

314)

SCSL-03-01-T  
(11244 - 11250)

11244



**THE SPECIAL COURT FOR SIERRA LEONE**

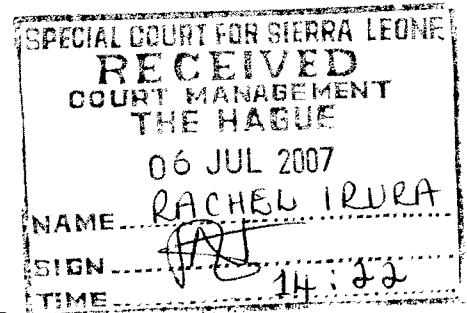
**In Trial Chamber II**

**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



**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

PUBLIC

REPLY TO THE PROSECUTION'S RESPONSE TO "DEFENCE MOTION SEEKING SPECIAL MEASURES WITH REGARDS TO RESOLUTIONS 1521 AND 1532 OF THE UNITED NATIONS SECURITY COUNCIL"

**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 Seeking Special Measures with Regards to Resolutions 1521 and 1532 of the United Nations Security Council (Rule 8 and 54 of the Rules of Procedure and Evidence)* was filed with the Registry on 4 June 2007.<sup>1</sup>
2. The Prosecution was served with the Motion 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>2</sup>
3. 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 Motion and the Response by the Prosecution.<sup>3</sup>
4. 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>4</sup>
5. 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>5</sup>
6. 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.

---

<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-277, (hereinafter "Motion").

<sup>2</sup> See, *Prosecutor v. Taylor*, SCSL-03-01-T-298, Prosecution's Response to "Defence Motion Seeking Special Measures with Regards to Resolutions 1521 and 1532 of the United Nations Security Council," 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 Motion by the Registry on 5 June 2007, and that the Motion is unsigned and was accompanied by only three affidavits as "other documents." Duty Counsel seeks the Trial Chamber's indulgence for the Defence's oversight in failing to attach some of the appendices that are referred to in the body of the Motion and also enumerated in the "List of Authorities." The same is also sought in relation to the absence of counsel's signature, following the prayer for relief within the Motion. Furthermore, and in relation to at least two of the three affidavits that were, indeed, appended to the Motion, the apparent intention was to file these *ex parte* and confidentially with the Trial Chamber. As such, Duty Counsel intends to make a separate application to the Chamber regarding what corrective measures may be taken under the circumstances to ameliorate the oversight in failing to file these *ex parte* and in confidence, notwithstanding that the identities of the affiants and their affidavits are already in the public domain.

<sup>3</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>4</sup> See, *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 25 June 2007, page 44 - 45.

<sup>5</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.

## II. THE PROSECUTION'S RESPONSE MISPERCIEVES THE INHERENT RAMIFICATIONS OF THE TRAVEL BAN AND ASSETS FREEZE ON THE ACCUSED'S FUNDAMENTAL RIGHT TO A FAIR TRIAL

7. Duty Counsel initially incorporates herein by reference, every argument and averment that is contained in the Motion as if set out fully below.

8. In its Response, the Prosecution avers that the Motion "provides no evidence to suggest that there is any objective basis for concluding that..." the travel ban and assets freeze which derive respectively from Security Council Resolutions 1521 and 1532 have had, and continue to have, a chilling effect on prospective witnesses for the Accused, thereby undermining his fundamental right to a fair trial under Article 17 of this Court's Statute.<sup>6</sup> The Prosecution also argues that the relief that the Motion requests has not been shown to be "necessary," inasmuch as the Defence has not exhausted other remedies (*de facto* political in nature) before coming to the Trial Chamber for relief.<sup>7</sup> Duty Counsel responds below to these respective arguments by the Prosecution and explicates why they are misplaced.

### A. Objective Bases in Support of the "Chilling Effects" on Witnesses

9. Duty Counsel respectfully submits that there is no shortage of objective indicia regarding the chilling effect that the travel ban and assets freeze continue to have on the universe of prospective defence witnesses in this case.

10. As an initial matter, an objective confirmation of the possibility that witnesses who might otherwise wish to travel to Sierra Leone to give evidence in proceedings before the Special Court may, in certain instances, need special legal protection to facilitate their appearance before the Court is clearly reflected in the provisions of Article 15 of the 16 January 2002 *Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone* ("Agreement"). That provision invokes the provisions of Article 14, paragraph 2(a) and (d) of the same Agreement in mandating, *inter alia*, that such witnesses shall be immune from any immigration restrictions during their stay in Sierra Leone and their journey to and from the Court.<sup>8</sup>

<sup>6</sup> Response, para. 7; United Nations Security Council Resolution 1521 (travel ban) (S/RES/1521/2003), para. (4) (a) and United Nations Security Council Resolution 1532 (assets freeze) (S/RES/1532/2004), para. 1; and Article 17, Statute of the Special Court for Sierra Leone ("Statute").

<sup>7</sup> Response, paras. 14 -15.

<sup>8</sup> Agreement, Articles 15, referring to Article 14.

11. There is additionally the exemption that explicitly appears in Security Council Resolution 1688 in specific relation to the case *sub judice*, exempting from the travel ban the travel of any witnesses whose presence at the Accused's trial is required.<sup>9</sup>

12. Implicit in these various forms of legal protection (exemptions and the like) that have been afforded, *a priori*, to potential witnesses appearing before the Court, generally, and the proceedings in this case, specifically, is the objective recognition that the overall context in which this case is situated requires special measures to ensure that every potential and willing witness is able to attend the proceedings free from any governmental or quasi-governmental restrictions.

13. What we are thus faced with is a case in which special legal protection has already been provided to witnesses of every type in recognition of very real impediments (obtaining outside the judicial theatre) to the availability and willingness of witnesses to participate in the proceedings. However, the one exception to this umbrella of legal protection are those witnesses who have not only been stripped of what all others so readily enjoy, but have been saddled with the additional burden of the travel ban and/ or assets freeze.

14. As such, for the Prosecution to now argue that there are no objective indicia regarding the "chilling effect" that such measures have had and continue to have on prospective Defence witnesses flies in the face of reason and commonsense. This is even more the case when the affidavits that are annexed to the Motion are considered. These are affidavits by potential Defence witnesses who live everyday with the burden of the travel ban and/ or assets freeze and who have sworn under penalty of perjury to the "chilling effects" of these measures. The direct consequence of this "chilling effect" on prospective Defence witnesses is that the Accused's fundamental right to a fair trial stands to be irreparably compromised unless the Trial Chamber immediately intervenes.

**B. Exhaustion of Remedies and this Chamber's Jurisdiction to Grant the Requested Relief**

15. The Prosecution has argued that the Defence has failed to demonstrate that it has made other efforts to attenuate the prejudicial effects of the travel ban and assets freeze on the

---

<sup>9</sup> United Nations Security Council Resolution 1688 (S/RES/1688/2006), Article 9, page 3.

Accused's rights to a fair trial. It is suggested that such other efforts could or should have been made at other venues, including those political in nature.<sup>10</sup>

16. Undergirding these arguments by the Prosecution is perhaps some question regarding the scope of this Chamber's jurisdiction and its competence to provide the requested relief.<sup>11</sup>

17. With respect, and in the first instance, Duty Counsel submits that there is no rule of law applicable to this proceeding that has, as a prerequisite, the exhaustion of remedies that are political in nature before those that are available at law before this Trial Chamber may be pursued. Such a principle of exhaustion of remedies (whether procedural and/ or substantive in nature) is inapposite under the prevailing circumstances. Indeed, where else can an Accused turn to in order to safeguard his fair trial rights than to the very Chamber before whom he is to be judged?

18. Duty Counsel further submits that this Chamber's jurisdiction extends to the matters under consideration. Significantly, the Trial Chamber is competent to grant the relief that is requested by the Motion where, as here, the Accused has a right under Article 17 of the Statute to have his witnesses appear in person before the Chamber (if he so prefers) rather than appear via video link or deposition (as suggested by the Prosecution). Of course, the Accused also enjoys a fundamental right to have access to information forming the basis of the allegations against him which information the Prosecution will use during cross-examination of Defence witnesses who are, or have been, subjected to the travel ban and/ or freeze in assets similar to the manner in which he is guaranteed due process of law and fundamental fairness.

### III. ADDITIONAL CONSIDERATIONS

19. Duty Counsel replies on the submissions that are made within the Motion regarding the imperative that the Accused have access to the underlying evidence which resulted in prospective Defence witnesses being placed on these lists.

20. A word should also be said about recent developments occurring before the Security Council since the Motion and Response were each filed – developments which ostensibly implicate the travel ban and/ or assets freeze.

---

<sup>10</sup> Response, paras. 14 and 16.

<sup>11</sup> See, for example, Response, para. 17, averring that certain matters raised in the Motion "cannot be litigated before the Special Court."

21. At its 5699th meeting on 20 June 2007, the Security Council unanimously adopted Resolution 1760 (2007) which states, in relevant part, that:

“The Security Council,

“Having reviewed the measures imposed by paragraphs 2 and 4 of resolution 1521 (2003) and paragraph 1 of resolution 1532 (2004) and the progress towards meeting the conditions set out by paragraph 5 of resolution 1521 (2003), and concluding that insufficient progress has been made towards that end,

“Acting under Chapter VII of the Charter of the United Nations,

“1. Requests the Secretary-General to establish, within one month from the date of adoption of this resolution, in consultation with the Committee, for a period of six months, a Panel of Experts... to undertake the following tasks:

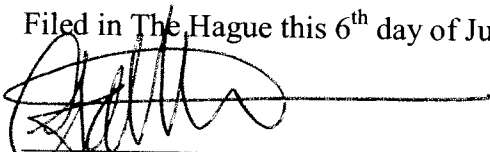
(a) To conduct a follow-up assessment mission to Liberia and neighbouring States, in order to investigate and compile a report on the implementation, and any violations, of the measures imposed by resolution 1521 (2003), including any information relevant to the designation by the Committee of the individuals described in paragraph 4 (a) of resolution 1521 (2003) and paragraph 1 of resolution 1532 (2004), and including the various sources of financing, such as from natural resources, for the illicit trade of arms...

22. Significantly, Duty Counsel submits that this new resolution by the Security Council illustrates more than ever, the need for this Chamber to step in to ensure that the rights guaranteed the Accused under Article 17 retain some semblance of relevance, in a most minimal sense of ensuring that the Accused is able to “obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her”.<sup>12</sup>

#### IV. CONCLUSION

For all of the foregoing reasons, Duty Counsel respectfully requests that the Motion be sustained and that the prayed for relief be granted.

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



**Charles Jalloh, Duty Counsel**

<sup>12</sup> Statute, Article 17 (4) (e).

## List of Authorities

### Prosecutor v. Taylor

*Prosecutor v. Taylor*, SCSL-03-01-T-277, The Defence Motion Seeking Special Measures with Regards to Resolutions 1521 and 1532 of the United Nations Security Council (Rule 8 and 54 of the Rules of Procedure and Evidence), 4 June 2007.

*Prosecutor v. Taylor*, SCSL-03-01-T-298, Prosecution's Response to "Defence Motion Seeking Special Measures with Regards to Resolutions 1521 and 1532 of the United Nations Security Council," 15 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, Trial Transcript, 25 June 2007. Online: <http://www.scsl.org/Transcripts/Taylor/25June2007.pdf>.

*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.

### UN Security Council's Resolutions

United Nations Security Council Resolution 1521 (travel ban) (S/RES/1521/2003).

United Nations Security Council Resolution 1532 (assets freeze) (S/RES/1532/2004).

United Nations Security Council Resolution 1688 (S/RES/1688/2006).