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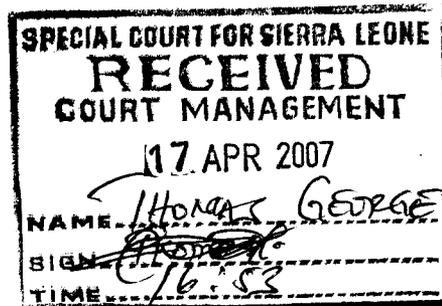
**THE SPECIAL COURT FOR SIERRA LEONE**

**Before:** Hon. Justice Julia Sebutinde, Presiding  
Hon. Justice Richard Lussick  
Hon. Justice Teresa Doherty

**Registrar:** Mr. Herman von Hebel, Acting Registrar

**Date:** 17 April 2007

**Case No.:** SCSL-2003-01-PT



**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

PUBLIC

**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 J. Hollis  
Ms. Wendy van Tongeren  
Mr. Mohammad Bangura  
Ms. Ann Sutherland  
Ms. Shyamala Alagendra  
Mr. Alain Werner  
Ms. Anne Althaus  
Ms. Leigh Lawrie

**Counsel for Charles Taylor**

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

## **I INTRODUCTION**

1. This motion is filed by the Defence for Mr. Charles Taylor (the “Defence”) and seeks the Trial Chamber’s reconsideration of its *Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor’s Defence*, rendered on 23 January 2007 (“Joint Decision”)<sup>1</sup> in which 4 June 2007 was fixed as the start date of Mr. Taylor’s trial. The Defence requests that the trial commencement date be re-scheduled to a date not before 3 September 2007 for the reasons detailed herein.
2. This request for reconsideration is based on Rule 54 of the Special Court for Sierra Leone (“SCSL”) Rules of Procedure and Evidence and on Article 17 of the SCSL Statute on the ground that there has been a substantial change of circumstances which has altered the basis of the original decision. The substantial change of circumstances are:
  - (i) From 10 November 2006 until 22 March 2006 legal consultations between Mr. Taylor and his Defence team were severely hampered by the installation of a video surveillance camera in the legal consultation room. This intrusion has been the cause of significant delays in case preparation and, ultimately, caused the Defence to suspend all legal visits with Mr. Taylor until the matter was resolved. The Trial Chamber had been forewarned<sup>2</sup> of the likelihood of this present motion, which is a natural consequence of the failure of the Registrar of the SCSL to resolve, in an expeditious and timely manner, an issue impinging on the essential right of an Accused, namely the right to confidential communications with his lawyers; and
  - (ii) As a subsidiary, supplementary and wholly separate ground, two members of the Defence legal team, including Lead Counsel, are involved in appeal proceedings before the International Criminal Tribunal for the Former Yugoslavia (“ICTY”) (The case of *Limaj et al*) which, the Defence have been notified, has provisionally been scheduled by the President of the ICTY to be heard on 31 May and 1 June 2007, three days before Mr. Taylor’s trial is due to start.

## **II PROCEDURAL BACKGROUND**

3. In its Joint Decision, the Trial Chamber fixed 4 June 2007 as the date for the start of trial.<sup>3</sup> The Defence initially asked for the trial to be postponed until 3 September 2007, “in order to

<sup>1</sup> *Prosecutor v. Taylor*, Case No. SCSL-03-1-PT-164, Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor’s Defence, 23 January 2007.

<sup>2</sup> *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. 4.

<sup>3</sup> The Joint Decision was handed down after considering the arguments of the parties as set out in the following filings: *Prosecutor v. Taylor*, SCSL-03-1-PT-147, Defence Motion on Adequate Facilities for the Preparation of Mr. Taylor’s Defence, 15 December 2006 (“First Defence Motion”); *Prosecutor v. Taylor*, SCSL-03-1-PT-

ensure that the time, resources, and facilities allocated to the parties are not stacked wholly in favour of the Prosecution”.<sup>4</sup> The Defence raised the following grounds in support of their position: (i) the geographic complexity of the case; (ii) the volume of material disclosed by the Prosecution; (iii) the number and variety of the Prosecution’s proposed expert witnesses; (iv) the fact that the Defence is not yet fully functional, having only very recently assembled a complete legal and investigative team<sup>5</sup> and still lacking proper office space in both The Hague and Monrovia; and (v) the inordinate amount of time spent in unsuccessfully attempting to resolve these issues through administrative channels.<sup>6</sup>

4. In their First Defence Motion, the Defence set out the problems encountered in its ongoing struggle to obtain adequate facilities. It was submitted that the various obstacles detailed therein, were hindering the Defence, militated against efficient trial preparation, and put it at a significant disadvantage *vis a vis* the situation applicable to the Prosecution in the same case. Individually and cumulatively, it was submitted that these difficulties conspired to prevent the Defence being trial ready before 3 September 2007. In its Response to the First Defence Motion, the Prosecution was generally sympathetic to the Defence position. The Prosecution submitted:

Should the Trial Chamber determine that the administrative matters raised by the Defence Motion on Facilities is closely related to the Accused’s fundamental trial rights and thus may negatively impact on his rights as set out in Article 17(2) of the Statute, the Prosecution requests that the Trial Chamber provide relief to the Defence. Should the Trial Chamber determine that the relief requested does not fall within the jurisdiction of the Trial Chamber, the Prosecution that the Trial Chamber order or request the Registrar to immediately take all necessary administrative actions to finally determine the matters raised by the Defence Motion.<sup>7</sup>

5. In its Response to the Second Defence Motion, the Prosecution expressed the view that the Defence had shown good cause to justify a delay in the commencement of the trial. The Prosecution submitted that:

[A] delay in the trial start date until at least July 2007 would be in the interests of justice. To the extent a delay until the date requested by the Defence would ensure the orderly progress of the trial proceedings,

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148, Defence Motion on Adequate Time for the Preparation of Mr. Taylor’s Defence, 15 December 2006 (“Second Defence Motion”); *Prosecutor v. Taylor*, SCSL-03-1-PT-153, Prosecution Response to ‘Defence Motion on Adequate Facilities for the Preparation of Mr. Taylor’s Defence’, 8 January 2007 (“Prosecution Response to First Defence Motion”); *Prosecutor v. Taylor*, SCSL-03-1-PT-154, Prosecution Response to ‘Defence Motion on Adequate Time for the Preparation of Mr. Taylor’s Defence’, 8 January 2007 (“Prosecution Response to the Second Defence Motion”).

<sup>4</sup> Second Defence Motion, para. 3.

<sup>5</sup> As matters transpired, the investigative team was not, in fact, complete. An international investigator’s contract was signed on 10 March 2007, and due to various difficulties a suitable local investigator for Liberia has still not been secured. The Office of the Principal Defender has been kept informed of developments in that regard. It is hoped this position will be filled shortly.

<sup>6</sup> Second Defence Motion, para. 2. The last two grounds were detailed in the First Defence Motion.

<sup>7</sup> Prosecution Response to the First Defence Motion, para. 9.

unencumbered by additional delays for Defence preparation or to conclude proceedings in other cases before the Trial Chamber, such delay would be in the interests of justice, judicial economy and efficiency.<sup>8</sup>

6. Based on the arguments of the parties, the Trial Chamber considered the lack of offices in The Hague and Monrovia and the inordinate amount of time spent in unsuccessfully attempting to resolve these issues through administrative channels to be new grounds not previously ventilated before the Trial Chamber. The Trial Chamber held that these new grounds, when considered cumulatively with some of the other factors cited provided “good cause” to warrant rescheduling the commencement of trial from 2 April 2007 to 4 June 2007, a date earlier than requested by either party.<sup>9</sup> Any further postponement, in the considered opinion of the Trial Chamber, could not be justified in light of the Trial Chamber’s duty “to balance the right of the Accused to have adequate time for preparation of his case and his right to be tried without undue delay”.<sup>10</sup>
7. On 26 January 2007, the Defence filed an application for leave to appeal the Joint Decision pursuant to Rule 73(B), *inter alia* on the ground that the Joint Decision, “in holding that the Defence requires more time to prepare but granting only limited relief, implicates the fundamental right to a fair trial pursuant to Article 17”, a violation of which by its “very nature” meets the requirements of Rule 73(B).<sup>11</sup>
8. The Prosecution supported the Defence application for leave to appeal the Joint Decision. In their Response to the Defence Application, the Prosecution submitted:
 

[I]n all the circumstances as a whole, it is clearly desirable for this issue of the alleged violation of Article 17(4)(b) of the Statute to be settled once and for all before the trial begins, by a decision of the Appeals Chamber. If the interlocutory appeal is denied by the Appeals Chamber, the trial can proceed on the basis that it has definitely been settled that the setting of the 4 June trial start date was not inconsistent with the rights of the Accused. If the interlocutory appeal is allowed, the situation can be remedied much more efficiently at this stage, by simply postponing the trial start date by an appropriate period of time.<sup>12</sup>
9. Although both parties agreed that the trial should be postponed to a date between July and September 2007 and the Prosecution supported the Defence’s application for leave to appeal the Joint Decision on similar grounds, the Trial Chamber nonetheless rejected the

<sup>8</sup> Prosecution Response to Second Defence Motion, para. 12.

<sup>9</sup> Joint Decision, paras. 20 & 21.

<sup>10</sup> Joint Decision, para. 21.

<sup>11</sup> *Prosecutor v. Taylor*, SCSL-03-1-PT-168, Defence Application for Leave to Appeal “Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor’s Defence” Dated 23 January 2007, 26 January 2007, para. 9.

<sup>12</sup> *Prosecutor v. Taylor*, SCSL-03-1-PT-173, Prosecution Response to “Defence Application for Leave to Appeal ‘Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor’s Defence’ Dated 23 January 2007”, 5 February 2007, para. 10.

application.<sup>13</sup> In this renewed application, the Defence maintains the position set out in the Second Defence Motion, albeit that a number of the issues raised have been resolved.<sup>14</sup> It is submitted that these factors, when considered cumulatively with the new circumstances set out in the present motion [video surveillance of legal consultations, extreme proximity in time to ICTY appeal] justify a reconsideration of the Trial Chamber's Decision, in the exercise of its discretion and in light of its primary duty to ensure a fair trial.

### **III LEGAL CRITERIA FOR RECONSIDERATION**

10. This request is based on Rule 54, which grants jurisdiction to a Trial Chamber to reconsider an order or decision on the ground that there has been a substantial change of circumstances which has removed or altered the basis of the original order or decision.<sup>15</sup> The Trial Chamber further has inherent jurisdiction to take any measures necessary to guarantee Mr. Taylor's right to have adequate time to prepare his defence pursuant to Article 17(4)(b) of the SCSL Statute.
11. In an Appeals Chamber's Decision in *Brima et al*, Justice Robertson held that Trial Chambers "have an inherent jurisdiction to revisit and reconsider any decision, if the circumstances have changed and the interests of justice so require".<sup>16</sup>
12. Justice Robertson subsequently stated in the conclusion:
 

Trial Chambers have inherent jurisdiction to rescind or vary orders and to reconsider interlocutory judgements if there has been a change of circumstances which has removed or altered the basis of the original order.<sup>17</sup>
13. Properly considered, the Defence maintain that "the interests of justice" is not a threshold test or a freestanding element to be considered by the Trial Chamber in deciding whether to reconsider a matter at the request of a party, or *suo motu*. Rather, it is an integral factor in determining whether the alleged change of circumstances is material, and, if so, whether or not the alleged change should affect the original decision. Be that as it may, because the Defence

<sup>13</sup> *Prosecutor v. Taylor*, SCSL-03-1-PT-182, Decision on Defence Application for Leave to Appeal "Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor's Defence" Dated 23 January 2007, 15 February 2007.

<sup>14</sup> The issues raised in the First Defence Motion, namely the need for offices in The Hague and Monrovia, have been resolved after significant efforts made by the Defence.

<sup>15</sup> *Prosecutor v. Taylor*, SCSL-03-1-PT-198, Decision on urgent Defence Motion to vacate date for filing Defence Pre-Trial Brief, 5 March 2007, pg. 3.

<sup>16</sup> *Prosecutor v. Brima, Kamara, Kanu*, SCSL-2004-16-AR73, Decision on Brima-Kamara Defence Appeal Motion Against Trial Chamber II Majority Decision on Extremely Urgent Confidential Joint Motion for the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazy Kamara, 8 December 2005, Separate and Concurring Opinion of Justice Robertson, para. 49. Quoted by this Trial Chamber in *Prosecutor v. Taylor*, SCSL-03-1-PT-198, Decision on Urgent Defence Motion to Vacate Date for Filing of Defence Pre-Trial Brief, 5 March 2007, p. 3.

<sup>17</sup> *Ibid*, para. 102(vi).

maintain that all judicial decisions should in any event fulfil this criteria,<sup>18</sup> the Defence will demonstrate that there has been a change of circumstances, altering the basis of the original decision to fix 4 June 2007 as the start date for trial. Further, the Defence submit that reconsideration of this decision is required in the interests of justice and pray that the start date be postponed to a date not before 3 September 2007.

#### IV CHANGED CIRCUMSTANCES

##### (i) Video Surveillance of Legal Consultations

14. Legal consultations between Mr. Taylor and his Defence team have been monitored since 10 November 2006, when the International Criminal Court Detention Unit (“ICCDU”) installed video surveillance cameras in the conference rooms available for Mr. Taylor’s legal consultations. The Defence for Mr. Taylor were not given any prior notice that cameras were to be installed, nor were the views of the Defence team invited or taken into account prior to taking this unilateral and still unexplained action.
15. The Defence first attempted to resolve the issue with the Registrar, and when this approach failed, addressed the Trial Chamber and then the President. In the numerous motions and submissions filed,<sup>19</sup> the main arguments relied on by the Defence were that the presence of a live video camera in the room set aside for legal conferences, violated the sanctity of legal professional privilege and had a chilling effect, in practice, on confidential communications between Mr. Taylor and his legal team. The monitoring of privileged consultations engendered an atmosphere whereby Mr. Taylor did not feel free to communicate with his counsel in a full and frank manner and raised concerns that the substance of his communications could be used against him.<sup>20</sup> These concerns are, perhaps, all the more understandable when put in the context that no similar surveillance has been ordered in the SCSL in Freetown, at the ICTY, ICTR, or the Special Panels / Extraordinary Chambers dealing with alleged violations of IHL in East Timor or Cambodia. In addition, that immediate cessation of such surveillance of legal consultations was promptly ordered and implemented by the ICC in the case of Mr. Lubanga but, for no discernable or articulated reason, continued in Mr. Taylor’s case would, it is submitted, give any reasonable accused in a similar position cause for concern. In sum, Mr.

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<sup>18</sup> Also see, *Prosecutor v. Taylor*, SCSL-03-1-PT-217, Decision on Prosecution Motion to Allow Witnesses to Give Testimony by Video-Link, 30 March 2007, para. 25.

<sup>19</sup> Instead of rehashing the entire history of the litigation since the installation of the video surveillance cameras on 10 November 2006, the Defence adopt the Procedural Background outlined in paragraphs 5 through 17 of: *Prosecutor v. Taylor*, SCSL-03-01-PT-197, Notification of Suspension of Legally Privileged Attorney-Client Consultations with Mr. Charles Taylor, 5 March 2007 (“Notification”).

<sup>20</sup> See *Prosecutor v. Taylor*, SCSL-03-01-PT-156, Urgent and Public *Corrigendum* to the Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, 8 January 2007.

Taylor's right to freely communicate with his lawyer, an element of fair trial under Article 17(4)(b) of the SCSL Statute was effectively compromised.<sup>21</sup>

16. The Defence have not been dilatory in raising this complaint, as evidenced by the substantial body of motions and submissions related to this issue. A decision was taken at an early stage to continue with privileged consultations with Mr. Taylor despite this encroachment, although the Registry<sup>22</sup> and the Trial Chamber<sup>23</sup> were notified on 15 December 2006 that the Defence would consider suspending all legal consultations if no resolution could be reached, and that delay in resolving this matter could necessitate a further application for postponement of trial.
17. The Trial Chamber and the President clearly understood the importance of the alleged violation and its potential impact of Defence preparation. In its Decision of 30 November 2006, the Trial Chamber urged "the Chief of Detention and the Registrar to deal with the matter promptly in accordance with Rule 59(C) of the Rules of Detention".<sup>24</sup> Despite this admonition, no developments were discernable in resolving this issue and the Defence was forced to have recourse to the President. On 21 February 2007, the President of the SCSL issued his *Decision on the Urgent and Public Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations*<sup>25</sup> and stated that the Registrar should:
  - have made a decision on the video surveillance issues and communicated that decision to the officials concerned [at the ICC] in order to ensure that the Applicant's complaint was dealt with promptly and without delay, in accordance with the provisions of Rule 59(C) of the Rules of Detention.<sup>26</sup>
18. The President then directed that:<sup>27</sup>
  - (i) the Registrar communicate forthwith to the relevant ICC authorities in The Hague his Decision that "the use of video surveillance of the legal consultations of the Detainee Charles Taylor with his Counsel be discontinued"; and
  - (ii) the Registrar ensure that his said Decision is complied with forthwith.
19. Notwithstanding the unambiguous language used, the Registrar took no significant action to ensure the implementation of the President's Decision and on 27 February 2007, the Defence wrote to the Registrar to remind him of his obligation to execute this Order.<sup>28</sup>

<sup>21</sup> It is an accepted principle of international human rights law that rights conferred must be "practical and effective" and not "theoretical and illusory". See, ex., ECHR, *Artico, v Italy*, May 13, 1980, Series A, No 37; 3 EHRR, para 33.

<sup>22</sup> Letter from Karim Khan to the Registrar, dated 15 December 2006 [Annex A].

<sup>23</sup> *Ibid.* This letter was circulated to H.E. President Justice George Gelaga, Hon. Justice Richard Lussick, Presiding; Hon. Justice Teresa Doherty and Hon. Justice Julia Sebutinde.

<sup>24</sup> *Prosecutor v. Taylor*, SCSL-03-01-PT-137, Decision on Urgent and Public Defence Motion Requesting Removal of Camera from Conference Room, 30 November 2006, p. 4.

<sup>25</sup> *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 ("President's Decision on Video Surveillance").

<sup>26</sup> President's Decision on Video Surveillance, para. 26 (emphasis added).

<sup>27</sup> President's Decision on Video Surveillance, para. 31 (emphasis added).

20. The Registrar responded on 1 March 2007 by stating that on 26 February 2007, he had requested the Registrar of the ICC to “discontinue” the use of video surveillance of the legal consultations.<sup>29</sup> The Registrar further noted that the ICC Registrar was “out of his duty station” and would only discuss the matter upon his return.<sup>30</sup> No indication was given as to when the ICC Registrar would resume his post.
21. By this point, video surveillance of Mr Taylor’s privileged consultations had been active for more than three and a half months. The Defence wish to emphasise that the decision to continue attending on the client during this period was made under protest, in good faith, and in a genuine attempt to try and prepare as much as possible for an earlier than requested start date. It should also be understood that, due to the absence of a Defence office in The Hague, absence of Duty counsel or proper support, the difficulty with visas and given the few family members that have been able to visit Mr. Taylor in The Hague, these continued visits also had a welfare aspect to them. Welfare that was, of course, the Court’s non-delegable duty to provide.<sup>31</sup> Contemporaneously with this, every possible endeavour was made by the Defence to reach a resolution through administrative and judicial channels. Throughout this time, the fact remains that the Defence was severely hampered in its ability to prepare Mr. Taylor’s case. Simply put, Mr. Taylor could not freely discuss his case with his lawyers given the “chilling effect” of the camera. Consequently, discussions with Mr. Taylor were limited to largely peripheral matters, or matters of background. The cloak of privilege means that the Defence is unable to provide further details in this regard. Suffice it to say that the debacle in the Registry of the SCSL or between the Registries of the SCSL and the ICC, over ordering the cessation of video surveillance and implementing that decision, is a further factor which has conspired against the Defence, so as to hamper it significantly, in its bid to be trial ready by 4 June 2007.
22. In light of the continued impasse over this issue, a decision was taken by the Defence team that it was no longer feasible to continue attending upon Mr. Taylor without addressing the many core issues of the case. Accordingly, and having exhausted all available remedies, the Defence notified the Acting Chief of Detention at the ICCDU of Mr. Taylor’s decision to suspend privileged attorney-client consultations. In response, the Defence were told that:

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<sup>28</sup> Letter from Karim Khan to Registrar, 27 February 2007 [Annex B].

<sup>29</sup> Letter from Registrar to Karim Khan, 1 March 2007 [Annex C].

<sup>30</sup> *Ibid.*

<sup>31</sup> *Prosecutor v. Taylor*, SCSL-03-01-PT-146, Defence Application Requesting Review of the Memorandum of Understanding Between the International Criminal Court and the Special Court of Sierra Leone dated 13 April 2006 & Modification of Mr. Taylor’s Conditions of Detention, 14 December 2006, para. 16.

I take notice of the decision of your client. On this matter I can inform you I have been instructed by the ICC Registrar not to implement the Decision of the Registrar of SCSL and that the ICC Registrar is in contact with the SCSL Registrar on this matter.<sup>32</sup>

23. On 5 March 2007, the Defence formally notified the Trial Chamber that it had been forced to suspend all legally privileged attorney-client consultations with Mr. Taylor.<sup>33</sup> On 22 March 2007, two and a half weeks later, more than one month after the President’s Decision was issued, and almost four months after video surveillance commenced, the SCSL Registrar finally took action to implement the President’s Decision.<sup>34</sup>

(ii) Appeal Proceedings in ICTY case of *Limaj et al*

24. Prior to being engaged in the defence of Mr. Taylor, Lead Counsel and one of the Legal Assistants of Mr. Taylor’s legal defence team were members of defence teams in the ICTY case of *Limaj et al.* whose judgment was rendered on 30 November 2005.<sup>35</sup> The Defence has been informally advised that the Appeals Chamber will list *Limaj et al* for hearing on 31 May and 1 June 2007, three days before Mr. Taylor’s trial is due to start . Both *Limaj* and *Taylor* are onerous and important cases and both demand intensive preparation. The prior commitment of Lead Counsel and a critical member of the Taylor Defence Team to the *Limaj* appeal seriously complicate the Defence’s ability to be trial-ready for 4 June 2007. Although the Defence recognise that these supplementary grounds do not warrant a delay until September 2007, the Defence ask the Trial Chamber to consider exercising its discretion and delaying the commencement of trial for a minimum period of two weeks on this ground alone.

**VI INTERESTS OF JUSTICE**

25. The reconsideration of the Trial Chamber’s joint Decision to postpone Mr. Taylor’s trial until 3 September 2007 is clearly in the interests of justice. The installation of a video surveillance camera in Mr. Taylor’s legal consultation room and the subsequent failures of the SCSL Registrar to ensure that the use of the camera be discontinued in violation of a President’s Decision and Registrar’s submissions amounted to very serious violations of Mr. Taylor’s right to a fair trial, including his right to freely communicate with counsel pursuant to Article 17(4)(b) of the SCSL Statute and his right to have adequate time and facilities to prepare a defence pursuant to Article 17(4)(b) of the SCSL Statute. The sanctity of legal professional meetings is one of the pillars upon which any system of justice operates.

<sup>32</sup> Email from Harry Tjonk to Avi Singh, dated 3 March 2007 (emphasis added) [Annex D].

<sup>33</sup> Notification.

<sup>34</sup> Letter from Deputy Registrar to Karim Khan, dated 22 March 2007 [Annex E].

<sup>35</sup> *Prosecutor v. Limaj et al*, IT-03-66, Judgment of 30 November 2005.

26. The Defence accepts that the loss of time caused by the camera surveillance issue is not the fault or responsibility of the Trial Chamber. The Defence nonetheless requests the Trial Chamber to intervene in this matter, as the overseer of fair trial rights, in order to rectify the violations of Mr. Taylor's statutory right to a fair trial and provide him with a remedy. As a cursory review of the chronology of events reveals, it is plain that the Defence has expended considerable energy in attempting to resolve this matter. Our efforts have diverted valuable and scarce resources away from trial preparation. Critically, throughout the period between 10 November 2006 and 22 March 2007, the Defence team was hamstrung and largely unable to take proper instructions from the Accused, causing significant and substantial impairment to its trial preparation programme. This was put into sharpest focus by the two and a half weeks during which all legal consultations were suspended. As stated in previous filings,<sup>36</sup> the prejudice caused to the Defence is tangible and cannot now be remedied absent additional preparation time. Given that surveillance continued for more than four months, but that some limited work could, nonetheless be done, the Defence request that the trial commencement date be postponed for three months until 3 September 2007 in order to ensure that the Defence have adequate time to prepare pursuant to Article 17(4)(b).

## **VI CONCLUSION**

27. For the reasons detailed above, the Defence prays that the Trial Chamber reconsider its *Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor's Defence*, rendered on 23 January 2007 and re-schedule the trial commencement date of 4 June 2007 to a date not before 3 September 2007.

**Respectfully Submitted,**



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**Karim A. A. Khan**

**Counsel for Mr. Charles Taylor**

Dated this 17<sup>th</sup> Day of April 2007

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<sup>36</sup> *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. 4.

## Table of Authorities

### Prosecutor v. Taylor Filings and Decisions

*Prosecutor v. Taylor*, SCSL-03-01-PT-137, Decision on Urgent and Public Defence Motion Requesting Removal of Camera from Conference Room, 30 November 2006

*Prosecutor v. Taylor*, SCSL-03-01-PT-146, Defence Application Requesting Review of the Memorandum of Understanding Between the International Criminal Court and the Special Court of Sierra Leone dated 13 April 2006 & Modification of Mr. Taylor's Conditions of Detention, 14 December 2006

*Prosecutor v. Taylor*, Case No. SCSL-03-1-PT-147, Defence Motion on Adequate Facilities for the Preparation of Mr. Taylor's Defence, 15 December 2006

*Prosecutor v. Taylor*, SCSL-03-1-PT-148, Defence Motion on Adequate Time for the Preparation of Mr. Taylor's Defence, 15 December 2006

*Prosecutor v. Taylor*, SCSL-03-1-PT-153, Prosecution Response to 'Defence Motion on Adequate Facilities for the Preparation of Mr. Taylor's Defence', 8 January 2007

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*Prosecutor v. Taylor*, SCSL-03-01-PT-156, Urgent and Public *Corrigendum* to the Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, 8 January 2007

*Prosecutor v. Taylor*, Case No. SCSL-03-1-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-03-1-PT-168, Defence Application for Leave to Appeal "Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor's Defence" Dated 23 January 2007, 26 January 2007

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*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 with Mr. Charles Taylor, 5 March 2007

*Prosecutor v. Taylor*, SCSL-03-1-PT-198, Decision on urgent Defence Motion to vacate date for filing Defence Pre-Trial Brief, 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-03-1-PT-217, Decision on Prosecution Motion to Allow Witnesses to Give Testimony by Video-Link, 30 March 2007

### **SCSL Jurisprudence**

*Prosecutor v. Brima, Kamara, Kanu*, SCSL-2004-16-AR73, Decision on Brima-Kamara Defence Appeal Motion Against Trial Chamber II Majority Decision on Extremely Urgent Confidential Joint Motion for the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara, 8 December 2005, Separate and Concurring Opinion of Justice Robertson

### **International Tribunal Jurisprudence**

*Prosecutor v. Limaj et al*, IT-03-66, Judgment of 30 November 2005.

Online: <http://www.un.org/icty/limaj/trialc/judgement/lim-tj051130-e.pdf>.

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- Annex A** Letter from Karim Khan to the Registrar, dated 15 December 2006
- Annex B** Letter from Karim Khan to Registrar, 27 February 2007
- Annex C** Letter from Registrar to Karim Khan, 1 March 2007
- Annex D** Email from Harry Tjonk to Avi Singh, dated 3 March 2007
- Annex E** Letter from Deputy Registrar to Karim Khan, dated 22 March 2007

Annex A  
5735



SPECIAL COURT FOR SIERRA LEONE  
OFFICE FOR THE DEFENCE OF CHARLES TAYLOR  
Telephone +232 769 59141 (SL); +92 301 547 8371 (Pak); +44 796 802 9947(UK)  
[karimahmadkhan@hotmail.com](mailto:karimahmadkhan@hotmail.com) [rogersabota@hotmail.com](mailto:rogersabota@hotmail.com)

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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.

**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)<sup>1</sup> 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

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



SPECIAL COURT FOR SIERRA LEONE  
OFFICE FOR THE DEFENCE OF CHARLES TAYLOR

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Our Ref KK 27022007

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

Cc: Hon. Justice George Gelaga King, President

27 February 2007

Dear Mr Registrar,

**Continuation of Video Surveillance of Legally Privileged Consultations**

I write because I am concerned that video surveillance of legal consultations at the ICC Detention Unit continues unabated, contrary to the direction of the President of the Special Court, dated 21 February 2007. My Legal Assistant Avi Singh attended upon Mr. Taylor yesterday and was informed by the Acting Chief of Detention, Harry Tjonk, that he had not received any instructions from the Registrar of the ICC to switch off the camera. Mr. Tjonk was aware of the Special Court President's Order, but he was unable to explain the reason for the delay in implementation. I would be grateful for your assurance that this matter will be dealt with immediately. If this matter cannot be dealt with urgently and without further delay, please provide me with a full explanation of the problem, so that I may consider the appropriate advice to give to my client.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'AK', written over a horizontal line.

Karim Ahmad Khan,  
Lead Counsel for Mr. Charles Taylor



Annex C

57/38

SPECIAL COURT FOR SIERRA LEONE  
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UN Intermission 178 7000 or 178 (+Ext)  
FAX: +232 22 297001 or UN Intermission: 178 7001

1 March 2007

Ref/REG/083/2007

Mr. Karim A. Khan  
Defence Counsel for Mr Charles Taylor  
Freetown

Dear Mr. Khan,

I would like to refer to your letter to me dated 27 February 2007 on issues pertaining to video-surveillance of Mr Taylor's visits.

I would like to inform you that, in compliance with the direction of the President, I addressed the Registrar of the International Criminal Court, Mr. Bruno Cathala, in my letter dated 26 February and requested that the use of video surveillance of the legal consultations of the Detainee Charles Taylor with his Counsel be discontinued. In our telephone conversation of today, we have agreed that the matter will be discussed as soon as Mr. Cathala returns to The Hague. Mr. Cathala is at the moment out of his duty station and has not yet read my said letter to him.

Yours sincerely,

Lovemore Munlo SC  
Registrar

cc: Hon. Justice George Gelaga King, President

Annex D 5739



cmbuisman@hotmail.com

Printed: Sunday, March 4, 2007 10:27 PM

**From :** Tjonk, Harry <Harry.Tjonk@icc-cpi.int>  
**Sent :** Saturday, March 3, 2007 4:29 PM  
**To :** <singhavi@gmail.com>  
 <karimahmadkhan@gmail.com>, <rogersahota@gmail.com>, "caroline buisman" <cmbuisman@hotmail.com>,  
**CC :** "Guenier, Geraldine" <Geraldine.Guenier@icc-cpi.int>, "Dubuisson, Marc" <Marc.Dubuisson@icc-cpi.int>, "Becerra Suarez, Bibiana" <Bibiana.BecerraSuarez@icc-cpi.int>  
**Subject :** RE: Legal Visit and Video Surveillance

Dear Mr. Singh,

I take notice of the decision of your client. On this matter I can inform you I have been instructed by the ICC Registrar not to implement the Decision of the Registrar of SCSL and that the ICC Registrar is in contact with the SCSL Registrar on this matter.

Regarding your visit on Friday there seem to have been some confusion amongst the staff of the Dutch Host prison. (I also refer to your phone-call when you informed me that your name wasn't on the list, even though I had announced your visit earlier.) I regret the troubles you have experienced. These events once again stress the importance to, if possible of course, request a visit the day before the actual visiting day so that your arrival can be properly notified to the Dutch Host prison.

With kindest regards, Harry

-----Original Message-----

**From:** Avi Singh [mailto:singhavi@gmail.com]  
**Sent:** 02 March 2007 16:26  
**To:** Tjonk, Harry  
**Cc:** karimahmadkhan@gmail.com; rogersahota@gmail.com; 'caroline buisman'  
**Subject:** Legal Visit and Video Surveillance

Dear Harry,

It's a pity we couldn't connect on the phone this afternoon.

There will be a notice filed with the Trial Chamber in due course, but I wanted to let you know that legal consultations have been suspended on Mr. Taylor's instructions because of the continuation of video surveillance in disregard of the SCSL President's Order.

Also, I wanted to explain the events at today's legal visits to improve the process in the future. After checking in at the Detention Facility front desk (the Dutch prison authorities), I was ushered into the waiting area, and had to wait there for almost an hour. I asked the front desk twice on whether the ICC had been contacted, and was told that they had been, and they would contact them again. By chance, there was an ICTY guard who saw me in passing, and then escorted me to the ICC area of the prison. According to your staff, no phone call had been made to them informing them of the visit.

I am not sure where the system broke down.

S440

Please note that the ICC has been flexible in organising legal visits for me and other members of the legal team. This e-mail is not intended as a complaint against any of your staff.

Best Regards,

Avi Singh.

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This message is confidential and intended solely for the person to whom it is addressed. It may contain privileged and confidential information. If you are not the intended recipient you must not read, copy, distribute, discuss or take any action in reliance on it.



Mr. Herman von Hebel  
Deputy Registrar  
Special Court for Sierra Leone  
Jomo Kenyatta Road  
Freetown – Sierra Leone

Reference: DS/043/MD/bbs

Date: 22 March 2007

Dear Mr. von Hebel,

On behalf of the Registrar of the International Criminal Court, and on the matter of the surveillance camera with respect to Mr. Charles Taylor I would like to inform you of the following:

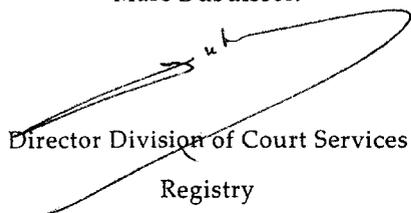
- i. After internal consultation on the matter of the use of the surveillance camera with respect to Mr. Thomas Lubanga Dyilo involving the relevant Chambers and the ICC Presidency, it has been decided that the surveillance camera envisaged in regulation 183 of the Regulations of the Registry shall not apply to the legal visits of Mr. Lubanga Dyilo as of today, thereby continuing the implementation of the order of 10 November 2006 by Pre-Trial Chamber I;
- ii. Consequently, and for the sake of maintaining a uniform regime at the ICC Detention Centre, it is deemed appropriate that the surveillance camera referred to above is not used for the legal consultations of Mr. Charles Taylor either. However, any change in the status of Mr. Lubanga with respect to Regulation 183 of the Regulations of the Registry may also have an impact in respect of Mr. Taylor. In this regard, the consultation process between both Courts will take place as soon as possible;

S4A2

- iii. The above entails that the surveillance camera envisaged in Regulation 183 of the Regulations of the Registry shall not be used in the legal consultations between Mr. Charles Taylor and members of his legal team entitled to legal privilege;
- iv. Considering the above, the ICC Registry would consider that there is no disagreement anymore between the ICC and the Special Court as to the matter of the camera and that consequently we can satisfactorily conclude that this matter has come to a mutually acceptable conclusion.

Should you require further specific information on the above, I remain at your disposal for any queries.

Best regards.

Marc Dubuisson  
  
Director Division of Court Services  
Registry

CC: Mr. Philippe Kirsch, President  
Mr. René Blattmann, Second Vice-President  
Mr. Bruno Cathala, ICC Registrar  
Ms. Rosette Muzigo-Morrison, SCSL Legal Officer  
Ms. Rokhayatou Diarra, ICC Legal Coordinator  
Mr. Harry Tjonk, Acting Chief Custody Officer, ICC Detention Centre  
Ms. Bibiana Becerra-Suárez, ALO ICC Detention Section