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SCSL-03-01-PT
(5457-5468)



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THE SPECIAL COURT FOR SIERRA LEONE

In Trial Chamber II

Before: Justice Julia Sebutinde, Presiding
Justice Richard Lussick
Justice Teresa Doherty

Registrar: Mr. Herman von Hebel, Acting Registrar

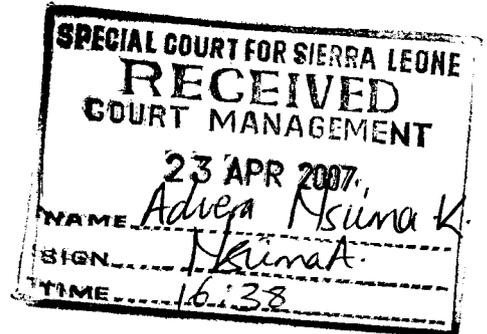
Date: 23 April 2007

Case No.: SCSL-2003-01-PT

THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR



PUBLIC

**DEFENCE REPLY TO PROSECUTION'S RESPONSE TO
"DEFENCE MOTION REQUESTING RECONSIDERATION OF
'JOINT DECISION ON DEFENCE MOTIONS ON ADEQUATE FACILITIES
AND ADEQUATE TIME FOR THE PREPARATION OF MR. TAYLOR'S DEFENCE'
DATED 23 JANUARY 2007"**

Office of the Prosecution

Mr. Stephen Rapp
Ms. Brenda Hollis
Ms. Wendy van Tongeren
Ms. Ann Sutherland
Ms. Shyamala Alagendra
Mr. Alain Werner
Ms. Leigh Lawrie

Counsel for Charles Taylor

Mr. Karim A. A. Khan
Mr. Roger Sahota

I. Introduction

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1. The Defence for Charles Taylor (“Defence”) file this Reply to the Prosecution’s Response to “Defence Motion Requesting Reconsideration of ‘Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor’s Defence,’ dated 23 January 2007”, (“Defence Motion”) filed by the Prosecution on 20 April 2007.¹ This Reply is submitted in accordance with the Trial Chamber’s Order for Expedited Filing, filed 19 April 2007.²
2. Given the scope of the Defence Motion and the relief requested therein, it is submitted that the most important feature of the Prosecution Response is the acceptance, by the Prosecutor, that the Defence has “established good cause for additional delay of the trial start date.”³ This concession is welcome and should not, in the respectful submission of the Defence, be understated in any way.
3. “Notwithstanding the good cause shown”⁴, the Prosecution allege in its Response that the Defence “overstate” the argument that it has been “severely hampered” and “effectively compromised” by the video surveillance complained of.⁵ The Defence respectfully take issue with the Prosecution in this regard. Indeed, the Defence maintain that the arguments advanced in its Motion are entirely reasonable, coherent and supported by argument. Accordingly, the present Reply adopts all the submissions previously made on this issue in the Defence Motion.
4. It is submitted that the contention that the Defence has overstated the argument regarding the effect of video surveillance on Defence preparation should be entirely disregarded as being one no longer properly open to the Prosecution to make and / or otherwise singularly without merit.

¹ *Prosecutor v. Taylor*, SCSL-03-01-PT-223, Prosecution’s Response to “Defence Motion Requesting Reconsideration of ‘Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor’s Defence,’ dated 23 January 2007”, 20 April 2007 (“Prosecution Response”).

² *Prosecutor v. Taylor*, SCSL-03-01-PT-222, Order for Expedited Filing, 19 April 2007 (“Order”).

³ Prosecution Response, para 3; para 15.

⁴ Prosecution Response, para 6.

⁵ Prosecution Response, para 7.

II. Submissions

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5. The Defence respectfully refer the Trial Chamber to its previous filings and correspondence on the issue of the video surveillance of legal conferences.⁶ The Defence maintain that it has demonstrated an entirely principled and consistent approach throughout. Indeed, the Defence would respectfully characterise its approach as constructive and practical given:

- (i) that the Defence complained of the video surveillance to the Registry immediately upon its commencement - and that throughout its filings to the Trial Chamber, President and Registry it sought to persevere with legal conferences whilst simultaneously complaining of a breach of privilege;⁷
- (ii) Despite its notification on 15 December 2007⁸ that it may be forced to suspend legal visits, it attempted to continue to prepare for trial, under the complained of circumstances, before finally having to suspend consultations on 3 March 2007.⁹ Suspension was the very last port of call, demonstrating a *bona fide* attempt by the Defence to resolve matters constructively and with a minimum degree of disruption.

6. In any event, the primary contention of the Defence has been consistent in all its filings on this issue. It is that video surveillance has had a chilling effect on legal consultations, has circumscribed the areas that could be discussed between the Accused and his legal team, and that prejudice has been suffered.

⁶ *Prosecutor v. Taylor*, SCSL-03-01-PT-133, Defence Motion Requesting Removal of Camera from Conference Room, 28 November 2006 (“Video Surveillance Motion to Trial Chamber”); *Prosecutor v. Taylor*, SCSL-03-01-PT-156, *Corrigendum* to the Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, 19 December 2006 (“Video Surveillance Motion to President”); and Letter from Karim Khan to the Registrar, dated 15 December 2006 [Annex A].

⁷ Video Surveillance Motion to President, para 20.

⁸ Letter from Karim Khan to the Registrar, dated 15 December 2006 [Annex A].

⁹ Defence Motion, para 22-23, footnote 32 (which references an email in Annex D showing that legal visits were actually suspended from 3 March. However, due to the weekend, the official notification of suspension, *Prosecutor v. Taylor*, SCSL-03-01-PT-197, Notification of Suspension of Legally Privileged Attorney-Client Consultations, could not be filed until 5 March 2007).

7. The Defence submit that it is highly relevant to consider three facts when assessing whether the Prosecution are entitled, at this juncture, to allege that the Defence “overstates” the prejudice suffered by the video surveillance:

- (i) The Prosecution did not assert any disagreement¹⁰ when the Defence raised identical concerns regarding the prejudice being suffered by the continued video surveillance of legal conferences in its Motion Requesting Removal of Camera from Conference Room before the Trial Chamber on 28 November 2006;¹¹
- (ii) The Prosecution did not assert any disagreement¹² when the Defence raised identical concerns regarding the prejudice being suffered by the continued video surveillance of legal conferences in its *Corrigendum* to the Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations before the President on 8 January 2007;¹³
- (iii) The Prosecution did not assert any disagreement, or otherwise reply or comment, when the Defence raised similar concerns regarding the prejudice being suffered by the continued video surveillance of legal conferences, and particularly the relief that would be requested if matters were not resolved in a timely fashion, in its letter to the Registrar dated 15 December 2007, which was copied to the Prosecution.¹⁴

8. Given that on three previous occasions the Prosecution have failed to dispute, controvert or otherwise take issue with broadly identical submissions made by the Defence, it is submitted

¹⁰ *Prosecutor v. Taylor*, SCSL-03-01-PT-134, Prosecution letter Re: Defence Motion Requesting Removal of Camera from Conference Room, 29 November 2006.
¹¹ Video Surveillance Motion to Trial Chamber, paras. 10, 24-25.
¹² *Prosecutor v. Taylor*, SCSL-03-01-PT-152, Prosecution letter, Re: Urgent and Public Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, SCSL-03-01-PT-149, 8 January 2007.
¹³ Video Surveillance Motion to President.
¹⁴ Letter from Karim Khan to the Registrar, dated 15 December 2007, pg. 1 [Annex A]. (In particular, “If we do not receive a reply from you before then we will consider suspending all further legal consultations with our client with immediate effect. We will also consider raising this with the Trial Chamber as further grounds to delay the trial date.”)

that it should not be allowed to do so now for the first time. As far as the chilling effect of the camera goes to legal conferences, it is submitted that the Prosecution must be tied to their decision not to take issue with the materially identical Defence submissions in the previous filings. The present motion is premised on the hitherto uncontested averment that prejudice has been suffered by the Defence, and that the video surveillance was *ultra vires* the power of the ICC Registry and should not have been permitted to occur by the SCSL. It is submitted that Prosecution has either waived its right to controvert the submission of the Defence in this regard, or should otherwise be estopped from doing so given their previous, well documented, silence on this issue. For these reasons, the Defence respectfully invite the Trial Chamber to disregard paragraphs seven through eleven of the Prosecution Response.¹⁵

9. In any event, the submissions of the Prosecution in this regard are without foundation and wholly erroneous. The Prosecution submit that the Defence overstate the impact of the video surveillance as “[t]here is no showing that there was any violation of the legal professional privilege, or that the Accused’s right to freely communicate with his lawyer was “severely hampered” or “effectively compromised”.¹⁶ The Defence would urge the Trial Chamber to have regard to Paragraph 15 and 21 of the Defence Motion.
10. In addition, it suffices (even apart from the other arguments raised by the Defence on this issue),¹⁷ that the Registrar has determined that Regulation 183(1) of the Regulations of the Registry of the ICC does “not justify video surveillance of visits between a detainee and his counsel”¹⁸ and that such video surveillance “is not applicable to the privileged communications between a detainee and his counsel”.¹⁹ The President noted that this was the most crucial submission of the Registrar on this issue.²⁰ In light of the finding of the illegality of video surveillance of legal conferences, the Prosecution contention that the Defence have failed to demonstrate a violation of legal privilege, or that the legal

¹⁵ Prosecution Response, paras. 7-11.

¹⁶ Prosecution Response, para. 7.

¹⁷ See, ex, Video Surveillance Motion to Trial Chamber; Video Surveillance Motion to President..

¹⁸ *Prosecutor v. Taylor*, SCSL-03-01-PT-189, Decision of the President on Urgent and Public Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, 21 February 2007, para. 28 (“President’s Decision on Video Surveillance”).

¹⁹ President’s Decision on Video Surveillance, para. 29.

²⁰ President’s Decision on Video Surveillance, para. 29.

conferences held under such circumstances were not “severely hampered” or “effectively compromised” is somewhat surprising, and the Defence submit, wholly untenable. 5462

11. In paragraphs seven and eight of the Prosecution Response, the Prosecution refer to a letter from the Director, Division of Court Services of the International Criminal Court which was sent to the parties as part of the Registrar’s Rule 33 submission dated 19 January 2007.²¹ The Defence had not received a copy of that letter before. Between 10 November 2007 and 19 January 2007, the Defence did not have a clear understanding of the scope and technical side of the video surveillance. That said, the Defence had been informed (orally by guards at the ICC) that the camera was not wired for sound. This is apparent from a previous Defence Motion:

“The conditions of use, method of operation and technological limits of the video surveillance facility are unclear. The ICCDU claim that the surveillance camera only records video-footage and does not record or relay any audio conversations. Notwithstanding this claim, the Defence is still concerned that confidential communications may be discovered visually. Confidential material could be identified through the use of lip-reading analysis or, for instance, through the magnification of images of maps, documents and photographs necessarily referred to in legal consultations. Such images would be easily discernable through the use of modern technology. Furthermore, monitoring of the time spent on any particular disclosure package could indicate its significance. Also, there remain practical concerns that confidential material could fall into the hands of a third party and be used against the Accused. The Defence strongly opposes the use of a surveillance camera during the privileged meetings between Mr. Taylor and his defence team even if the camera does not record or relay any audio conversations. Mr. Taylor’s ability to frankly and freely communicate with his counsel is thereby circumscribed because of the fear that the video transmission of his consultation, through the recorded video, could be used against him”.²²

²¹ *Prosecutor v. Taylor*, SCSL-03-01-PT-162, Registrar’s Submission on the *Corrigendum* to the Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations dated 19 December 2006, filed on 8 January 2007, Pursuant to Rule 33(B) of the Rules of Procedure and Evidence, 19 January 2007, Annex A.

²² Video Surveillance Motion to Trial Chamber, para. 10. The Defence would also point out again the impact and uncertainty that was created by it being kept in the dark and a failure of proper communication. This is apparent from the Defence letter dated 15 December 2007 [Annex A] “...we are compelled to write to you now, as many of the letters and points we have raised have gone unanswered.” Also see *Prosecutor v. Taylor*, SCSL-03-01-PT-213, Notification of Resumption of Legally Privileged Attorney-Client Consultations with Mr. Charles Taylor, 23 March 2007, para. 3 (“During this period [the time of suspension], the Defence was kept entirely in the dark and as to what, if any, action the Special Court Registry was taking to alleviate the complaint advanced by the Defence or to otherwise implement the Decision of the President of the Special Court”).

12. The Defence make no additional submissions regarding the difficulties caused by the scheduling conflict and the proximity between the ICTY case in *Limaj* and the present case. The Defence included this as a supplementary and subsidiary ground. It is accepted that the weight, if any, which should be afforded this fact, is entirely a matter within the province of the Trial Chamber in exercising its discretion. Whilst a filing is not a proper place to give evidence, the position is that the Defence has been informed that the Appeals Chamber of the ICTY will schedule the appeal hearing in *Limaj et al.* for 31 May and 1 June. The Appeals Chamber was made aware of the start date of Mr. Taylor’s trial. It is understood that the only alternative dates for the Appeals hearing were later in June 2007 which would disrupt Mr. Taylor’s trial to a greater extent, perhaps, and were not, in any event, convenient to counsel for the other Appellants / Respondents in that case.

13. The Defence considers the submission of the Prosecution adumbrated at paragraph 14 of its Response as academic at this juncture, given that a change of circumstances has been clearly demonstrated by the Defence. Accordingly, the Defence does not comment on the additional submission of the Prosecution regarding “change of circumstances” in this Reply.

III. Conclusion

14. Consequently, the Defence pray that:

- i) The Trial Chamber reconsider its Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor’s Defence;²³ and
- ii) Re-schedule the trial commencement date of 4 June 2007 to a date not before 3 September 2007.

²³ *Prosecutor v. Taylor*, SCSL-03-01-PT-164, Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor’s Defence, 23 January 2007.

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Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'K' followed by a horizontal line that extends to the right and then curves back down.

Karim A. A. Khan

Lead Counsel for Mr. Charles Taylor

Dated this 23rd Day of April 2007

Table of Authorities

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Prosecutor v. Taylor, SCSL-03-01-PT-133, Defence Motion Requesting Removal of Camera from Conference Room, 28 November 2006

Prosecutor v. Taylor, SCSL-03-01-PT-134, Prosecution letter Re: Defence Motion Requesting Removal of Camera from Conference Room, 29 November 2006

Prosecutor v. Taylor, SCSL-03-01-PT-152, Prosecution letter, Re: Urgent and Public Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, SCSL-03-01-PT-149, 8 January 2007

Prosecutor v. Taylor, SCSL-03-01-PT-156, *Corrigendum* to the Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, 19 December 2006

Prosecutor v. Taylor, SCSL-03-01-PT-162, Registrar's Submission on the *Corrigendum* to the Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations dated 19 December 2006, filed on 8 January 2007, Pursuant to Rule 33(B) of the Rules of Procedure and Evidence, 19 January 2007

Prosecutor v. Taylor, SCSL-03-01-PT-164, Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor's Defence, 23 January 2007

Prosecutor v. Taylor, SCSL-03-01-PT-189, Decision of the President on Urgent and Public Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, 21 February 2007

Prosecutor v. Taylor, SCSL-03-01-PT-197, Notification of Suspension of Legally Privileged Attorney-Client Consultations, 5 March 2007

Prosecutor v. Taylor, SCSL-03-01-PT-213, Notification of Resumption of Legally Privileged Attorney-Client Consultations with Mr. Charles Taylor, 23 March 2007

Prosecutor v. Taylor, SCSL-03-01-PT-220, Defence Motion Requesting Reconsideration of 'Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor's Defence,' dated 23 January 2007, 17 April 2007

Prosecutor v. Taylor, SCSL-03-01-PT-222, Order for Expedited Filing, 19 April 2007

Prosecutor v. Taylor, SCSL-03-01-PT-223, Prosecution's Response to "Defence Motion Requesting Reconsideration of 'Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor's Defence,' dated 23 January 2007," 20 April 2007

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Table of Annexes

Annex A Letter from Karim Khan to the Registrar, dated 15 December 2006



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Our Ref RJS 15122006

Mr. Lovemore G. Munlo SC
Registrar
Office of the Registry
The Special Court for Sierra Leone

Cc: H.E. President Justice George Gelaga King
Trial Chamber II: Hon. Justice Richard Lussick, Presiding;
Hon. Justice Teresa Doherty; Hon. Justice Julia Sebutinde
OTP: Mr. Christopher Staker, Mr. James C. Johnson, Ms. Wendy van
Tongeren, Mr. Alain Werner, Ms. Shyamala Alagendra
OPD: Mr. Vincent Nmeheille, Ms. Elizabeth Nahamya

15 December 2006

Dear Mr. Registrar,

You will be aware that we have been in regular correspondence with your office and the Principal Defender regarding various issues that we feel are compromising our ability to properly represent our client. We are compelled to write to you now, as many of the letters and points we have raised have gone unanswered and we cannot allow this situation to drift into January with the Christmas recess imminent. It is with great reluctance and some surprise that we write to you given our constructive dialogue in the past. We would therefore be grateful if you would address the following points:

Camera Motion

We note that you have failed to comply with the Trial Chamber decision of 30 November 2006 where the Trial Chamber "urge(d) the Chief of Detention and the Registrar to deal with the matter promptly in accordance with Rule 50(C) of the Rules of Detention". We understand that you have been in dialogue with the ICC regarding this matter and that this has taken some time but nevertheless cannot see why this cannot be resolved before the Christmas recess. If we do not receive a reply from you before then we will consider suspending all further legal consultations with our client with immediate effect. We will also consider raising this with the Trial Chamber as further grounds to delay the trial date. We intend to exhaust our available remedies by requesting the President to review the situation. We regard the continuation of the

current surveillance of legal consultations, and non-responsiveness from the Registry as of the last day of this Winter term, as a *de facto* refusal of our request.

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Requests re International Investigator, Sierra Leonean Investigator, Office Facilities and Additional Funding for Second Co-Counsel Pre-Trial

We have had no reply to any of the letters attached. We require a reply before the Christmas recess particularly in relation to our request for an indication of the funds available for an international investigator, whether the appointment of Prince Taylor is approved and whether any funds are available for our Hague or Monrovia office or an additional co-counsel in the pre-trial phase. We have drafted an additional letter today enclosed as we require a printer / scanner / fax machine in The Hague with immediate effect.

We realise that this case raises unique and novel problems and that your office and the OPD may be very busy dealing with these and other matters. But in particular, we consider the delay and failure to respond to some of our correspondence completely unacceptable. This is a basic courtesy to which we are entitled. We are already working in intolerable conditions and under great stress. Simply put we cannot continue to prepare a complicated international criminal trial if even the most straightforward request takes between 1 - 3 months to resolve (if at all)¹ or is met by a deafening silence. We further cannot continue to devote an inordinate amount of time to the resolution of these problems at the expense of essential case preparation.

We have raised in our previous correspondence the possibility that we may consider withdrawing from this case if we feel that the time and resources available to us are completely inadequate and place us in conflict with our professional obligations and render the possibility of a fair trial impossible. We must give you formal notice that we now fear that we may shortly be approaching the point when we will have to give further consideration to this option.

Yours faithfully,



Karim Ahmad Khan and Roger J Sahota

Counsel for Mr. Charles Taylor

Encl: 3 letters from Counsel to the Office of the Principal Defender

¹ See for instance our extensive correspondence regarding the use of laptops during legal consultations.