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

Before: Hon. Justice George Gelaga King, President

Registrar: Mr. Lovemore Munlo, SC

Date: 21 February 2007

PROSECUTOR **against** **Charles Ghankay TAYLOR**
(Case No. SCSL-03-01-PT)

DECISION OF THE PRESIDENT ON URGENT AND PUBLIC DEFENCE MOTION REQUESTING CESSATION OF VIDEO SURVEILLANCE OF LEGAL CONSULTATIONS

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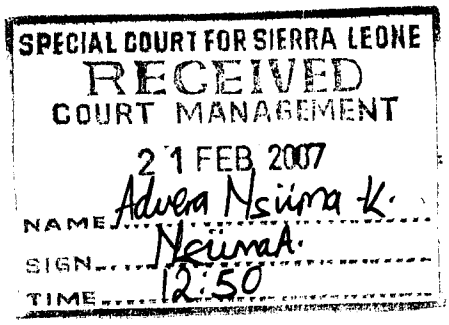

I. PROCEDURAL HISTORY

1. On 30 November 2006 Trial Chamber II ("Trial Chamber") dismissed the Applicant Charles Ghankay Taylor's ("Applicant") Motion[1] requesting that Chamber "order the immediate removal of the surveillance camera from any conference room used for legal consultations by Mr. Taylor."[2] The Trial Chamber found that the detention issues raised in the Motion were within the administrative preserve of the Registrar, with the right of appeal to the President and that therefore the Motion was premature. It 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]

2. On 15 December 2006 the Applicant filed a Second Defence Motion before the Trial Chamber for Cessation of Video Surveillance of Legal Consultations and requesting "the President", inter alia, "to order the immediate removal of the surveillance camera from any conference room used for legal consultations by Mr. Taylor."[4]

3. On 8 January 2007 the Applicant filed an Urgent and Public *Corrigendum* to the Second Defence Motion in which he stated that "due to still unexplained, but apparently administrative oversight on the part of the Defence, the cover sheet of the motion was purportedly addressed to Trial Chamber II. This was in error. The motion, in seeking at least a temporary stay in the ongoing video surveillance of Mr. Taylor's legal consultations, in contravention of his rights, requires the President's immediate attention."[5]

4. The Applicant further requested "that the President urgently direct that the cover page of the motion be replaced with the correct cover page (*Appendix B*), and the motion be *immediately* placed before the President."[6]

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[1] Urgent and Public Defence Motion Requesting Removal of Camera from Conference Room, (Case No. SCSL-03-01-PT), filed 28 November 2006.
[2] *Ibid.* para. 30.
[3] *Prosecutor against Charles Ghankay Taylor*, (Case No. SCSL -03-1-PT), Decision on Urgent and Public Defence Motion Requesting Removal of Camera from Conference Room, 30 November 2006, page 4.
[4] Urgent and Public Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, (Case No. SCSL-03-01-PT), filed 15 December 2006, para. 30.
[5] Urgent and Public *Corrigendum* to the Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, (Case No. SCSL-03-01-PT), filed 8 January 2007, para. 1.
[6] *Ibid.* para. 2.

5. Finally, the *Corrigendum* stated that "the Defence also requests that Trial Chamber II be notified that the Motion, as clear from its body, was addressed to the President, and that its cover sheet has now been amended to reflect that."[7]

6. It is necessary to note here that the Applicant did not say under which authority he was requesting the President to urgently direct that the cover page of the Motion be replaced with what he says is the correct cover page (Appendix B) and that the Motion be immediately placed before the President.

7. Without any direction from the President as requested the cover page was replaced to read: "Before Justice George Gelaga King, President," instead of before the Judges of the Trial Chamber.

8. On 19 January 2007 the Registrar filed what is stated to be the "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" ("the Rules").[8]

9. On 23 January 2007 the Applicant filed 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 19 January 2007."[9]

10. On 29 January 2007 the Registrar filed the "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."[10]

11. On 1 February 2007 the Applicant filed the "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."[11]

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[7] Urgent and Public *Corrigendum* to the Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultations, (Case No. SCSL-03-01-PT), filed 8 January 2007, para. 3.
[8] (Case No. SCSL-03-01-PT), pages 1-6.
[9] (Case No. SCSL-03-01-PT), pages 1-9.
[10] (Case No. SCSL-03-01-PT), pages 1-7.
[11] (Case No. SCSL-03-01-PT), pages 1-5.

II. DELIBERATION

A. The Original Motion

12. The original Defence Motion was filed before Trial Chamber II. It named the Office of the Prosecutor and Counsel for Charles Ghankay Taylor as "the Parties and/or any other State, organisation or person that shall receive the document filed."[12] It did not name the Registrar as a party or respondent. The Applicant submitted, inter alia, that the Chamber, rather than the President of the Special Court for Sierra Leone ("SCSL"), had the inherent jurisdiction to review administrative decisions that impact Mr. Taylor's substantive rights and that "Mr. Taylor's right to freely communicate with his lawyer, an element of fair trial under Article 17(4)(b), is [...] compromised by video surveillance of his privileged consultations with his legal team."[13]

13. He went on to complain that the Defence received no reply to an e-mail sent on 14 November 2006 to the Head of Detention Services, the Principal Defender and Deputy Registrar of the SCSL requesting that the video surveillance cameras be removed immediately from the consultation rooms.[14]

14. Furthermore, he articulated the fact that the Memorandum of Understanding regarding Administrative Arrangements between the International Criminal Court and the Special Court for Sierra Leone, dated 13 April 2006 ("Memorandum of Understanding between the ICC and SCSL"), granted the SCSL jurisdiction and authority over Mr. Taylor. He referred to Article 6.4 (Detention Services and Facilities) which provides:

> "The Special Court shall retain full legal control and authority over the Detainee and shall assume full legal responsibility [*sic*] for all aspects arising out of the provision of the day to day detention services and facilities under this Article including the well-being of the Detainee."[15]

15. The Applicant's quotation is inaccurate. Article 6.4 of the Memorandum of Understanding between the ICC and SCSL reads:

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[12] Article 4(A)(vi) of the Practice Direction on Filing Documents before the Special Court for Sierra Leone, as amended 10 June 2005.
[13] Urgent and Public Defence Motion Requesting Removal of Camera from Conference Room, (Case No. SCSL-03-01-PT), filed 28 November 2006, para. 12.
[14] *Ibid.* para. 4.
[15] *Ibid.* para. 13.

> "The Special Court shall retain full legal control and authority over the Detainee and shall assume full legal responsibility for the custody of the Detainee. In particular, the Special Court shall remain fully responsible for all aspects arising out of the provision of the day to day detention services and facilities under this Article including the well-being of the Detainee."

16. The Applicant cited Rule 44(D) of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Special Court for Sierra Leone or Otherwise Detained on the Authority of the Special Court for Sierra Leone ("Rules of Detention"), which states that visits by counsel at the SCSL "shall be conducted in the sight of but not within the hearing of the staff" and pointed out the similarity with Regulation 183(1) of the Regulations of the Registry of the International Criminal Court ("ICC"),[16] which states that some visits "shall be conducted within the sight but not the hearing, whether direct or indirect, of the staff of the detention centre, while others shall also 'be monitored by video surveillance.'"[17] He argued that video surveillance is an "indirect" mode of surveillance "not envisaged by the drafters of the two sets of Regulations."[18] He concluded that the ICC Detention Unit's actions are contrary to the Memorandum of Understanding between the ICC and SCSL.

B. The Decision of Trial Chamber II and Subsequent Procedural Steps

17. The original Defence Motion named the Prosecutor as a party. There was no Response filed by the Prosecutor. Not surprisingly there was no Response from the Registrar as he was not named as party or respondent. On 30 November 2006 the Trial Chamber issued its Decision in which it found "that the detention issues raised in the Motion are within the administrative preserve of the Registrar, with right of appeal to the President, and that therefore the Motion is premature,"[19] (Emphasis mine). The Trial Chamber dismissed the Motion and 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. Rule 59(C) of the Rules of Detention deals with complaints and provides:

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[16] Regulations of the Registry, ICC-BD/03-01-06-Rev.1., as revised 25 September 2006.
[17] Urgent and Public Defence Motion Requesting Removal of Camera from Conference Room, (Case No. SCSL-03-01-PT), filed 28 November 2006, paras. 15 and 16.
[18] *Ibid.* para. 17.
[19] *Prosecutor against Charles Ghankay Taylor*, (Case No. SCSL -03-1-PT), Decision on Urgent and Public Defence Motion Requesting Removal of Camera from Conference Room, 30 November 2006, page 4.

"Each complaint shall be dealt with promptly by the Registrar and replied to without undue delay."

18. On 8 December 2006 in response to an e-mail from the Applicant, the Deputy Registrar wrote to him stating that he had discussed the video surveillance issue with representatives of the ICC and that he was awaiting a detailed response from them. He went on: "I understand the urgency of the matter [...] We will endeavour to provide you with our position before the end of next week so that you can decide by then how to proceed with this matter, if necessary at all."[20]

19. On 15 December 2006 the Applicant's counsel wrote to the Registrar: "We regard the continuation of the current surveillance of legal consultations, and non-responsiveness from the Registry as of the last day of this Winter term, as a *de facto* refusal of our request."[21]

C. The Second Defence Motion, The Corrigendum and The Registrar's Submissions

20. On the same day, 15 December 2006, the Applicant filed before the same Trial Chamber a Second Defence Motion Requesting Cessation of Video Surveillance of Legal Consultation. Here again the other party named was the Prosecutor and despite the earlier decision of the Trial Chamber that the detention issues raised in the original motion were within the administrative preserve of the Registrar, the Registrar was not named as a party or respondent. This second Motion which was substantially in the same vein as the original Motion also received no Response from the Prosecutor.

21. There then followed the filing of the *Corrigendum* referred to in paragraph 3 *supra*. The President did not make any order, nor did he direct that the cover page of the Motion be replaced with the correct cover page (Appendix B), nor did he order "that the motion be immediately filed before the President."[22]

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[20] E-mail from the Deputy-Registrar of the SCSL to Counsel for Charles Ghankay Taylor, dated 8 December 2006.
[21] Letter to the Registrar of the SCSL signed by Counsel to Charles Ghankay Taylor, dated 15 December 2006.
[22] See Paragraph 4 *supra*.

22. In the face of this obvious and patent irregularity, proceedings continued unabated and on the 19 January 2007 the Registrar, as stated in paragraph 8 *supra*, filed the "Registrar's Submission [...] Pursuant to Rule 33(B) of the Rules."

23. In paragraph 9 of the Submission the Registrar states: "In accordance with Rule 33(B) of the Rules of Procedure and Evidence, the Registrar submits the present brief to the President."[23] (Emphasis mine). This procedure is irregular for the reasons following.

D. Rule 33(B) of the Rules of Procedure and Evidence and the Registrar's Submissions

24. Rule 33(B) of the Rules provides:

> "The 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, including that of implementing judicial decisions, with notice to the parties where necessary" (Emphasis mine).

Quite clearly the rule empowers the Registrar to make representations to Chambers and not to the President as President. It is clear from Article 11 of the Statute of the Special Court ("the Statute") that the Organs of the Special Court are:

> "(a) The Chambers, comprising one or more Trial Chambers and an Appeals Chamber;
> (b) The Prosecutor; and
> (c) The Registry" (Emphasis mine).

It follows that such representations may only be made to the President when he is empanelled jointly with Appeals Chamber Justices, which he is not in this Motion. In the circumstance, the Registrar's representations or "submissions" must be deemed to be irregular.

25. The Trial Chamber had ruled that the detention issues raised in the Motion were within the administrative preserve of the Registrar and urged the Chief of Detention and the Registrar to deal with the matter promptly. This finding of the Trial Chamber is supported by the Rules of

[23] 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, (Case No. SCSL-03-01-PT), filed 19 January 2007, para. 9.

Detention, which Rules are to be applied in conjunction with the relevant provisions of the Agreement between the United Nations and the Government of Sierra Leone signed on 16 January 2002, the Rules, and the Headquarters Agreement. [24] As to 'Responsibility for Detention Facility,' the Rules of Detention provide:

> "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."[25] (Emphasis mine).

26. A proper construction of that Rule shows that it is clearly within the competence of the Registrar to take all decisions relating to the detention issues raised in the Motion and to ensure that any such decisions are carried out. In other words, instead of filing "submissions," he should on the basis of what he states in his submissions, have made a decision on the video surveillance issues and communicated that decision to the officials concerned in order to ensure that the Applicant's complaint was dealt with promptly and without delay, in accordance with the provisions of Rule 59(C) of the Rules of Detention. This rule of course takes its genesis from the Statute which clothes the Registrar with responsibility for the administration and servicing of the Special Court.[26]

E. Supervisory Powers of the President over the Registrar

27. It is instructive to note that it is under the authority of the President that the Registrar is made responsible for the administration and servicing of the SCSL and it is under that authority that the Registrar serves as the Special Court's channel of communication.[27] It is also specifically provided in the Rules that the President shall "**supervise** the activities of the Registry as well as

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[24] *See* Rule 2 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before The Special Court for Sierra Leone or Otherwise Detained on the Authority of the Special Court for Sierra Leone, as amended 14 May 2005.
[25] *Ibid.* Rule 3.
[26] Article 16 of the Statute of the Special Court for Sierra Leone, 16 January 2002.
[27] *See* Rule 33(A) of the Rules of Procedure and Evidence, as amended 24 November 2006.

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exercise all the other functions conferred on him by the Agreement, the Statute and the Rules."[28] (Emphasis mine).

F. Is Video Surveillance Justified?

28. Under those aforesaid powers, in my supervisory capacity I shall entertain the submissions of the Registry even though I have held they were made irregularly to me. The most crucial submission of the Registrar is when he posits that Regulation 183(1) of the Regulations of the Registry of the ICC would not justify video surveillance of visits between a detainee and his counsel.[29]

29. Having called in aid the following,

Rule 97 of the Rules:

> "All communications between lawyer and client shall be regarded as privileged"

Rule 44(A) of the Rules of Detention:

> "Each Detainee shall be entitled to receive visits from his Counsel and Legal Assistant and to communicate fully and without restraint by letter or telephone with his Counsel and Legal Assistant [...] All such communications shall be privileged, unless otherwise ordered by a Judge or a Chamber"

and Rule 44(D) of the Rules of Detention:

> "Visits from Counsel and Legal Assistants shall be conducted in the sight of but not within the hearing of the staff of the Detention Facility,"

the Registrar came to the conclusion that Regulation 183(1) is not applicable to the privileged communications between a detainee and his counsel and *a fortiori* decided that "the use of video-

[28] *See* Rule 19(A) of the Rules of Procedure and Evidence, as amended 24 November 2006.
[29] 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, (Case No. SCSL-03-01-PT), filed 19 January 2007, para. 19.

surveillance of the legal consultations of the Detainee Charles Taylor with his Counsel be discontinued."[30]

30. Having so concluded and decided, it was the duty of the Registrar to communicate his decision to the relevant officers at the ICC in The Hague where the Applicant is detained and to ensure that they comply with his decision.

III. DISPOSITION

31. For the above reasons and acting in my supervisory capacity I direct that:

(i) the Registrar communicate forthwith to the relevant ICC authorities in The Hague his Decision that "the use of video surveillance of the legal consultations of the Detainee Charles Taylor with his Counsel be discontinued;"

(ii) the Registrar ensure that his said Decision is complied with forthwith.

32. The filing of further pleadings after the Reply to the Registrar's Submission, engendering a further multiplication of issues must be frowned upon as highly irregular and impermissible and consequently of no effect. That kind of procedural innovation and escalation is reminiscent of the interminable proceedings in Chancery in the case of Jarndyce v. Jarndyce in Charles Dickens' Bleak House[31] and has no place in our Rules of Procedure and Evidence.

Done in Freetown, this 21st Day of February 2007.

Hon. Justice George Gelaga King
President

[Seal of the Special Court]

[30] 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, (Case No. SCSL-03-01-PT), filed 19 January 2007, para. 23.
[31] Charles Dickens, Bleak House (Nicola Bradbury ed., Penguin Books 2003) (1853).