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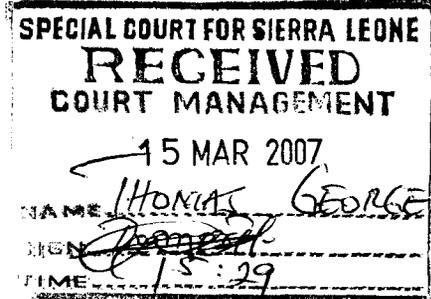
THE SPECIAL COURT FOR SIERRA LEONE

Before: Justice George Gelaga King, President

Registrar: Mr. Lovemore G. Munlo, SC

Date: 15 March 2007

Case No.: SCSL-2003-01-PT



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**DEFENCE RESPONSE TO THE PROSECUTION'S SUBMISSION REGARDING
"DEFENCE APPLICATION REQUESTING REVIEW OF THE
MEMORANDUM OF UNDERSTANDING BETWEEN
THE INTERNATIONAL CRIMINAL COURT AND
THE SPECIAL COURT FOR 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
Ms. Ann Sutherland
Ms. Shyamala Alagendra
Mr. Alain Werner
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Counsel for Charles Taylor

Mr. Karim A. A. Khan
Mr. Roger Sahota

I. Introduction

1. Seldom has one seen a Prosecution motion as lacking in merit as the *Public Prosecution Submission Regarding Defence Application Requesting Review of the Memorandum of Understanding Between the International Criminal Court and the Special Court for Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention*, filed 24 March 2007 ("Prosecution's Submission").¹
2. The Prosecution's Submission is, in effect, a tardy response to the *Public Defence Application Requesting Review of the Memorandum of Understanding Between the International Criminal Court and the Special Court for Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention*, dated 14 December 2006 ("Defence Application").² As is obvious, that Application was filed three months ago – not an insignificant amount of time in any judicial calendar. Despite the best endeavors of the Defence, it remains unclear what event woke the Prosecution from its apparent stupor in this matter, and compelled them to file the present Submission. While the search for enlightenment continues, the Defence make the following submissions.
3. The Prosecution's Submission should be excluded and completely disregarded as being procedurally and substantively without foundation, on the basis that it:
 - (i) Is filed out of time,
 - (ii) Is otherwise procedurally irregular; and
 - (iii) Amounts to a motion for reconsideration by the President, which is a form of relief not recognized in the Rules.

¹ *Prosecutor v. Taylor*, SCSL-03-01-PT-203, Public Prosecution's Submission Regarding Defence Application Requesting Review of the Memorandum of Understanding Between the International Criminal Court and the Special Court for Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention, 24 March 2007.

² *Prosecutor v. Taylor*, SCSL-03-01-PT-146, Defence Application Requesting Review of the Memorandum of Understanding Between the International Criminal Court and the Special Court for Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention, 14 December 2006.

II. Argument

4. Rule 7 of the Special Court Rules of Procedure and Evidence (“the Rules”) sets out the order and time limits for the filing of Responses and Replies. If the Prosecution had something worthwhile to say on the issue of the Defence Application, one would have expected them to file a response to the Defence Application by 08 January 2007, the first date for filing after the judicial recess. That opportunity was patently not taken by the Prosecution. Therefore, they must, with respect, be expected to live with their legal decision to remain silent in this matter.

5. The entitling of the Prosecution’s 14 March filing as a “Prosecution’s Submission” rather than as a motion, response, or reply cannot disguise the absence of any procedural foundation for the purported filing. Even if, *arguendo*, the Prosecution was purporting to respond to *Registrar’s Rule 33(B) Submission*, dated 20 February 2007,³ it would be out of time. It would be out of time, even if, *arguendo*, the Prosecution was purporting to respond to the *Defence Reply to the Registrar’s Rule 33(B) Submission*, filed 26 March 2007.⁴ In these circumstances, the Prosecution’s creative entitling of its filing as a “Submission” is understandable because it clearly falls outside the confines of the Rules. However, such entitling cannot, with respect, make a bad filing good.

6. In addition, the learned President of the Special Court has deprecated and admonished against untrammelled filings in his *Decision of the President on Urgent and Public Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations*, dated 21 February 2007. As the President elegantly put it,

“the filing of further pleadings after the reply to the Registrar’s Submission, engendering a further multiplication of issues, must be frowned upon as

³ *Prosecutor v. Taylor*, SCSL-03-01-PT-188, Registrar’s Submission Pursuant to Rule 33(B) in Relation to Issues Raised in the Defence Motion Requesting a Review of the Memorandum of Understanding Between the International Criminal Court and the Special Court for Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor’s Conditions of Detention, 20 February 2007 (“Registrar’s Rule 33(B) Submission”).

⁴ *Prosecutor v. Taylor*, SCSL-03-01-PT-194, Defence Reply to Registrar’s Submission Pursuant to Rule 33(B) in Relation to Issues Raised in the Defence Motion Requesting a Review of the Memorandum of Understanding Between the International Criminal Court and the Special Court for Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor’s Conditions of Detention, 26 February 2007 (“Defence Reply to the Registrar’s Rule 33(B) Submission”).

highly irregular and impermissible and consequently of no effect. That kind of procedural innovation and escalation and elevation is reminiscent of the interminable proceedings in Chancery in the case of *Jarndyce v. Jarndyce* in Charles Dickens' *Bleak House* and has no place in our Rules of Procedure and Evidence.”⁵

7. For the reasons given above, the Defence respectfully submit that the bland assertion that “The Prosecution, as a party in this case, has the right to file submissions on matters raised with the President, which may later be raised at trial or on appeal” cannot be taken as a license to act outside the Rules. The Defence would respectfully urge caution in the face of the rather cavalier approach apparently adopted by the Prosecution with regard to the Special Court’s Rules of Procedure and Evidence.

8. In any event, the Prosecution’s Submission should be summarily rejected as, properly considered, it amounts to a motion for reconsideration of the *President’s Decision on Video Surveillance*, dated 21 February 2007. The President has previously ruled that the Rule 33(B) mechanism is inapposite and inappropriate with regard to filings to the President.⁶ Indeed, the Registrar is only empowered to make representations to Chambers and not to the President as President.⁷ Having thus judicially determined the proper scope of Rule 33(B), it is not open to the Prosecution to ask the President to reconsider his determination. This is apparent from the *Decision of the President on Defence Motion for Reconsideration of Order Changing Venue of Proceedings*, dated 12 March 2007.⁸ There, the President held, in relation to an arguably far more important matter, that “the authority vested in the President and properly exercised in this matter is administrative in nature and that the Rules do not provide the Applicant an avenue for ‘reconsideration’ or review before the President.”⁹ This constitutes a further ground for rejecting the purported Prosecution’s Submission.

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, para. 32 (“President’s Decision on Video Surveillance”). (footnote omitted.)

⁶ President’s Decision on Video Surveillance, para. 24.

⁷ *Id.*

⁸ *Prosecutor v. Taylor*, SCSL-03-01-PT-202, Decision of the President on Defence Motion for Reconsideration of Order Changing Venue of Proceedings, 12 March 2007.

⁹ *Id.*, pg. 4.

9. In the penultimate paragraph of its Submission, the Prosecution states, “[t]he Defence arguments also ignore the reality that in some ways the detention conditions at the ICC offer more amenities than those at the SCSL Detention Facility.”¹⁰ It has evidently taken the Prosecution three months to struggle to that seminal conclusion. The Defence wonders how long they would need to substantiate the purported assertion. Interesting though that possibility is, the Defence have no option other than to state the obvious: Submission by assertion should have no place in proceedings before the Special Court for Sierra Leone. Arguments should be based on legal authority or evidence. Both are conspicuously absent in the Prosecution’s submissions. In short, not only is the Prosecution’s Submission procedurally and legally impermissible, out of time, and without foundation, it is also striking for its complete lack of substantive merit.

III. Conclusion

10. Accordingly, the Defence respectfully request the President to:

- (i) DISMISS the Prosecution’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 for Sierra Leone dated 13 April 2006 & Modification of Mr. Taylor’s Conditions of Detention*, filed 14 December 2006.

Respectfully submitted,



Karim A. A. Khan

Lead Counsel for Mr. Charles Ghankay Taylor

Done in Freetown this 15th Day of March 2007

¹⁰ Prosecution’s Submission, para. 13.

Table of Authorities

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

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

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

Prosecutor v. Taylor, SCSL-03-01-PT-194, Defence Reply to Registrar's Submission Pursuant to Rule 33(B) in Relation to Issues Raised in the Defence Motion Requesting a Review of the Memorandum of Understanding Between the International Criminal Court and the Special Court for Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention, 26 February 2007

Prosecutor v. Taylor, SCSL-03-01-PT-202, Decision of the President on Defence Motion for Reconsideration of Order Changing Venue of Proceedings, 12 March 2007

Prosecutor v. Taylor, SCSL-03-01-PT-203, Public Prosecution's Submission Regarding Defence Application Requesting Review of the Memorandum of Understanding Between the International Criminal Court and the Special Court for Sierra Leone dated 13 April 2006 & Modification of Mr. Charles Taylor's Conditions of Detention, 24 March 2007