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SCSL-03-01-PT  
(SH46 - SH54)

SH46

**SPECIAL COURT FOR SIERRA LEONE**  
**OFFICE OF THE PROSECUTOR**  
Freetown - Sierra Leone

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

Acting Registrar: Mr. Herman von Hebel

Date filed: 20 April 2007



**THE PROSECUTOR**

**Against**

**Charles Taylor**

Case No. SCSL-03-01-PT

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**PUBLIC**

**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"**

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Office of the Prosecutor:

Ms. Brenda J. Hollis  
Ms. Ann Sutherland

Defence Counsel for Charles Taylor:

Mr. Karim A. A. Khan  
Mr. Roger Sahota  
Mr. Avi Singh  
Ms. Caroline Buisman  
Mr. James Supuwood

## I. INTRODUCTION

1. Pursuant to Rule 73 of the Rules of Procedure and Evidence (“Rules”), the Prosecution files its response to the “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,” filed on 17 April 2007.<sup>1</sup>
2. The Accused seeks reconsideration of the Trial Chamber decision which scheduled the trial to commence on 4 June 2007,<sup>2</sup> requesting that the trial commencement date be re-scheduled to a date not before 3 September 2007. In support of this request, the Accused asserts that “there has been a substantial change of circumstances which has altered the basis of the original decision.”<sup>3</sup> The Motion identifies two such circumstances: (1) that legal consultations between the Accused and his Defence team were impeded for nearly four and a half months, causing a “chilling effect” on confidential communication; and (2) a scheduling conflict with an appellate case to be heard at the International Criminal Tribunal for the Former Yugoslavia (“ICTY”).<sup>4</sup>

## II. SUBMISSIONS

3. The potential “chilling effect”<sup>5</sup> of the video monitoring, at least for a period of time, combined with the justifications for delay discussed in the Prosecution’s earlier pleading on this issue,<sup>6</sup> which the Prosecution incorporates herein, establish good cause for additional delay of the trial start date. The scheduling conflict may also provide a basis for some additional delay in the interests of justice, as discussed below.

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<sup>1</sup> *Prosecutor v. Taylor*, Case No. 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 (“Motion”).

<sup>2</sup> *Prosecutor v. Taylor*, Case No. SCSL-03-01-PT-164, “Joint Decision on the Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor’s Defence”, 23 January 2007 (“Decision”).

<sup>3</sup> Motion, para. 2.

<sup>4</sup> Motion, paras. 2(i), (ii), 15, 21 and 24.

<sup>5</sup> Motion, paras. 15 and 21.

<sup>6</sup> *Prosecutor v. Taylor*, Case No. SCSL-03-01-PT-154, “Prosecution Response to ‘Defence Motion on Adequate Time for the Preparation of Mr. Taylor’s Defence’, 8 January 2007 (“8 January 2007 Response”).

4. The Prosecution reiterates that to the extent delaying the trial start date would ensure the orderly progress of the trial proceedings, 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>7</sup>
5. The Motion reinforces the need for the parties to be promptly informed of the court schedule - that is, the daily and weekly schedule and the dates of the first session. This is of particular importance to the Prosecution as it impacts the witness order and, more importantly, the safety and security of the witnesses. In accordance with the various protective measures orders, the identity and unredacted statements of protected witnesses must be disclosed 42 days prior to their testimony. The Prosecution must know the trial schedule in order to comply with this requirement, but also in order to ensure that the identities are not prematurely disclosed. For these reasons, the Prosecution requests that the parties be advised of the court schedule as soon as possible.
6. Notwithstanding the good cause shown, the Prosecution addresses below certain assertions made by the Accused in the Motion.

#### *Video Monitoring*

7. The Accused argues that the legal consultations between the Accused and his Defence team were “severely hampered” and “effectively compromised”, and that legal professional privilege was violated for nearly four and a half months, due to the installation of a video surveillance camera in the legal consultation room.<sup>8</sup> The Accused overstates this argument. There 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”.<sup>9</sup>
8. The Director, Division of Court Services of the International Criminal Court (“ICC”) advised the then SCSL Deputy Registrar, by letter dated 15 December 2006, that the video surveillance at the ICC means only by surveillance

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<sup>7</sup> 8 January 2007 Response, para. 12.

<sup>8</sup> Motion, para. 2(i).

<sup>9</sup> Motion, paras. 2(i), 15 and 21.

camera, but not the video recording, nor the audio recording of any visit. The Director further stated that the equipment used has no audio facilities and that the video recording capacity has been disabled. The Registrar informed the President of the SCSL and the parties of these facts in his submissions filed on 19 January 2007.<sup>10</sup> Given this reality, the video monitoring did not violate any right of the Accused to communicate freely with his Defence team or any legal professional privilege. Rather, this procedure simply employed video technology to monitor the Accused, consistent with the SCSL's rules of detention.<sup>11</sup> Specifically, Rule 44(D) of the Rules of Detention provides that "[v]isits from Counsel and Legal Assistants shall be conducted in the sight of but not within the hearing of the staff of the Detention Facility."

9. However, the President of the SCSL did direct, on 21 February 2007, that the video monitoring be discontinued.<sup>12</sup> There was a delay of some 29 days in the implementation of the President's decision.<sup>13</sup>
10. The monitoring did not cause a complete cessation of contact. During the period when the video monitoring was in use (except for the 18 days during which the Defence suspended visits), the Accused did have contact with his Defence team by way of personal visits and telephonic contact.<sup>14</sup> In addition, it is the Prosecution's understanding that, even during the 18 day suspension period, the Accused had telephonic contact with his Defence team.
11. Nonetheless, it can be argued that some "chilling effect" on free communications did exist until notice was given to the Accused of the nature of the video monitoring, i.e. during the period 10 November 2006 and 15

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<sup>10</sup> *Prosecutor v. Taylor*, Case No. 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, para. 6, and Annex A.

<sup>11</sup> Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Special Court of Sierra Leone or Otherwise Detained on the Authority of the Special Court for Sierra Leone, adopted on 7 March 2003, as amended on 4 May 2004, as amended on 14 May 2005 ("Rules of Detention").

<sup>12</sup> *Prosecutor v. Taylor*, Case No. 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.

<sup>13</sup> *Prosecutor v. Taylor*, Case No. SCSL-03-01-PT-213, "Notification of Resumption of Legally Privileged Attorney-Client Consultations with Mr. Charles Taylor", 23 March 2007 ("Notification"), para. 2.

<sup>14</sup> Motion, paras. 15-16 and 21.

December 2006, or 19 January 2007, depending on the date upon which the Defence was advised of the nature of the video monitoring. It can also be argued that the failure to promptly comply with the President's order to discontinue the video monitoring also had a "chilling effect" on free communications from the date of the order, 21 February 2007, until the video monitoring was discontinued on 22 March 2007.<sup>15</sup> This "chilling effect" would occasion additional delay.

### *Scheduling Conflict*

12. The second, and supplementary, ground for reconsideration of the Decision is that "two members of the Defence legal team, including Lead Counsel, are involved in appeal proceedings before the [ICTY]", which the Defence has been notified are *provisionally* scheduled to be held immediately prior to the current trial start date.<sup>16</sup> While such a conflict does not in itself warrant a delay in the proceedings in this case,<sup>17</sup> it may occasion a delay in the interests of justice. The Prosecution expects that Defence counsel raised this existing professional obligation with the Principal Defenders Office and/or the Registry at the time of his appointment, in order to give the SCSL advance notice of a potential scheduling conflict. If such notice was provided, and if the ICTY proposed scheduling date cannot be avoided, then this may warrant a delay in the commencement of the trial start date. Even if Defence counsel gave no notice of a potential scheduling conflict, a failure by defence counsel to give notice of potential scheduling conflicts should not prejudice the Accused.

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<sup>15</sup> Notification, para. 2.

<sup>16</sup> Motion, para. 2(ii) (emphasis added) and para. 24 (informal notification of a proposed scheduling date).

<sup>17</sup> See ICTR/ICTY jurisprudence: *Ntakirutimana and Ntakirutimana v. Prosecutor*, Case No. ITCR-96-10-A & ITCR-96-17-A, Order on the Appellant's Motion for an Extension of Time for the Filing of the Appellants' Reply Briefs, App. Ch., 3 October 2003 (good cause not shown by domestic practice and academic commitments); *Prosecutor v. Naletilić and Martinović*, Case No. IT-98-34-A, "Decision on Mladen Naletilić Motion for Extension of Time", App. Ch., 3 February 2005 (good cause not shown by competing professional schedules in domestic jurisdictions); *Prosecutor v. Brđanin*, Case No. IT-99-36-A, Decision on Motion for Extension of Time for the Filing of Prosecution Response Brief, App. Ch., 20 July 2005 (good cause not shown by briefing scheduling considerably overlapping with that of another ICTY case). *But see Ntakirutimana and Ntakirutimana v. Prosecutor*, Case No. ITCR-96-10-A & ITCR-96-17-A, Order Granting an Extension of Time for the Filing of the Appellants' Appeal Briefs, App. Ch., 20 May 2003 (good cause shown by fact that defence counsel involved in another case before the ICTR and intention to prepare a joint brief to avoid repetition).

*Other matters raised in the Motion*

13. The Accused states in the Motion that the trial start date of 4 June 2007 was “a date earlier than *requested* by either party.”<sup>19</sup> In the 8 January 2007 response, the Prosecution did not request a delay, but rather, stated that the Defence had shown good cause to justify a delay in the commencement of the trial until at least July 2007.<sup>20</sup>
14. The Accused states that a reconsideration of the decision is required in the interests of justice,<sup>21</sup> and that “[t]he Trial Chamber [...] 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.”<sup>22</sup> With respect to the legal criteria for reconsideration of an order or decision, the Prosecution submits that a Trial Chamber may reconsider any order or decision which impinges fundamental rights of the Accused, or the right of the Prosecution to a fair hearing.<sup>23</sup> While most situations requiring such action will include new or changed circumstances, there may be situations in which a party later becomes aware of an existing circumstance which adversely impacts a right of the party, or in which an existing circumstance may impinge a right of a party only at a later time. While it could be argued that neither of these situations involve new or changed circumstances, nonetheless a Trial Chamber would have the inherent authority to reconsider a decision or order to ensure the parties’ rights are protected.

<sup>19</sup> Motion, para. 6 (emphasis added).

<sup>20</sup> 8 January 2007 Response, para. 12.

<sup>21</sup> Motion, para. 13.

<sup>22</sup> Motion, para. 10.

<sup>23</sup> See *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73, Reasons for Refusal of Leave to Appeal from Decision to Impose Time Limit, App. Ch., 16 May 2002, para. 17; cf. *Prosecutor v. Muvunyi*, Case No. ICTR-2000-55A-T, Decision on Motion to Strike or Exclude Portions of Prosecutor’s Exhibit No. 34, Alternatively Defence Objections to Prosecutor’s Exhibit No. 34, Tr. Ch. II, 30 May 2006; *Nahimana et al v. Prosecutor*, Case No. ICTR-99-52-A, Decision on Jean-Bosco Barayagwiza’s Request for Reconsideration of Appeals Chamber Decision of 19 January 2005, App. Ch., 4 February 2005, p. 2; *contra Prosecutor v. Taylor*, Case No. SCSL-03-01-198, “Decision on Urgent Defence Motion to Vacate Date for Filing of Defence Pre-Trial Brief”, 5 March 2007, p. 3, citing *Prosecutor v. Brima, Kamara and Kanu*, Case No. SCSL-04-16-AR73-441, “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, para. 49, 50, 102(vi).

SHS2

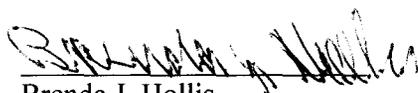
**III. CONCLUSION**

15. For the reasons set out in paragraphs 3, 4, 11 and 12 above, the Accused has shown good cause for an additional delay in the commencement of the trial in this case.

Filed in Freetown,

20 April 2007

For the Prosecution,



Brenda J. Hollis  
Senior Trial Attorney

SFE

## LIST OF AUTHORITIES

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**SCSL Rules**

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*Prosecutor v. Brđanin*, Case No. IT-99-36-A, "Decision on Motion for Extension of Time for the Filing of Prosecution Response Brief", App. Ch., 20 July 2005.  
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