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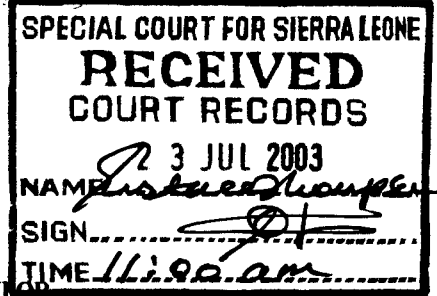
**THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN - SIERRA LEONE**

Before: The Trial Chamber

Registrar: Robin Vincent

CASE NO. SCSL 03 1

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

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

CASE NO. SCSL-07- -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 exparte 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 herewith 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".

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

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*

*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. [...]*

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.

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 chapter of the United Nations. It is submitted that the Universal Jurisdiction whether expressly or by necessarily 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 Ghanian 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.

**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

THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN – SIERRA LEONE

THE PROSECUTOR

CASE NO. SC01-03-

-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

---

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

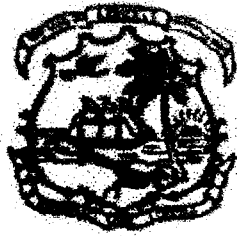
## **APPLICANTS INDEX OF ATTACHMENTS**

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.**

**INDEX OF ATTACHMENTS**

**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**

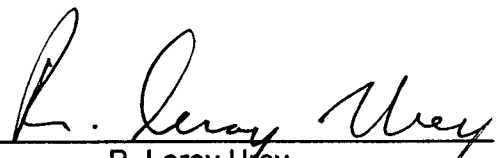
- 1. COUNTRY: REPUBLIC OF LIBERIA

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

# NOTARY CERTIFICATE

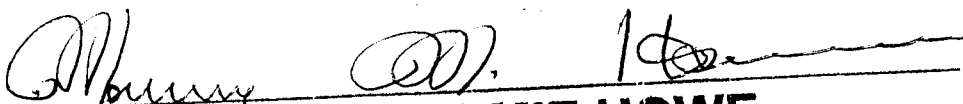
Personally Appeared Before Me in My Office within the City of  
Monrovia, Montserrado County, Republic of Liberia this  
18th day of JULY, A. D. 2003 duly  
qualified Notary Public for and in the County of Montserrado and in  
the Republic Aforesaid the Parties to the attached documents:-

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

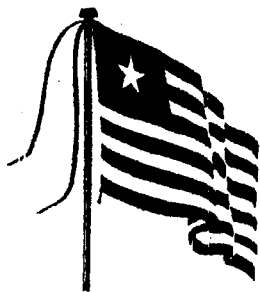
and did in my presence and in the presence of each other execute and  
signed their genuine signatures on the said Instruments(s) to be the  
person(s) they represent and that the same was made in my presence  
and declared by each of them to be their voluntary acts and in their  
own hand writings.

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

I have affixed my genuine Signature attesting to  
this transaction by the power vested in me this  
18th day of JULY, A. D. 2003.

  
— MARY MAMIE HOWE

NOTARY PUBLIC, MONTSERRADO COUNTY, R.L.  
\$2.50 REVENUE STAMPS AFFIXED ON THE ORIGINAL.



*Republic of Liberia  
Montserrado County*

*Office of the Notary Public  
Monrovia, Liberia*

## 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 Mamié Howe, Notary Public aforesaid, have*



**REPUBLIC OF LIBERIA**  
**MINISTRY OF FOREIGN AFFAIRS**  
**MONROVIA, LIBERIA**

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REPUBLIC OF LIBERIA )  
MONTERRADO COUNTY)

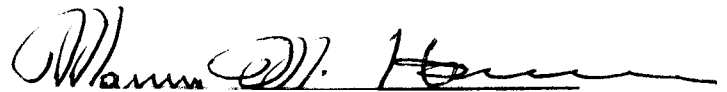
IN THE OFFICE OF THE JUSTICE OF THE PEACE  
FOR AND IN MONTERRADO COUNTY,  
MONROVIA, LIBERIA

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.





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**REPUBLIC OF LIBERIA  
MINISTRY OF FOREIGN AFFAIRS  
MONROVIA, LIBERIA**

REPUBLIC OF LIBERIA)  
MONTSERRADO COUNTY)

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

AFFIDAVIT

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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  
MONTSERRADO COUNTY  
REPUBLIC OF LIBERIA

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

\$5.00 Revenue stamp affixed to the original.

JUDICIAL BRANCH  
SUPREME COURT OF LIBERIA




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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

  
CHARLELS GHANKAY DAHKPANA TAYLOR  
PRESIDENT, REPUBLIC OF LIBERIA.

