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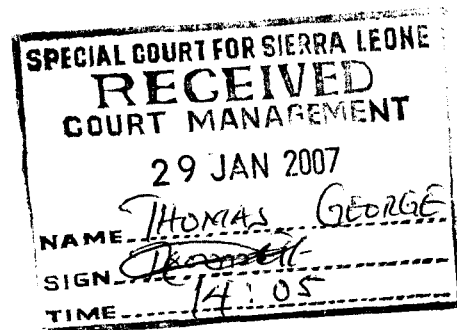
SCSL-03-01-PT  
(4218 - 4224)

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THE SPECIAL COURT FOR SIERRA LEONE

Case No.: SCSL-03-01-PT  
Before: Hon. Justice George Gelaga King, President  
Registrar: Mr Lovemore G. Munlo SC  
Date filed: 29 January 2007



THE PROSECUTOR

-v-

CHARLES TAYLOR

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REGISTRAR'S RESPONSE TO THE "DEFENCE REPLY TO THE REGISTRAR'S  
SUBMISSION ON THE *CORRIGENDUM* TO THE SECOND DEFENCE MOTION  
REQUESTING CESSATION OF VIDEO SURVEILLANCE OF LEGAL  
CONSULTATIONS, FILED ON 23 JANUARY 2007

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**Office of the Prosecutor**

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## I. INTRODUCTION

1. On 10 November 2006, the Detention Centre of the International Criminal Court (the “ICC”) installed a video surveillance camera in the conference rooms available for legal consultations of the Special Court Detainee Charles Taylor (“the Special Court Detainee”).
2. On 28 November 2006, the Defence filed an Urgent and Public Motion Requesting Removal of Camera from Conference Room before Trial Chamber II. On 30 November 2006, Trial Chamber II denied the Defence Motion, finding that “the detention issues raised in the Motion are within the administrative preserve of the Registrar, with the right of appeal to the President, and that therefore the Motion is premature.” The Trial Chamber urged the Chief of Detention and the Registrar to deal with the matter promptly in accordance with Rule 59 (C) of the Rules of Detention.
3. On 15 December 2006, the Defence incorrectly filed before Trial Chamber II a Second Motion Requesting Cessation of Video-Surveillance of Legal Consultations. On 19 December 2006, the Defence submitted before the President a *Corrigendum* to the above-mentioned Motion. The Motion was re-filed before the President on 8 January 2007, due to the Special Court’s judicial recess.
4. On 19 January 2007, the Registrar filed a 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, under Rule 33(B) of the Rules of Procedure and Evidence (“the Registrar’s Submission”). On 23 January 2007, the Defence filed a Reply to the Registrar’s Submission.<sup>1</sup>
5. The Registrar notes that the conclusions of its Submission are welcomed by the Defence. The Defence “support[s] the Registrar’s conclusion that the International Criminal Court (“ICC) may not, from a plain reading of its own rules and the

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<sup>1</sup> *Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-PT*, Defence Reply to the “Registrar’s Submission on the Corrigendum to the Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, Filed on 19 January 2007”, 23 January 2007 (“Defence Reply to the Registrar’s Submission”).

applicable order of the ICC Pre-Trial Chamber, place privileged legal communications under video surveillance.”<sup>2</sup>

6. However, the Defence disagrees with the reasoning of the Registrar’s Submission. The Registrar submits the following Response to the Defence’s Reply.

## II. SCOPE OF THE REGISTRAR’S SUBMISSION FILED ON 19 JANUARY 2006

7. The Defence contests the Registrar’s Submission in that it “fails to address any aspect of the Defence Submissions [...]”<sup>3</sup> However, the Registrar notes that this Submission was submitted under Rule 33 (B) of the Rules of Procedure and Evidence, whereby

“[t]he Registrar, in the execution of his functions, may make oral or written representations to Chambers on any issue arising in the context of a specific case which affects or may affect the discharge of such functions [...]”.

The Registrar’s Submission did not constitute a reply to the Defence Motion; it submitted the Registrar’s position on the matter to the President. Therefore, the Registrar was under no obligation to respond on every aspect of the Defence Motion.

## III. RESPONSE TO THE MAIN POINTS RAISED IN THE REPLY OF THE DEFENCE

8. The Defence alleges that the “Registrar’s Submissions acknowledge the *ultra vires* delegation of authority by the Special Court to the ICC”<sup>4</sup> and that the “MoU [i.e. the Memorandum of Understanding between the Special Court and the ICC] as practised, in delegating the Special Court’s jurisdiction over Mr Taylor to the ICC, is *ultra vires* without express authorisation.”<sup>5</sup> The Registrar denies that there is anything in this submission that acknowledges that there has been any *ultra vires* delegation of authority by the Special Court and submits that the arguments by the Defence are

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<sup>2</sup> Defence Reply to the Registrar’s Submission, para. 2.

<sup>3</sup> *Id.*, para. 3.

<sup>4</sup> *Ibid.*

<sup>5</sup> Defence Reply to the Registrar’s Submission, para. 15.

misconceived: The Defence not only fails to acknowledge the order of events and legal background under which the detention regime of Charles Taylor was ordered, but also fails to distinguish between the specific detention regime applied to the Special Court Detainee and the general issues of overall jurisdiction of the Special Court over him.

9. The detention regime applied to the Special Court Detainee in the ICC Detention Centre forms part of the Special Court's relevant Judicial Orders and Decisions regarding the change of venue of the proceedings related to him, as set out below.

10. On 19 June 2006, the President of the Special Court issued an *Order Changing Venue of the Proceedings*, whereby the President ordered, *i.a.*, that

“[...], pursuant to Rules 54 and 64 of the Rules, that Charles Gankhay Taylor be transferred to and detained in appropriate facilities in The Hague [...] **in accordance with the conditions set out in the agreements between the Registrar, the International Criminal Court, and the Government of The Netherlands.**”

The agreements referred to in the President's Order include the *Memorandum of Understanding regarding Administrative Arrangements between the ICC and the Special Court*, signed on 13 April 2006.

11. On the same day, namely on 19 June 2006, the President endorsed the *Registrar's Order pursuant to Rule 64 of the Rules of Procedure and Evidence*, whereby the Registrar

“Not[ed] the Memorandum of Understanding regarding Administrative Arrangements between the ICC and the Special Court, signed on 13 April 2006.”

“Not[ed] further that under Article 6 of the MOU, the Accused will have to be detained at the ICC Detention Centre under the ICC's rules of detention and standards under the overall responsibility of the Special Court.”

“Order[ed] that “The rules of detention and standards of the ICC shall be applicable for the detention of the Accused *mutatis mutandis*.”

“Order[ed] that the Complaints Procedure set out in Rule 59 of the Rules of Detention of the Special Court shall be applicable.”

12. On 23 June 2006, the Special Court's Trial Chamber II issued a *Decision on Defence Oral Application for Orders Pertaining to the Transfer of the Accused to The Hague*, whereby the Chamber

“Not[ed] [the Registrar's Order] whereby the Registrar made certain orders relating to the detention of the accused in the International Criminal Court Detention Centre, including an order that the rules of detention and standards of the ICC shall be applicable to the detention of the accused *mutatis mutandis* and that the complaints procedure set out in Rule 59 of the Rules of Detention shall be applicable.”

“Not[ed] the Endorsement Pursuant to Rule 64 dated 19 June 2006, whereby the President endorsed the Registrar's Order.”

13. In view of the above, it is submitted that there is no merit whatsoever in the Defence Submission that the detention regime which is applicable to Mr Taylor is *ultra vires*. It is further submitted that the detention regime provided in the MoU has been specifically authorised by both the President's Order for Change of Venue and the President's Endorsement of the Registrar's Order for special measures of detention.

14. Contrary to the assumption of the Defence, the detention regime of the Accused was not *ultra vires*, since the order by the Registrar was subsequently endorsed by the President of the Special Court. Therefore, the fact that “Mr Taylor's conditions of detention are subject to the ultimate authority of ICC detention framework”<sup>6</sup>, as a result of the implementation of the MoU, is in compliance with the Special Court's judicial orders and decisions.

15. According to the Defence, the “MoU as practised, in delegating the Special Court's jurisdiction over Mr Taylor to the ICC, is *ultra vires* without express authorisation”<sup>7</sup>. The Defence further states that “[t]he Special Court's charter documents and the relevant Security Council Resolutions authorise only a shift in venue, not a delegation of jurisdiction.”

16. In these statements, the Defence seems to fail to distinguish between the specific detention regime and the overall jurisdiction over the Accused. While, in accordance with Security Council Resolution 1688 (2006), the “Special Court shall retain

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<sup>6</sup> *Id.*, para. 10.

<sup>7</sup> *Id.*, para. 15.

exclusive jurisdiction over [...] [Charles] Taylor during his transfer and presence in the Netherlands”, the Special Court, in ordering the transfer of the proceedings and of the Accused to the ICC Facilities in The Hague, did not delegate the overall jurisdiction over the Accused to the ICC. This is also shown by the fact that the Special Court’s Trial Chamber pronounced itself on the detention regime<sup>8</sup> and that the Defence addressed the President of the Special Court with regard to matters of detention. The application of the rules of detention and standards of the ICC, in accordance with the MoU, cannot be regarded as a delegation of jurisdiction from the Special Court to the ICC.

17. The Defence also considers that “in submitting only Mr Taylor to video surveillance, his right to equal treatment vis-à-vis other Special Court detainees is implicated.”<sup>9</sup> While the Registrar, in his Submission dated 19 January 2007, supported a discontinuation of the video surveillance, it is submitted that this argument is misconceived. The Defence fails to acknowledge the fact that the Special Court Detainee is subject to **special measures of detention**, as set out in the Rule 64 Order of 19 June 2006. The conditions of detention of the Detainee at the ICC Detention Facilities in The Hague are, therefore, not fully identical to those provided under the rules and practice of the Special Court Detention Centre, as they have to take into account Mr Taylor’s special circumstances that are not applicable to the detainees at the seat of the Court.

18. The Registrar also wishes to stress that the rules of detention and standards of the ICC, as set out in Chapter 6 of the Regulations of the ICC, Chapter 5 of the Regulations of the ICC Registry as well as the ICC House Rules for Detained Persons fully meet the highest international standards for treatment of detainees. This includes a provision that “[a]ll detained persons shall be treated with humanity and with respect for the inherent dignity of the human person.”<sup>10</sup>

19. Finally, the Defence asserts that the “[t]he Registrar’s Submission requires, even if the Special Court’s President were to order cessation of the video surveillance of Mr

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<sup>8</sup> *Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-PT*, Decision on Urgent and Public Defence Motion Requesting Removal of Camera from Conference Room, Trial Chamber II, 30 November 2006.

<sup>9</sup> Defence Reply to the Registrar’s Submission, para. 4.

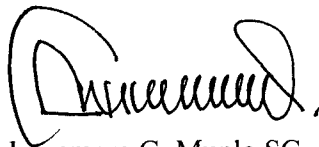
<sup>10</sup> International Criminal Court, Regulations of the Court, Regulation 91 (1).

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Taylor's legal consultations, an intervening ICC Chamber decision."<sup>11</sup> The Registrar submits that this conclusion is misconceived and is not supported by the facts on the ground. As shown by the Registrar's Submission to the Special Court President, a possible order to discontinue the video surveillance of legal consultations would ultimately be taken by the President of the Special Court and not by an ICC Chamber.<sup>12</sup>

Respectfully submitted.

Freetown, 29 January 2007



Lovemore G. Munlo SC

Registrar

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<sup>11</sup> Defence Reply to the Registrar's Submission, para. 19.

<sup>12</sup> Registrar's Submission, para. 23.