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SCSL-03-01-T

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(11260 - 11267)



**THE SPECIAL COURT FOR SIERRA LEONE**

**In Trial Chamber II**

**Before:** Justice Julia Sebutinde, Presiding  
Justice Richard Lussick  
Justice Teresa Doherty  
Justice El Hadji Malick Sow, Alternate

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

**Date:** 6 July 2007

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

SPECIAL COURT FOR SIERRA LEONE	
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**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

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PUBLIC

REPLY TO THE PROSECUTION'S RESPONSE TO "DEFENCE APPLICATION FOR LEAVE TO APPEAL THE 29 MAY 2007 'DECISION ON URGENT AND PUBLIC DEFENCE MOTION REQUESTING LEAVE FOR CHARLES GHANKAY TAYLOR TO GIVE AN UN-SWORN STATEMENT FROM THE DOCK'"

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**Office of the Prosecutor**

Ms. Brenda J. Hollis  
Ms. Ann Sutherland

**Interim Counsel for Charles G. Taylor**

Mr. Charles Jalloh, Duty Counsel

## I. INTRODUCTION

1. The *Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock* was filed with the Registry on 18 May 2007.<sup>1</sup>
2. The *Prosecution's Response to "Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock"* was filed on 25 May 2007.<sup>2</sup>
3. The Defence on 28 May 2007, filed its *Reply to the "Prosecution's Response to 'Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock,' "* Served 26 May 2007.<sup>3</sup>
4. On 29 May 2007, the Trial Chamber rendered its *Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-Sworn Statement from the Dock*.<sup>4</sup>
5. The *Defence Application for Leave to Appeal the 29 May 2007 "Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-Sworn Statement from the Dock"* was filed on 4 June 2007.<sup>5</sup>
6. The Prosecution was served with the Application on 5 June 2007 and it filed a response on 15 June 2007, consistent with the requirements of Rule 7(C) of the *Rules of Procedure and Evidence* ("Rules").<sup>6</sup>

<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-PT-244, *Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock*, filed 18 May 2007 (hereinafter "Motion").

<sup>2</sup> *Prosecutor v. Taylor*, SCSL-03-01-PT-256, *Prosecution's Response to "Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock,"* filed 25 May 2007 (hereinafter "Response to the Motion").

<sup>3</sup> *Prosecutor v. Taylor*, SCSL-03-01-PT-262, *Reply to the "Prosecution's Response to 'Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock,' "* Served 26 May 2007, filed 28 May 2007 (hereinafter "Reply"). The phrase "served 26 May 2007" which appears at the end of the quotation marks in the title of the Reply has been included in the title herein because it is consistent with the title to the original Reply that was filed with the Registry.

<sup>4</sup> *Prosecutor v. Taylor*, SCSL-03-01-PT-264, *Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-Sworn Statement from the Dock*, filed 29 May 2007 (hereinafter "Decision").

<sup>5</sup> *Prosecutor v. Taylor*, SCSL-03-01-PT-276, *Defence Application for Leave to Appeal the 29 May 2007 "Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-Sworn Statement from the Dock,"* filed 4 June 2007 (hereinafter "Application").

<sup>6</sup> See, *Prosecutor v. Taylor*, SCSL-03-01-T-299, *Prosecution's Response to "Defence Application for Leave to Appeal the 29 May 2007 'Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-Sworn Statement from the Dock,'"* filed on 15 June 2007 (hereinafter "Response"). The Prosecution correctly notes in footnote 1 of its Response that it was served with an electronic copy of the Application by the Registry on 5 June 2007.

7. The *Principal Defender's Decision Accepting the Withdrawal of Mr. Karim Khan as Assigned Counsel to Mr. Charles Ghankay Taylor* was filed on 14 June 2007, in the period between the filing of the Application by the Defence and the Response by the Prosecution.<sup>7</sup>

8. By way of an Oral Decision on 25 June 2007, the Trial Chamber directed Duty Counsel to represent the Accused on an interim basis until the assignment of new or interim Defence counsel(s).<sup>8</sup>

9. In a Decision dated 3 July 2007, The Trial Chamber ordered Duty Counsel to file a reply to the Prosecution's Response by 4:00 p.m. on 6 July 2007.<sup>9</sup>

10. It is in response to the respective directives of the Trial Chamber that Duty Counsel now brings forth this Reply on the behalf of the Accused.

## II. PRELIMINARY OBSERVATION – THE ISSUE IS NOT MOOT

11. The trial of the case against the Accused commenced with the Prosecution's Opening Statement on 4 June 2007. However, the Prosecution did not present any evidence before the Trial Chamber on 4 June because it was not required nor called upon to do so by the Chamber.<sup>10</sup>

12. The trial was reconvened on 25 June 2007 for the presentation of evidence by the Prosecution. However, no evidence was on that day presented by the Prosecution for a number of reasons which are the subject of the Chamber's Oral Decision on 25 June 2007 and written Decision of 3 July 2007.<sup>11</sup>

13. On 28 June 2007, the Prosecution and Duty Counsel filed a joint submission requesting, *inter alia*, that the resumption of the Prosecution's case be continued from 3 July to 20 August 2007.<sup>12</sup> That request was granted by the Trial Chamber by way of a written Order dated 28 June

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<sup>7</sup> See, *Prosecutor v. Taylor*, SCSL-03-01-T-293, Principal Defender's Decision Accepting the Withdrawal of Mr. Karim Khan as Assigned Counsel to Mr. Charles Ghankay Taylor, filed on 14 June 2007.

<sup>8</sup> See, *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 25 June 2007, pages 44 - 45.

<sup>9</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-311, Decision on Defence Office Application to Suspend all Time Limits Pending the Resolution of Issues Surrounding the Termination of Mr. Karim Khan by Mr. Charles Ghankay Taylor before the Prosecution Opening Statement on 4 June 2007, filed on 3 July 2007.

<sup>10</sup> See, *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 4 June 2007.

<sup>11</sup> See, *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 25 June 2007, pages 44 - 45; *Prosecutor v. Taylor*, SCSL-03-01-T-311, Decision on Defence Office Application to Suspend all Time Limits Pending the Resolution of Issues Surrounding the Termination of Mr. Karim Khan by Mr. Charles Ghankay Taylor before the Prosecution Opening Statement on 4 June 2007, filed on 3 July 2007.

<sup>12</sup> See, *Prosecutor v. Taylor*, SCSL-03-01-T-309, Joint Submission by the Office of the Principal Defender and the Prosecution in Relation to the Re-Commencement of the Trial on 3 July 2007, filed on 28 June 2007.

2007,<sup>13</sup> and the Chamber orally elaborated on the *ratio decidendi* behind its Order in open session on 3 July 2007.<sup>14</sup>

14. The foregoing procedural history is necessary, in Duty Counsel's view, in explicating the present stage of the trial proceedings in this case – namely, that the Prosecution has made an Opening Statement, but has yet to formally commence presenting evidence. Furthermore, the Prosecution would only be in a position to commence presenting evidence when the trial is reconvened on 20 August 2007.

15. Accordingly, Duty Counsel observes that the possibility of the Accused giving an unsworn statement from the dock, as requested by the Motion and underlying the Application, remains very alive and has not been rendered moot by the commencement of trial proceedings, as such.

### III. THE PROSECUTION'S RESPONSE MISCHARACTERISES THE DEFENCE'S SUBMISSIONS REGARDING THE EXISTENCE OF "EXCEPTIONAL CIRCUMSTANCES"

16. In its Response, the Prosecution asserts that "the fact that a party seeking to bring an interlocutory appeal alleges an error of law in the impugned decision does not of itself constitute an exceptional circumstance for the purposes of Rule 73(B)."<sup>15</sup> This assertion ostensibly derives from the use of the phrase "exceptional circumstance" by the Defence in paragraph 4 of the Application.

17. Duty Counsel respectfully submits that arguments which have been put forth in the Application should rightly be viewed in the overall context in which they have been made. In this regard, and considering the specific submission in the Response regarding "exceptional circumstances," it is clear that despite the use of that phrase in the first sentence of paragraph 4 of the Application, the sum and substance of the Defence's arguments regarding "exceptional circumstances" are to be found in paragraph 8 of the Application and, of course, in the Motion.

18. Though inarticulately expressed on occasion in the Application, the Defence has merely and rightly sought through the Application to point out why the Trial Chamber erred in its

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<sup>13</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-310, Order on Urgent and Public Joint Submission by the Office of the Principal Defender and the Prosecution in Relation to the Re-Commencement of the Trial on 3 July 2007, filed on 28 June 2007.

<sup>14</sup> See, *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 3 July 2007, pages 1-5.

<sup>15</sup> Response, para. 10.

Decision vis-à-vis its misapprehension of the import of core arguments that were made in the Motion. In this particular regard, paragraph 2 of the Application is instructive.

19. The Prosecution further contends that the Accused is seeking to make two opening statements in that it will leave scope for the Defence to later make an opening statement under Rule 84. The Defence has not expressly or impliedly waived the right to make an opening statement to which the Accused is entitled under the Rules. However, it should be rather obvious that an unsworn statement by the Accused at this stage of the proceedings, before the substance of the Prosecution case begins, is separate and distinct from any opening statements that would be made by counsel at the opening of the Defence case.

#### **IV. THE CONTINUATION OF THE PROCEEDINGS TO 20 AUGUST 2007 COUNSELS IN FAVOR OF GRANTING LEAVE TO APPEAL**

20. As previously indicated above, the trial of the case now stands adjourned until 20 August 2007. In Duty Counsel's view, this is a significant development in the context of the Application and otherwise prevailing rationales against allowing interlocutory appeals.

21. The Prosecution has, in its Response, seized on a recurring rationale against granting leave to appeal in criminal trials – namely, that such trials ought not be heavily encumbered and unduly delayed by interlocutory appeals.<sup>16</sup> But in appropriate circumstances, Duty Counsel submits that such jurisprudential principles can, and have in the past, yielded to exceptions when the issues implicate an Accused's fundamental rights to a fair trial. Significantly, and as matters currently stand, the adjournment of the trial to 20 August 2007 allows for ample time during which the issues that are raised in the Motion and Application could be adequately argued and resolved on appeal without occasioning any delays in the trial proceedings. It is further submitted that such "ample time" obtains even in the face of the Court's Judicial Recess between 6 and 17 August 2007.<sup>17</sup>

22. Indeed, and as has been made clear by the Motion and the Application, the prejudice which would inure to the Accused should the impugned Decision stand would be irreparable in nature, inasmuch as it could not be cured once the Prosecution begins presenting evidence on 20

<sup>16</sup> Response, paras. 5 and 6.

<sup>17</sup> See, *Order Scheduling Judicial Recess*, by Justice George Gelaga King, President of the Special Court for Sierra Leone, SCSL-04-14-T-779, filed on 8 June 2007.

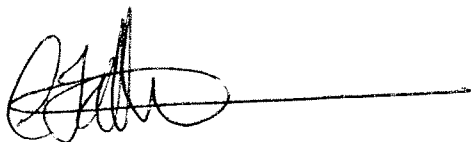
August. Viewed in the totality of the circumstances, Duty Counsel respectfully submits that the case for an interlocutory appeal has been made and the prevailing circumstances counsel in favour of such an appeal.

23. Moreover, Duty Counsel observes that in view of the current impasse in the Accused's case following his termination of instructions to then Assigned Counsel, the propriety of an unsworn statement before the Prosecution continues may be in the interests of justice and the larger interest of the Court because it could have the effect, depending on the actual statement made by the Accused, of restoring credibility otherwise lost by the legal process because of the largely ignored complaints leading up to the events of 4 June 2007.

#### IV. CONCLUSION

23. For all of the foregoing reasons, Duty Counsel respectfully requests that the Application be sustained and that leave to appeal the Decision be granted.

Filed in The Hague on this 6<sup>th</sup> day of July 2007,

A handwritten signature in black ink, appearing to be 'Charles Jalloh', with a long horizontal line extending to the right from the end of the signature.

**Charles Jalloh, Duty Counsel**

## List of Authorities

### SCSL

*Prosecutor v. Taylor*, SCSL-03-01-PT-244, Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock, 18 May 2007.

*Prosecutor v. Taylor*, SCSL-03-01-PT-256, Prosecution's Response to "Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock," 25 May 2007.

*Prosecutor v. Taylor*, SCSL-03-01-PT-262, Reply to the "Prosecution's Response to 'Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock,' " Served 26 May 2007, 28 May 2007.

*Prosecutor v. Taylor*, SCSL-03-01-PT-264, Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-Sworn Statement from the Dock, 29 May 2007.

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 4 June 2007. Online: <http://www.sc-sl.org/Transcripts/Taylor/4June2007.pdf>.

*Prosecutor v. Taylor*, SCSL-03-01-PT-276, Defence Application for Leave to Appeal the 29 May 2007 "Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-Sworn Statement from the Dock," 4 June 2007.

*Prosecutor v. Taylor*, SCSL-03-01-T-293, Principal Defender's Decision Accepting the Withdrawal of Mr. Karim Khan as Assigned Counsel to Mr. Charles Ghankay Taylor, 14 June 2007.

*Prosecutor v. Taylor*, SCSL-03-01-T-299, Prosecution's Response to "Defence Application for Leave to Appeal the 29 May 2007 'Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-Sworn Statement from the Dock,'" 15 June 2007.

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 25 June 2007. Online: <http://www.sc-sl.org/Transcripts/Taylor/25June2007.pdf>.

*Prosecutor v. Taylor*, SCSL-03-01-T-309, Joint Submission by the Office of the Principal Defender and the Prosecution in Relation to the Re-Commencement of the Trial on 3 July 2007, 28 June 2007.

*Prosecutor v. Taylor*, SCSL-03-01-T-310, Order on Urgent and Public Joint Submission by the Office of the Principal Defender and the Prosecution in Relation to the Re-Commencement of the Trial on 3 July 2007, 28 June 2007.

*Prosecutor v. Taylor*, SCSL-03-01-T-311, Decision on Defence Office Application to Suspend all Time Limits Pending the Resolution of Issues Surrounding the

Termination of Mr. Karim Khan by Mr. Charles Ghankay Taylor before the Prosecution Opening Statement on 4 June 2007, 3 July 2007.

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*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 3 July 2007. Online: <http://www.sc-sl.org/Transcripts/Taylor/3July2007.pdf>.

*Order Scheduling Judicial Recess*, by Justice George Gelaga King, President of the Special Court for Sierra Leone, SCSL-04-14-T-779, 8 June 2007.