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

Before: Justice George Gelaga King, President

Registrar: Mr. Lovemore G. Munlo, SC

Date: 26 February 2007

Case No.: SCSL-2003-01-PT

THE PROSECUTOR

–v–

CHARLES GHANKAY TAYLOR

PUBLIC

DEFENCE REPLY TO "REGISTRAR'S SUBMISSION PURSUANT TO RULE 33(B) IN RELATION TO ISSUES RAISED IN THE DEFENCE APPLICATION REQUESTING REVIEW OF THE MEMORANDUM OF UNDERSTANDING BETWEEN THE INTERNATIONAL CRIMINAL COURT AND THE SPECIAL COURT OF SIERRA LEONE DATED 13 APRIL 2006 & MODIFICATION OF MR. CHARLES TAYLOR'S CONDITIONS OF DETENTION"

Office of the Prosecution
Mr. Stephen Rapp
Ms. Brenda Hollis
Ms. Wendy van Tongeren
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Mr. Alain Werner
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SPECIAL COURT FOR SIERRA LEONE
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I. Introduction

1. The Defence for Mr. Charles Taylor submit this Reply to the "Registrar's Submission Pursuant to Rule 33(b) in Relation to Issues Raised in the Defence Application Requesting A Review of the Memorandum of Understanding between the International Criminal Court and the Special Court of Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention," filed 20 February 2007 (The "Registrar's Submission").[1]

2. The Defence initially filed its "Application Requesting A Review of the Memorandum of Understanding between the International Criminal Court and the Special Court of Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention" on 14 December 2006, more than two months prior to the Registrar's Submission, and reiterates the points raised therein.[2]

II. Procedure Regarding Rule 33(B) Submissions

3. Rule 33(B) of the Special Court Rules of Procedure and Evidence ("the Rules") states:

> "The Registrar, in the exercise 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, including that of implementing judicial decisions, with notice to the parties where necessary."

Based on a plain reading of this Rule, the Defence submit that it is not necessary for a party to expressly name the Registrar as a respondent for the Registrar to have the right to make oral or written representations on an issue falling within the ambit of the Rule.[3] Rather the Registrar may make submissions on his own initiative, if considered appropriate by him in relation to a matter which "affects or may affect the discharge of his functions" including the implementation of judicial decisions..

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[1] *Prosecutor v. Taylor,* SCSL-03-01-PT-188, Registrar's Submission Pursuant to Rule 33(b) in Relation to Issues Raised in the Defence Application Requesting A Review of the Memorandum of Understanding between the International Criminal Court and the Special Court of Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention, 20 February 2007 ("Registrar's Submission").

[2] *Prosecutor v. Taylor,* SCSL-03-01-PT-146, Defence Application Requesting A Review of the Memorandum of Understanding between the International Criminal Court and the Special Court of Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention, 14 December 2006 ("Defence MOU and Modification Motion").

[3] *Compare to Prosecutor v. Taylor,* SCSL-03-01-PT-189, Decision of the President on Urgent and Public Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, 21 February 2007, para. 20 ("Video Surveillance Decision").

4. In light of the "Decision of the President on Urgent and Public Defence Motion Requesting Cessation of Video Surveillance" dated 21 February 2007, it was clearly inappropriate for the Registrar to make a Rule 33(B) submission in this instance, because the Registrar is only empowered "to make representations to Chambers and not to the President as President."[4] As the Defence MOU and Modification Motion was addressed to the *President qua President*, it is irregular for the Registrar to make a submission purportedly under the Rule 33 mechanism. Given that the scope and application of Rule 33 has been clarified by the President, the Defence submits that the Registrar's submission should be disregarded by the President, held to be of no legal effect and accordingly be given no further consideration. However, the Defence also accepts that there may remain a discretionary power of the President to receive submissions from the Registrar, with notice to the parties, notwithstanding the lack of *right* of the Registrar to make such submissions. Accordingly, the Defence considers it prudent and necessary to reply to the Registrar's Submission, in order to correct and clarify various issues raised therein.

III. Unduly Restrictive Conditions for Visits

5. The Defence argument that "the SCSL's agreement with the Dutch authorities which only allows one person 'to visit [the Netherlands] at a time'" is *prima facie* discriminatory[5] has been erroneously interpreted by the Registrar.[6] The Defence obviously understand that this restriction is set by Dutch visa policy for adult visitors of Mr. Taylor to the Netherlands and is not part of the applicable ICC Detention Unit regime governing visits to the Accused. But the Defence note that this policy was agreed by the Dutch with the Registrar of the Special Court.[7] It was a policy that was unfair and unsupportable at the outset and the Registrar should never have agreed to such a policy.[8] In any event, the

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[4] Video Surveillance Decision, para. 24.
[5] Defence MOU and Modification Motion, para. 16.
[6] Registrar's Submission, para. 13 and Annex I, Application Process for Personal Visitors to the Detainee Charles Taylor Requiring a Visa to Enter the Territory of the Netherlands, para. 4.
[7] Id. It is clear that the "Policy" was subject to negotiations between the Dutch Government and the Registrar of the SCSL. The header on the document attached by the Registrar also makes this clear "Final Revised [version] as *approved* by the Dutch authorities, 31 August 2006."
[8] The right to family visits and other social interaction, even in restricted form due to incarceration, flows not only from numerous international treaties (for example, Article 8 of the ECHR), and is provided for in Rule 41 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal Before the Special Court, but it is a corollary to the presumption of innocence recognized in Art 17(3) the Statute of the SCSL. Moreover, Paragraph

Registrar, who serves as a "channel of communication" between the Special Court and other entities,[9] has the responsibility of liaising with Dutch authorities in an attempt to renegotiate the terms of the visa policy.[10]

6. In addition to being discriminatory on its face, the visa policy is also discriminatory in effect. Because of this restrictive policy, Mr. Taylor's sister and her husband have had to travel to The Hague separately to visit him.[11] Female members of Mr. Taylor's family have expressed concern at the prospect of traveling to Europe unaccompanied – an arrangement which is considered culturally inappropriate in many parts of Africa and in many other countries throughout the world. The Defence maintain that the policy which has been put in place in the case of Mr. Taylor's family and friends is also callous and shows no regard for the security or comfort for women traveling alone.

7. The Dutch visa policy also includes a provision stipulating that persons wishing to visit Mr. Taylor submit documentary evidence of a "personal relationship" (essentially familial ties) with Mr. Taylor.[12] Yet there is no similar bar for visits by non-family members of

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8(c) of SC Resolution 1688 (2006) provides "The Government of the Netherlands shall facilitate the implementation of the *decision of the Special Court* to conduct the trial of former President Taylor in the Netherlands, in particular by....enabling the appearance of witnesses, experts and *other persons* required to be at the Special Court under the same conditions and according to the same procedures as applicable to the ICTY." (emphasis added). The Defence submit that the right to family life and to maintain social contacts, albeit subject to proportionate restrictions arising from incarceration, should have led a reasonable Registrar to require that the same policy with regard to ICTY detainees be followed by the Dutch Government in the case of Mr. Taylor. In the case of the ICTY, the Defence is not aware of any restriction as to the number of family members that can obtain visas to enter the territory of the Kingdom of the Netherlands in order to visit an ICTY detained accused. Indeed, it is common practice in the case of ICTY accused that several family members at once obtain visas to visit an accused in custody and obtain visas for that purpose from the Dutch authorities.

[9] SCSL Rule 33(A).

[10] The unfair visa policy applied by the Dutch in relation to Mr. Taylor's family and friends effectively creates more restrictive conditions of detention for the Accused. Only one family member can be given a visa to be in the Netherlands at any one time. Accordingly, the accused is limited to seeing the same person throughout their visit in the Netherlands and no rotations are possible amongst family and friends to break up the monotony and sometimes stress for the Accused or the visiting person. This is contrary to the practice both in Freetown amongst the SCSL detainees and in the ICTY in relation to accused held in that jurisdiction. Rule 33(C) of the SCSL Rules, of course, requires that "The Registrar, mindful of the need to ensure respect for human rights and fundamental freedoms and particularly the presumption of innocence shall...ensure conditions of detention." The Defence submit that the visa policy negatively impacts on the Accused's conditions of detention and amounts to an unreasonable restriction.

[11] *See* Letter to the Registrar from Karim Khan, 1 February 2007. [Confidential Annex A]

[12] Registrar's Submission, Annex I, Application Process for Personal Visitors to the Detainee Charles Taylor Requiring a Visa to Enter the Territory of the Netherlands, para. 3(c). Also see Registrar's Submission, Annex II, where the Registrar explicitly states in a letter to the Defence dated 18 September 2006 that "It needs to be emphasized that this procedure *only applies to members of the family of Mr. Taylor who reside in countries for which a visa is required.*" (emphasis added). The Defence also take issue with what seems to be a rather blasé submission by the Registrar that family members in the United States can attend without the need for visas. Whilst this is true, the Registrar is not acquainted with the situation of Mr. Taylor's family and it can hardly be

any Accused according to either the Special Court or the ICC Rules of Detention, where all visits are subject only to the approval of the Chief of Detention. In practice, this restriction discriminatorily prevents visits by West African non-family members and demonstrates an additional way that Mr. Taylor is treated differently than Special Court detainees.

8. It is unfair and a mischaracterisation of the Defence submissions for the Registrar to claim that the Defence objections to the Dutch visa policies are "entirely theoretical" as "the number of requests for visas has been very low and at no point have problems arisen as to visitors not being able to travel to The Hague because of number of applications pending."[13] The number of visa applications is low precisely because of the Dutch visa policy. It is untenable and a contortion of reality for the Registrar to raise an argument which, properly understood, is based upon the respect Mr. Taylor's family have shown in adhering to what the Defence and family have maintained from the outset to be an unfair policy. Furthermore, whilst the Registrar may be unaware of the numerous problems that have arisen in regard to visitors not being able to travel to The Hague based on visa limitations, the Office of the Principal Defender, which works under his supervision, has had extensive dealings with Mr. Taylor's family, and can attest that many family members have been prejudiced and inconvenienced by this discriminatory and unduly restrictive visa policy.[14]

IV. Telephone Calls

9. The Registrar concedes that a disparity exists between the number of minutes of free calls available to detainees in Freetown and the ICC Detention Unit in The Hague.[15] Yet, he fails to detail or explain how the disparity is fair or sustainable. Despite negotiations with

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expected that a few members in the United States can be expected to further disrupt their lives and relocate to the Hague to cure what is a deficient and unsustainable visa policy imposed by the Dutch with the apparent acquiescence of the Registrar. The policy is *prima facie* discriminatory to African nationals who are not visa exempt and who make up the major part of the Accused's family and friends.

[13] Registrar's Submission, para. 13.

[14] The Defence has requested a Memorandum from the Office of the Principal Defender on this matter, but it has not been completed by the time of filing. In the event that the Memorandum is completed, the Defence ask that the President accept the Memorandum as an Addendum to the present Defence Reply, based on his Rule 54 powers.

[15] Registrar's Submission, para. 14.

the ICC, the Registrar has been unable to satisfactorily redress this disparity.[16] This inequity highlights arises from the flawed application of the Memorandum of Understanding between the ICC and SCSL. This has been well documented by the Defence "Application Requesting a Review of the Memorandum of Understanding between the International Criminal Court and the Special Court of Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention."[17] It is submitted that the Registrar should feel confident to assert himself and assert the independence of the legal regime of the SCSL in all its dealings with the ICC which is being paid by the SCSL to act as host. Indeed, it is submitted that this is nothing more than his legal responsibility.[18]

V. Diet and Provisions

10. The Registrar claims that after Mr. Taylor was transferred to The Hague and raised matters of his diet, "adjustments were made" to the menu offered and that the catering services now provide a "variety of food items that sufficiently take into account [Mr. Taylor's] dietary preferences."[19] The Defence do not accept these vague and unsupported assertions of the Registrar. There appears to have been no reason in principle why the Registrar failed in his submissions to appraise the President of the adjustments made if significant. Moreover, it is notable that the Defence has not received any correspondence from the Registrar specifying what, if any changes have been made that are said to meet the concerns expressed on numerous occasions. As the attached attendance note makes clear,[20] the Defence submit that there has been no discernable improvement in the nature or quality of food provided to Mr. Taylor. The Accused continues to purchase appropriate food at his own expense. No adjustments have taken into account Mr. Taylor's habitual diet, cultural requirements, or other relevant considerations in accordance with Rule 18 of the SCSL Rules of Detention and ICC Regulation 199. Furthermore, the Registrar makes no reference to Defence submissions of violations of

[16] Registrar's Submission, para. 15.
[17] Defence MOU and Modification Motion, para. 17.
[18] SCSL Rules of Procedure and Evidence, Rule 33. Also see Video Surveillance Decision, paras. 25.- 26.
[19] Registrar's Submission, para. 20.
[20] *See* Attendance Note of Co-Counsel Roger Sahota, 22 February 2007. [Confidential Annex B]

the Geneva Convention.[22] Given that diet and the treatment of the Accused is a matter within the clear purview of the Registrar, this silence is both notable and regrettable.

11. In order to determine whether the "adjustments" made recently by the ICC in catering arrangements are adequate, the Registrar is invited to serve copies of the catering menus and shopping lists available to detainees in Freetown and The Hague over the last two months.[23]

VI. Disparity in Detention Regimes

12. Rule 3 of the SCSL Rules of Detention reads as follows:

> Rule 3 – Responsibility for Detention Facility –
>
> The Special Court shall retain sole responsibility for all aspects of detention pursuant to the Rules. Under the authority of the Registrar, the Chief of Detention shall have sole responsibility for all aspects of the daily management of the Detention Facility, including security and good order, and may make all decisions relating thereto, except where otherwise provided in the Rules. [emphasis added]

Consequently, the Defence once again requests that the Chief of Detention from Freetown be permitted to visit the ICC Detention Centre to inspect the facility and ensure that there is no needless or unfair disparity in regime between the two institutions.[24]

VII. Conclusion

13. For the reasons detailed above, the Defence prays that that the President:

(i) Dismiss the Registrar's Submission, and

(ii) Grant the measures as originally requested in the Defence Application Requesting a Review of the Memorandum of Understanding between the International Criminal Court and the Special Court of Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention, filed 14 December 2006.

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[22] Defence MOU and Modification Motion, para. 15.

[23] The Defence have made requests for same, and the menu for the Freetown Detention Unit is attached. [Confidential Annex C]. Also see Emails to Harry Tjonk and the Office of the Principal Defender, 23 February 2007. [Confidential Annex D]. If the ICC DU does provide a copy of its menu, the Defence request that the President accept the menu as an Addendum to the present Reply, based on his Rule 54 powers.

[24] *See* Emails from Herman von Hebel to Karim Khan regarding Request that SCSL Chief of Detention and Dr. to Visit Charles Ghankay Taylor, 30 November 2006. [Confidential Annex E]

Respectfully submitted,

Karim A. A. Khan

Lead Counsel for Mr. Charles Taylor

Done in Freetown this 26th Day of February 2007

Table of Authorities

1. *Prosecutor v. Taylor,* SCSL-03-01-PT-146, Defence Application Requesting A Review of the Memorandum of Understanding between the International Criminal Court and the Special Court of Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention, 14 December 2006

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

3. *Prosecutor v. 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

4. *Prosecutor v. Taylor,* SCSL-03-01-PT-188, Registrar's Submission Pursuant to Rule 33(b) in Relation to Issues Raised in the Defence Application Requesting A Review of the Memorandum of Understanding between the International Criminal Court and the Special Court of Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention, 20 February 2007

5. *Prosecutor v. Taylor,* SCSL-03-01-PT-189, Decision of the President on Urgent and Public Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, 21 February 2007

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CONFIDENTIAL DOCUMENT CERTIFICATE

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

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☐ Order
☐ Indictment
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Signed: Nsiima K.