are no concrete steps spelled out in the resolution to minimize the delays. In addition, instead of using the mandatory formulation “requests”, as it does with regard to ensuring the appearance of Charles Taylor in the Netherlands, the Security Council simply “encourages” states to make evidence and witnesses available. This is in marked contrast to the approach of the Security Council acting also under Chapter VII to state cooperation with the International Criminal Tribunals for the former Yugoslavia and Rwanda.

IV. If the venue is changed, significant investment will be required to relocate the trial effectively.

As set out below, a change of venue of the trial will incur significant costs. However, the draft resolution does nothing to address this issue. On the contrary, it requires these very substantial costs to be borne solely by the Special Court itself. If these costs are drawn from the existing budget of the Special Court it will undoubtedly seriously undermine its work, resulting in another financial crisis which will cause delays and undermine the Charles Taylor trial and the other cases in Freetown. If the Security Council decides that it is better to invest in the transfer of the case rather than in strengthening the existing infrastructure of the Special Court to try Charles Taylor in Freetown, it should ensure that funds will be immediately available to relocate the trial. Furthermore, the Security Council should take steps to guarantee consistent resources over a number of years for the Special Court to conduct the trial and any resulting appeals.

The Special Court will need its own secure premises. Although the Special Court may be able to use the courtroom of other courts, the Special Court will require its own premises where its staff can conduct their work. In particular, regarding the proposal to use the premises of the International Criminal Court, it should be noted that existing space shortages at its interim premises would likely make it impossible for the Special Court to use their office facilities. Additional investment in premises, facilities and security will be necessary. The Security Council does not appear to have conducted a review of the facilities in The Hague or elsewhere in the Netherlands and the draft resolution appears to assume that the facilities of the International Criminal Court (which is not mentioned) will be available and adequate.

The Special Court will need additional staff and other resources in the state where the trial is located. Significant investment will need to be made in recruiting staff to perform the range of tasks required to conduct the criminal proceedings including the trial and appeal in another

state, a process that could take a number of years. These tasks include protection and support to victims and witnesses, outreach, assistance to defence counsel, interpretation, security, administration etc. As an independent institution with its own caseload, the International Criminal Court or any other international criminal court or national court system should not be requested to take on any of these tasks. It is particularly important that a transfer of the case does not result in draining the staff and resources from the Special Court in Freetown where other important trials are taking place. Significant investment in additional staff will be required. Recruitments will need to take place promptly to avoid delays. The Security Council does not appear to have considered these questions and the draft resolution is silent on these matters.

Resources will be required to ensure that the trial is accessible to the people of Sierra Leone.

As stated above, a major concern of moving the trial from Freetown is that the process will become too far removed from the people of Sierra Leone. There is little indication that the Special Court or the governments concerned have consulted civil society on the question whether the criminal proceedings should be transferred. To address this concern, resources for outreach should be increased significantly. Communicating the trial process in another country to all regions of Sierra Leone will be a major challenge. The Special Court will need to revise its outreach strategy significantly to ensure that day to day developments in the trial are communicated promptly and accurately through a range of media such as radio, television, local newspapers and other media including community outreach programs. This will require investment in technical equipment and staff in the country where the trial is taking place and other resources. The Security Council does not appear to have considered these questions and the draft resolution is silent on these matters.

V. If the venue is changed, the activities of the Special Court must not interfere with the equally important work of the International Criminal Court or other international courts.

It is important to recognize that the International Criminal Court is advancing in three investigations into grave crimes committed in northern Uganda, Darfur and the Democratic Republic of Congo. Other international courts have significant workloads and limited courtroom availability. If the trial is transferred to use the facilities of another international court, it is important that the work of either court is not compromised by the sharing of the facilities. It will be essential to promptly adopt an agreement setting out a clear division between the work of the Special Court and the other international court or national courts, which guarantees their independence and their ability to share courtroom facilities. The Security Council does not appear to have considered these questions and the draft resolution is silent on these matters. Indeed, it leaves these questions entirely to the United Nations

Secretary-General and the Netherlands, neither of which can decide what facilities the International Criminal Court can provide.

VI. The Security Council should not seek to prevent the courts of the Netherlands from exercising jurisdiction over Charles Taylor.

Any attempt by the Security Council to prevent national courts from exercising jurisdiction over Charles Taylor, except to protect the jurisdiction of the Special Court, an international court, would be inconsistent with the *jus cogens* prohibitions of crimes against humanity and war crimes. Although the recognition that the Netherlands can exercise universal jurisdiction over Charles Taylor is to be welcomed, the Security Council should not seek to prevent the courts of the Netherlands from exercising jurisdiction over him by opening a criminal investigation while he is in that country (see operative paragraph 5). Charles Taylor is suspected of committing crimes against humanity and war crimes in Liberia and the Netherlands should be permitted to open a criminal investigation of allegations of such crimes while the criminal proceedings are pending against him in the Special Court so that, if there is sufficient evidence against him to prosecute, the Netherlands can arrest him at the close of criminal proceedings before he can leave the country. Otherwise, the Netherlands would be precluded from taking these precautionary steps, without the agreement of the Special Court.

Conclusion

Before adopting the draft resolution, Amnesty International hopes that the Security Council will give its full attention to the serious issues of security and consider options for increasing security to allow the trial to continue in Sierra Leone. If, and only if, that is not possible, the organization urges the Security Council to consider relocating the trial to another African state or, if that is not possible, to a state in another region. A decision to move the trial will raise a number of significant challenges that must be addressed immediately to minimize delay in relocating the case. In particular, the Special Court will require immediate additional resources essential to conduct the trial outside Sierra Leone. The issues are not adequately addressed in the draft resolution.

Amnesty International hopes that the Security Council will take effective measures to ensure justice for the people of Sierra Leone.

ANNEX: DRAFT SECURITY COUNCIL RESOLUTION 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 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 the Council's determination to end impunity, establish the rule of law and promote and encourage 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 for Sierra Leone,

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 Charles Taylor facing the charges against him in the Special Court for Sierra Leone 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 for Sierra Leone 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 for Sierra Leone on 29 March 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,

1. Takes note of the exchange of letters between the President of the Special Court for Sierra Leone ("the Special Court") and the Minister of Foreign Affairs of the Kingdom of the Netherlands dated 29 March 2006; and takes note also 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;
2. Welcomes the willingness of the Government of the Netherlands, as expressed in the letter from its Minister of Foreign Affairs to the President of the Special Court dated 29 March 2006, to host the Special Court for Sierra Leone for the trial of former President Taylor, including any appeal;
3. 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 for Sierra Leone, 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 Sierra Leone for this purpose;
4. 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 for Sierra Leone in the Netherlands and for the provision of the necessary facilities for the conduct of the trial, in consultation with the Special Court for Sierra Leone, as well as the Government of the Netherlands;

5. Decides that the Netherlands shall not exercise its jurisdiction over former President Taylor during his presence in the Netherlands, except with the express consent of the Special Court for Sierra Leone;

6. 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:

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

b. 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;

c. 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;

7. 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 from the travel ban in accordance with paragraph 4 (c) of resolution 1521 of 22 December 2003;

8. 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 for Sierra Leone in the sense of article 6 of the Agreement and that no additional costs shall be incurred by the United Nations or the Netherlands without their consent;

9. Decides to remain seized of the matter.