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The Special Court for Sierra Leone

BEFORE THE PRESIDENT

Before: Hon. Justice George Gelaga King, President

Registrar: Mr. Lovemore G. Munlo, SC

Date filed: 1 February 2007

Case No.: SCSL-2003-01-PT

THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**DEFENCE RESPONSE TO THE "REGISTRAR'S RESPONSE TO THE 'DEFENCE
REPLY TO THE REGISTRAR'S SUBMISSIONS ON THE *CORRIGENDUM* TO THE
SECOND DEFENCE MOTION REQUESTING CESSATION OF VIDEO
SURVEILLANCE OF LEGAL CONSULTATIONS", FILED ON 29 JANUARY 2007**

Office of the Prosecutor

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I. INTRODUCTION

1. The Defence makes this submission in response to the “*Registrar’s Response to the ‘Defence Reply to the Registrar’s Submissions on the Corrigendum to the Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, filed on 23 January 2007’*” (the “Registrar’s Response”).¹ The Defence submit that the Registrar’s objections to the Defence position are based on a misunderstanding of the Defence Reply, filed 23 June 2007 (the “Defence Reply”)², and are substantially erroneous. The Defence reiterate that the Memorandum of Understanding regarding Administrative Arrangements between the International Criminal Court (the “ICC”) and the Special Court (the “MoU”)M, *as practiced*, breaches Article 6.4 of the MoU, and is *ultra vires* in delegating jurisdiction over Mr. Taylor’s conditions of detention to the ICC. Also, the Registrar’s alternative contention that even if authority over conditions of detention is conceded, conditions of detentions are distinct from jurisdiction, is baseless. Lastly, the MoU, or any administrative rule or decision, may not violate or waive Mr. Taylor’s right to a fair trial, pursuant to Article 17 of the Statute of the Special Court.

2. As a preliminary matter, the Defence objects to any consideration of the Registrar’s Response. The Registrar’s initial submissions were a response to the initial Defence application - *Corrigendum to Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, filed on 8 January 2007* (the “Defence Motion”).³ Judicial practice suggests that on an application by a moving party, prior to adjudication, the non-moving party may file one response, to which the moving party may reply once.⁴ The Registrar’s, rather than the Prosecutor’s, involvement in this Motion does not imply deviation from sound judicial practice. Otherwise, parties would engage in endless submissions, precluding expeditious

¹ *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-169, Registrar’s Response to the ‘Defence Reply to the Registrar’s Submissions on the Corrigendum to the Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations’, filed on 23 January 2007, 29 January 2007.

² *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-165, Defence Reply to the Registrar’s Submissions on the Corrigendum to the Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, 23 January 2007.

³ *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-156, *Corrigendum to Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations*, 8 January 2007.

⁴ *See Prosecutor v. Charles Ghankay Taylor*. Case No. SCSL-03-01-PT, Status Conference, 26 January 2007, p. 37 (The Prosecutor moved to set a pre-trial date. The Defence responded. The Prosecutor replied. The Defence then sought to make additional submissions, prompting Judge Doherty to assert “. . . I don’t think you’ve got a right of reply to a reply. You’ve had a response, there’s been a reply, and I don’t think you’ve got a right of reply to another reply.” This instance is apposite.).

relief. Coining the initial Registrar response, filed 19 January 2007, “Submissions”⁵ did not change its form – it was a response to the Defence Motion, and included the Defence Motion in its title. The Registrar’s present response is an attempted second bite at the apple, a right not granted the non-moving party.

II. REGISTRAR’S RESPONSE MISSTATES DEFENCE SUBMISSIONS AND IS ERRONEOUS

- 3. The Registrar’s Response, in Paragraph 8, misconstrues the position of the Defence. The Defence, maintain only that the Registrar acknowledged, through his submissions, that authority over Mr. Taylor’s conditions of detention has been delegated to the ICC. The MoU, *as practiced*, is the purported basis for delegation. The Defence reiterate that the delegation of jurisdiction, and the MoU, *as practiced*, is *ultra vires*.
- 4. In Paragraphs 8 to 13, the Registrar’s Response is misleading and erroneous. The MoU, *as practiced*, exposes the tensions between Article 6.4 and Article 6.1 of the MoU. The Registrar’s contention, in Paragraph 14, that the MoU allows “Mr. Taylor’s conditions of detention [to be] subject to the ultimate authority of the ICC detention framework” is mistaken, for Article 6.4 explicitly grants the Special Court “full legal control and authority” over Mr Taylor’s conditions of detention.
- 5. Alternatively, and cumulatively, the MoU, in purporting to delegate the SCSL’s jurisdiction over Mr. Taylor, and *as practiced*, is *ultra vires*. Notwithstanding the Registrar’s signature on the MoU, and the President’s subsequent endorsement,⁶ the MoU, *as practiced*, has delegated authority sans mandate or authorisation. Indeed, on the contrary, the Special Court’s charter documents expressly require the Special Court to retain jurisdiction over Mr. Taylor.
- 6. Additionally, the Defence submit that Paragraph 16 of the Registrar’s Response is meretricious in distinguishing between jurisdiction and conditions of detention. Jurisdiction is not limited to Chambers; it encompasses the jurisdiction of all organs of the Court as an independent legal entity having international legal personality. It includes the authority and

⁵ *Prosecutor v. Charles Taylor*, 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.

⁶ *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-109, *Endorsement Pursuant to Rule 64*, 19 June 2006.

functions vested in the Registry. Specifically, the power to incarcerate and to regulate the treatment of an accused arise from a jurisdictional foundation. Accordingly, the distinction drawn by the Registrar (between jurisdiction and conditions of detention) is, with respect, erroneous. Contrary to the Registrar's contention, a transfer of authority over the rules and conditions of detention to an independent agency, not accountable to the Special Court, is an impermissible delegation of jurisdiction from the Special Court to the ICC.⁷

7. The Registrar's Response in Paragraph 17 is mistaken in law. Rule 64 does not, and cannot, waive or preclude the applicability of Article 17 rights to a fair trial, of which the right to equal treatment is an indivisible component. As such, although the conditions of detention may not be identical, given different detention units operating in different national and cultural contexts, substantive rights must be protected in equal measures. Mr. Taylor's right to free and confidential communication with his counsel must not be prejudiced vis-à-vis other Special Court detainees.
8. Paragraph 19 of the Registrar's Submissions once again misstates the Defence contentions, and quotes out of context. The Defence reiterates, consistent to previous submissions, that the Special Court's Trial Chamber or President should have exclusive jurisdiction to review Mr. Taylor's conditions of detention and Article 17 rights. In contrast, The Registry's position is contradictory. On the one hand, it pleads lack of administrative jurisdiction over Mr. Taylor's conditions of detention. On the other hand, it claims that the Special Court's President continues to retain jurisdiction to review administrative decisions with regard to Mr. Taylor's conditions of detention, without citing any relevant provision in support of such a proposition.
9. The Registrar's position, if properly understood, would give a Judge of the SCSL power to confirm and *follow* a decision of an ICC judge regarding applicable procedures and orders. It would *not* give a SCSL judge the power to depart from such legal reasoning or to *lead* with their own more rigorous, appropriate or otherwise necessary legal orders in relation to Mr. Taylor. The straitjacket that the Registrar of the ICC would seek to impose on the SCSL

⁷ In this regard, the Defence submit that the regime adopted by the SCSL stands in contrast to that properly adopted by the other legal regimes and judicial institutions using the Dutch facilities. The Dutch Prison Service own and control the prison facility in Scheveningen. The Dutch have sub let a building within its premises to the ICTY, who in turn have sub let its premises to the ICC, which, in turn, have sublet, at some cost, its premises to the SCSL. Unlike all other entities (the Dutch, the ICTY, the ICC) the SCSL stands alone and, unfortunately, apart as the only judicial organ that is not in direct control over its own accused where this has been requested. The SCSL is the only entity, intent on trying an accused in the Netherlands, that does not have its own prison guards *in situ*.

judiciary is manifestly clear in paragraph 16 of his Submission, namely that it is “*not within the authority of the ICC Registry to deviate from the established judicial interpretation of a Regulation by a competent ICC body, with regard to the Special Court detainee.*” By that reasoning, the ICC Registry and ICCDU operating under its supervision would not be bound to follow a decision of a SCSL judge if different from one imposed by an ICC judge in a wholly different case.

III. CONCLUSION

10. The Defence respectfully requests that the Registrar’s Response not be considered in determining the Defence Motion.

11. The Defence reiterate the initial urgent request for relief.



Karim A. A. Khan

Counsel for Mr. Charles Taylor

Dated this 1st Day of February 2007

Table of Authorities

1. *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-109, *Endorsement Pursuant to Rule 64*, 19 June 2006.
2. *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-156, *Corrigendum to Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations*, 8 January 2007.
3. *Prosecutor v. Charles Taylor*, 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.
4. *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-165, Defence Reply to the Registrar's Submissions on the Corrigendum to the Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, 23 January 2007.
5. *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-169, Registrar's Response to the 'Defence Reply to the Registrar's Submissions on the Corrigendum to the Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations', filed on 23 January 2007, 29 January 2007.
6. *Prosecutor v. Charles Taylor*, SCSL-03-01-PT, Status Conference Transcript, 26 January 2007.