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SCSL-03-01-PT  
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THE SPECIAL COURT FOR SIERRA LEONE

Case No.SCSL-03-01-PT

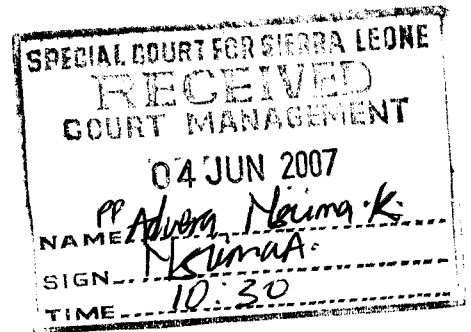
IN TRIAL CHAMBER II

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

Acting Registrar: Mr. Herman Von Hebel

Date filed: 04 June 2007

THE PROSECUTOR  
-v-  
CHARLES TAYLOR



PUBLIC

DEFENCE MOTION SEEKING SPECIAL MEASURES WITH REGARD TO  
RESOLUTIONS 1521 AND 1532 OF THE UNITED NATIONS SECURITY  
COUNCIL (Rule 8 and 54 of the Rules of Procedure and Evidence)

Office of the Prosecutor

Mr. Stephen Rapp  
Ms. Brenda J. Hollis  
Mr. Mohamed Bangura  
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

## **I INTRODUCTION**

1. During the Pre Trial Conference held on 7 May 2007 before this Chamber, counsel for Charles Taylor briefly raised the difficulties encountered by the Defence by reason of a travel ban<sup>1</sup> (the “ban”) and an assets freeze<sup>2</sup> (the “freeze”) decreed by the United Nations Security Council concerning Liberia<sup>3</sup>;
2. The present motion seeks to obtain from this Court that it requests a revocation or at least a suspension of the ban and the freeze from the Security Council for the duration of Mr. Taylor’s trial, as these measures are making it impossible for Mr. Taylor to obtain the fair trial envisioned by Article 17 of the Statute, as is detailed below;
3. The present motion also seeks to obtain for the Special Court assistance following Rule 8(C) of the Rules of Procedure and Evidence (“RPE”), so that it can have access to and obtain evidence and information concerning certain potential witnesses;

## **II THE TRAVEL BAN AND THE ASSETS FREEZE**

4. On 22 December 2003, the UN Security Council adopted Resolution 1521 (appendix 1), a resolution which terminated an earlier travel ban (Article 1), but which also decreed a new one, aimed at the broad category of individuals listed in its paragraph 4(a);
5. Following paragraph 4(a) of Resolution 1521 which was adopted under chapter VII of the Charter of the UN, the UN Security Council is asking all States to prevent entry into or through their territory of individuals designated by a Committee (itself composed of all members of the Security Council following Article 21 of the Resolution);
6. Under paragraph 4(a), the Committee can put individuals on the list for the reason that they were ‘senior members of former President Charles Taylor’s Government’ or ‘members of Liberia’s former armed forces who retain links to former President Charles Taylor’;

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<sup>1</sup> Resolution 1521 (2003)

<sup>2</sup> Pre Trial Conference, 7 May 2007, Transcripts, pp. 24-25

<sup>3</sup> Pre Trial Conference, 7 May 2007, Transcripts, pp. 24-25

7. On 15 December 2006, the Committee updated its list of individuals subject to the measures imposed by Paragraph 4 of Security Council Resolution 1521, the whole as appears from a copy of such list, produced herewith as appendix 1;
8. As it appears from its first page, the list, appendix 2, will be updated on a regular basis;
9. On 12 March 2004, Security Council adopted Resolution 1532 (appendix 3), by which it imposed an assets freeze on individuals designated by the Committee created by Resolution 1521;
10. On 3 April 2006, the Committee updated its list of individuals subject to the measures imposed by Paragraph 1 of Security Council Resolution 1532, the whole as appears from a copy of such list, produced herewith as appendix 4;
11. As it appears from its first page, the list, appendix 4, will be updated on a regular basis;

### **III LEGAL PRINCIPLES**

12. On 16 January 2002, the Government of Sierra Leone and the United Nations Organisation (“UN”) signed the agreement establishing the SCSL (“the Agreement”);
13. Following Article 15 of the Agreement, witnesses and experts appearing from outside Sierra Leone before the Special Court for Sierra Leone (“SCSL”) benefit from the provisions of Article 14, paragraph 2(a) and (d). Paragraph 2(d) sets forth an immunity from any immigration restrictions for witnesses during their stay and their journey to the Court and back;
14. The Statute for the SCSL was also adopted on 16 January 2002. Article 17, paragraph 4(e) of the Statute states:

“4 In the determination of any charges against the accused pursuant to the present Statute, he or she shall be entitled to the following minimum guarantees, in full equality:  
[...]  
e. To examine, or have examined, the witness against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her”;

15. The ban and the freeze decreed by resolutions 1521 and 1532, respectively, create conditions under which witnesses crucial to his defence are frightened or literally refuse to testify on behalf of Mr. Taylor;
16. The Security Council decided by way of a Resolution 1688 adopted on 16 June 2006 to conduct the trial of Mr. Taylor in The Hague;
17. In Resolution 1688 (appendix 5), the UN Security Council not only is “Recognizing that the proceedings in the Special Court in the case against former President Taylor will contribute to achieving truth and reconciliation in Liberia and the wider subregion” (page 2) but also “Decides [...] to exempt from the travel ban the travel of any witnesses whose presence at the trial is required;” (Article 9, page 3)
18. However, simply allowing defence witnesses to travel to and from the Hague will not alleviate the witnesses fear;
19. In reality, the mere fact of their testimony on behalf of Mr. Taylor will make them qualify to be added by the Committee to the list it is constantly updating;
20. Consequently, for those already on the list, their presence on behalf of Mr. Taylor is likely to incite the Committee to maintain their name on the list, whereas those not figuring on the list are likely to be added following their testimonies;
21. The Defence respectfully submits that the existence of the ban and the freeze, despite the limited exemption created by Resolution 1688, violates section 15 of the Agreement and section 17 of the Statute;
22. For example, the affidavits produced confidentially *en liasse* as appendixes 6 and 8 were signed by individuals whose names are appearing on exhibit 3 or 4 or on both, and detail their reasons for fearing to testify on behalf of Mr. Taylor;

23. The ban and freeze have a chilling effect on prospective witnesses for Mr. Taylor, as detailed in appendix 7, the affidavit of Mr. Avi Singh, a legal assistant who has met with many of such prospective witnesses in Liberia;
24. The recognition by the Security Council in its Resolution 1688 that the proceedings in the SCSL will contribute to achieve truth and reconciliation in Liberia and the wider subregion constitute under Article 4(c) of Resolution 1521 an explicit cause for the exemption of the measures decided under that Resolution;
25. However, the simple travel exemption of Resolution 1688 only go half way to achieve truth and reconciliation, as witnesses still fear the effect of the ban and freeze and are effectively prohibited from testifying before the SCSL;
26. Consequently, the Defence is requesting this Honourable Chamber to exercise its power under Rule 8(C) of the RPE to request the members (namely China, France, Russia Federation, the United States, the United Kingdom, Belgium, Italy, Qatar, the Republic of Congo, Panama, Slovakia, Ghana, Peru, South Africa and Indonesia) of the UN Security Council (together forming the Committee under Resolutions 1521 and 1532) to suspend the effect of Resolutions 1521 and 1532 of the Security Council;
27. Moreover, the suspension of the ban and freeze does not in itself constitute sufficient protection to allow the defence witnesses to make full and frank testimonies;
28. In fact, the affidavits, appendixes 6 and 8, detail how the witnesses fear for what will happen after their testimony;
29. One of the authors of the affidavits explains how he was told by other people affected by the ban how the latter has been used as a tool to incite people to testify in favour of the prosecution;
30. The fear of the author of that affidavit is that the travel ban will effectively be used as a reprisal tool in the event that he testifies on behalf of Mr. Taylor;

31. The only means of preventing such eventuality is to obtain in advance the evidence and the information upon which the inclusion of a given individual on the lists, appendixes 2 and 4 is based;
32. Further, that information is relevant to the Defence case, which is consequently entitled to seek it, invoking altogether Rules 8(C) and 54 of the RPE;
33. The information supporting the addition of individuals to the lists, exhibits 2 and 4 is relevant to Mr. Taylor's case as the information that led to the initial establishment of the travel ban in 2003<sup>4</sup> is information relied upon by the Prosecutor to support the charges against Mr. Taylor;
34. In Resolution 1343, appendix 9, the Security Council took note in the first page that the "Panel of Experts that diamonds represent a major and primary source of income for the Revolutionary Front (RUF)" and expressed concerns at the evidence presented by the same Panel of Experts "that the Government of Liberia is actively supporting the RUF at all levels".
35. In Resolution 1532, exhibit 3, the Security Council enacted the assets freeze after noting the actions and policies of former Liberian President Charles Taylor and after expressing concern that former President Taylor continued to exercise control and to have access to misappropriated funds and property. In that Resolution, the Security Council also recalled its Resolutions 1521 and 1343, mentioned above;
36. This would seem to indicate that evidence similar to that alleged against Mr. Taylor justified the imposition of a travel ban and an assets freeze on certain individuals, potentially defence witnesses for Mr Taylor;
37. Consequently, the defence is entitled to know the exact nature and content of that evidence, and to discuss it not only with Mr. Taylor, but with the individuals affected by it which it intends to call as witnesses;

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<sup>4</sup> Resolution 1343 (2001)

38. This will also ensure that the witnesses coming to testify on behalf of Mr Taylor be made aware of the evidence justifying the imposition of a travel ban and/or assets freeze on their person before and after testifying;
39. This solution will also allow such witnesses to verify that the evidence justifying the ban and/or freeze do not vary after their testimony;
40. The Defence proposes that the solution proposed exists by virtue of the combined application of Rules 8 and 54 of the RPE.
41. Consequently, the Defence requests this honourable Chamber to seek from the states currently forming the Security Council (and the committee responsible for administering the sanctions set forth in Resolutions 1521 and 1532) namely China, France, Russia Federation, the United States, the United Kingdom, Belgium, Italy, Qatar, the Republic of Congo, Panama, Slovakia, Ghana, Peru, South Africa and Indonesia to communicate the evidence following which the individuals appearing in the lists appendix 2 and 4 were added to those lists.

**WHEREFORE, MAY IT PLEASE THIS HONOURABLE CHAMBER:**

**REQUESTS THE STATES FORMING THE SECURITY COUNCIL, NAMELY, China, France, Russia Federation, the United States, the United Kingdom, Belgium, Italy, Qatar, the Republic of Congo, Panama, Slovakia, Ghana, Peru, South Africa and Indonesia TO:**

**- REQUEST from these States a suspension of the Travel Ban (Resolution 1521) and the Assets Freeze (Resolution 1532) during Mr. Taylor's trial;**

**- REQUEST from these States communication of the evidence supporting the addition of the individuals appearing in appendixes 2 and 4 were added to those lists.**



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**Karim A. A. Khan**

**Counsel for Mr. Charles Ghankay Taylor**

Dated this 4<sup>th</sup> Day of June 2007





**SPECIAL COURT FOR SIERRA LEONE**  
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Court Management Section – Court Records

**CONFIDENTIAL DOCUMENT CERTIFICATE**

This certificate replaces the following confidential document which has been filed in the *Confidential* Case File.

Case Name: The Prosecutor – v- Charles Ghankay Taylor  
Case Number: SCSL-2003-01-T  
Document Index Number: 277  
Document Date 4 June 2007  
Filing Date: 4 June 2007

Number of Pages 05

Page Numbers from: 9671-9675

- Application
- Order
- Indictment
- Other
- Correspondence

Document Title: (Confidential Ex Parte Annex)

Name of Officer:

Maureen Edmonds

Signed: *M Edmonds*

**THIS CONFIDENTIAL CERTIFICATE WAS CREATED ON 30 AUGUST 2007, THE ANNEX HAVING PREVIOUSLY BEEN FILED PUBLICLY AS ORIGINALLY REQUESTED BY KARIM KHAN EX-COUNSEL TO CHARLES TAYLOR.**