



SPECIAL COURT FOR SIERRA LEONE

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CS7 - NOTICE OF DEFICIENT FILING FORM

Date:	29 May 2007	Case No: SCSL-03-01-PT	The Prosecutor v Charles Ghankay Taylor
To:	PROSECUTION: X DEFENCE: X CHAMBER: X OTHER:		
From:	Advera Nsiima K.: Court Management		
CC:			
Subject	Article 12 Late Filing Rule 7(B)		

Document(s): Reply to the "Prosecution's Response to 'Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock,'".. -SCSL-03-01-PT-262

Document Dated: 28 May 2007 Received by Court Management at 09:00am

Reason: The document was filed late. It was required by Order dated 28 May 2007, Document number SCSL-03-01-PT-258 to be filed not later than 4:00pm on Monday, 28 May 2007.

Signed: *Nsiima K.*
Advera Nsiima K.

Dated: 29/05/2007

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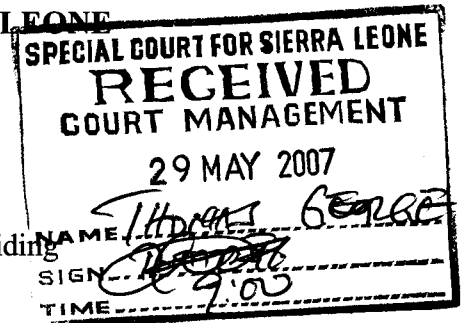
SCSL-03-01-PT
(9559-9565)

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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: Herman von Hebel, Acting Registrar

Date: 28 May 2007

Case No.: SCSL-2003-01-PT

THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

URGENT & PUBLIC

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

Office of the Prosecution

Ms. Brenda Hollis
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
Mr. Roger Sahota

I. Introduction

1. This is the Counsel for Mr. Charles Taylor (the “Defence”) reply to the “Prosecutor’s Response to “Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement From The Dock” (the “Response”),¹ filed 25 May 2007, served 26 May 2007.
2. The Defence respectfully notes that the Chamber’s “Order for Expedited Filings”,² filed 28 May 2007, at 10:41am, and served electronically on the Defence at 3:42pm (Sierra Leone time), orders that, inter alia, “Any reply to the Response to first Defence Motion shall be filed not later than 4:00 p.m. on Monday, 28 May 2007.” Compliance with this Order, which at best gives the Defence 17 minutes to respond, is almost impossible and entirely unreasonable given the well catalogued problems that the dislocation from the court in Freetown has caused. The Trial Chamber is fully cognizant of these issues, being informed both by Defence on numerous occasions, and most recently by Court Management Services.³ Nevertheless, the Defence has attempted to submit its response within one hour.
3. The Defence respectfully submit that the Prosecution’s Response is misplaced and mistaken in law. Although well researched, it does not address the Defence contentions. Reference to issues with regard to counsel’s opening statements and reference to corollary rules do not address the issue and do not detract from the submissions in the original motion. As the Prosecution is well aware, Mr. Taylor, a detainee yet to be convicted, has not been stripped of his right to speak freely. The Special Court’s Rules of Procedure and Evidence (the “Rules”) do not pronounce themselves on the issue, and thus it is within the Chamber’s discretionary provenance to allow Mr. Taylor to give an unsworn statement from the dock.

¹ *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,” 25 May 2007.

² *Prosecutor v. Taylor*, SCSL-03-01-PT-258, Order for Expedited Filing, 28 May 2007.

³ See Email from Rosette Muzigo-Morrison to Elaine Bola-Clarkson, copied to Trial Chamber II, 23 May 2007 [Annex A].

II. The Special Court's Rules Do Not Pronounce Themselves on the Accused Giving an Unsworn Statement

4. Contrary to the Prosecution's submissions, the Special Court's Rules do not pronounce themselves on the substantive issue. The Prosecutor's reliance on Rule 84 and Rule 85 are misplaced. Rule 84 refers to Defence Counsel's Opening Statements. Rule 85 (C) refers to the Accused's sworn testimony, but does not preclude an unsworn statement. The ICTY Rules have an identical Rule 85(C), and unsworn statements have been allowed pursuant to Rule 84*bis*, and prior to the existence of Rule 84*bis*.
5. Further, in being guided by the customary practice at the international tribunals, the Prosecutor makes no reference to Rule 67(1)(h) at the International Criminal Court, which broadens the right of the accused to make an unsworn statement.

III. Mr. Taylor's Right To Freedom of Expression

6. The Prosecution's assertion in Paragraph 11 that the "Accused has no right to make public statements prior to trial, nor during trial except his right to testify under oath[]" is mistaken in law. The Prosecution is well aware that both the European Convention of Human Rights (ECHR) Article 10 and the ICCPR Article 19 grant freedom of expression. Such rights are not proscribed for prisoners, and certainly not for detainees who are presumed innocent. There are no administrative reasons to not allow Mr. Taylor to give an unsworn statement from the dock, monitored and supervised by the Chamber, which is sufficiently cogent to outweigh Mr. Taylor's freedom of expression.
7. The Prosecution's reference, in Paragraph 8, to counsel's opening statements is also misplaced. Counsel's opening statements serve different purposes. Counsel's opening statement is temporally distant, made at the end of the Prosecutor's presentation of the case, and cannot replace an unsworn statement from the dock after the Prosecution's Opening Statement.

IV. Unsworn Statements are Sufficiently Prevalent in Domestic and International Law

9562

8. The Defence respectfully do not contend the Prosecution's citation of English, Canadian, and Australian law. However, there are sufficient jurisdictions that allow unsworn statements to counter these examples. Although England, and to a lesser extent Canada and Australia enjoyed historical pre-eminence, their collective jurisprudence is not sufficient to mitigate against the prevailing practice in civil law countries, most common law countries, and at least two of the international tribunals to allow unsworn statements.

V. Conclusion

9. The Defence hereby respectfully maintain that the Trial Chamber:
- (i) GRANT Mr. Taylor leave to given an unsworn statement from the dock, lasting not more than an hour, subsequent to the Prosecutor's opening statement, on 4 June 2007.

Respectfully Submitted,



Karim A. A. Khan

Counsel for Mr. Charles Ghankay Taylor

Done in The Hague this 28th Day of May 2007.

Table of Authorities

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,” 25 May 2007

Prosecutor v. Taylor, SCSL-03-01-PT-258, Order for Expedited Filing, 28 May 2007

SCSL Defence-Taylor/SCSL
05/23/2007 10:44 AM

To Logan Hambrick/SCSL@SCSL
cc
bcc
Subject Fw: Document Number: SCSL-03-01-236-246,

----- Forwarded by SCSL Defence-Taylor/SCSL on 05/23/2007 10:44 AM -----

Rosette
Muzigo-Morrison/SCSL@UNL
B
05/23/2007 07:39 AM

To Elaine Bola-Clarkson/SCSL
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cc
Subject Re: Document Number: SCSL-03-01-236-246, [icon]

Dear Elaine,

Further to my telephone message yesterday and our telephone discussion last evening, I would like to inform you that the CMS office at the Sub-Office has still not been able to serve the Defence of Mr. Taylor with all documents filed from 17 May 2007 onwards.

Yesterday morning I had promised Mr. Khan that we would do our best to get hard copies of the documents to them latest this morning but we are unable to do that as we are yet to receive a complete set of the said documents.

9565

While the web-mail service has been restored, it would appear that several of the emails have not come through. (must be floating in cyber space)

Additionally, some of the documents received are illegible. It is not possible to tell from this end whether the problem was with the scanning or the originals filed. They come out as blank dark pages and will be of no use to the Defense.

Your urgent intervention is therefore solicited to have all the documents put on a CD and sent to the Sub-Office.

We will print them out and serve the Defence Office.

Could you please bring this matter to the attention of the Judges of Trial Chamber II as there are time limit implications involved.

Loking forward to hearing from you soon,

Kind regards,

Rosette