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SCSL-03-01-PT  
(3351-3354)

## SPECIAL COURT FOR SIERRA LEONE

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## TRIAL CHAMBER II

Before: Justice Richard Lussick, Presiding Judge  
Justice Teresa Doherty  
Justice Julia Sebutinde

Registrar: Lovemore G. Munlo, SC

Date: 23 June 2006

PROSECUTOR                      Against                      Charles Ghankay Taylor  
(Case No.SCSL-03-1-PT)

DECISION ON DEFENCE ORAL APPLICATION FOR ORDERS PERTAINING TO  
THE TRANSFER OF THE ACCUSED TO THE HAGUE

Office of the Prosecutor:

Brenda J. Hollis  
Christopher C. Santora  
Kirsten Keith

Defence Counsel for Charles G. Taylor:

Karim A. A. Khan

SPECIAL COURT FOR SIERRA LEONE	
<b>RECEIVED</b>	
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23 JUN 2006	
NAME	<i>Neil Gibson</i>
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**TRIAL CHAMBER II** ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court"), composed of Justice Richard Lussick, presiding, Justice Teresa Doherty and Justice Julia Sebutinde;

**SEISED** of the Defence application made orally during the Status Conference held on 21 June 2006 for the following orders;

1. An order directing the Registrar to take all necessary steps to ensure that visas for the Netherlands for the family members of the Accused are facilitated without any further delay;
2. An order directing the Registrar to allow the Accused to receive and make telephone calls in precisely the same way that he was allowed to do in Freetown;
3. An order scheduling a status conference in The Hague;

**CONSIDERING** the oral Defence submissions made in support of the application and the oral Prosecution submissions in reply<sup>1</sup>;

**RECALLING** the Scheduling Order for Status Conference dated 9 June 2006, whereby the Trial Chamber ordered that a Status Conference be held on Wednesday, 21 June 2006;

**NOTING** United Nations Security Council Resolution 1688 adopted on 16 June 2006, creating a Chapter VII legal basis for the Special Court to detain the Accused and conduct the trial in the Netherlands;

**NOTING** the Order Changing Venue of Proceedings dated 19 June 2006 ("President's Order"), whereby the President of the Special Court ("President") ordered that the Accused be transferred and detained in The Hague and that the pre-trial proceedings, trial, and any appeal of the Accused be conducted in The Hague;

**NOTING** the Order by the Registrar Pursuant to Rule 64 dated 19 June 2006 ("Registrar's Order") whereby the Registrar made certain orders relating to the detention of the Accused in the International Criminal Court ("ICC") 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 of the Special Court ("Rules of Detention") shall be applicable;

**NOTING** the Endorsement Pursuant to Rule 64 dated 19 June 2006, whereby the President endorsed the Registrar's Order;

**AWARE** that pursuant to the President's Order the Accused was transferred to the ICC Detention Centre in The Hague on Tuesday, 20 June 2006;

**NOTING** the Defence submission that since the transfer of the Accused to The Hague, Defence Counsel has not been able to communicate with his client and consequently it was not possible for the Defence to proceed to the merits or the substance of the Status Conference in the absence of the Accused;

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<sup>1</sup> Transcript 21 June 2006, pages 2 - 15.

**MINDFUL** of the provisions of Articles 16 and 17 the Statute of the Special Court for Sierra Leone ("Statute"), and of Rules 19, 33, 54, 64 and 65bis of the Rules of Procedure and Evidence ("Rules"), and of Rules 3, 40, 44, and 59 of the Rules of Detention, and of Regulations 97(1) and 99(1)(i) of the Regulations of the International Criminal Court (Detention Matters) ("ICC Regulations");

**NOTING** that by virtue of Article 16(1) of the Statute, the Registry is vested with the responsibility for the administration and servicing of the Special Court;

**NOTING** that Rule 19(A) of the Rules provides that the President shall supervise the Registry's activities and that under Rule 33(A) of the Rules the Registrar shall carry out his responsibilities for the administration and servicing of the Special Court under the authority of the President;

**NOTING** that under Rule 3 of the Rules of Detention the Chief of Detention, under the authority of the Registrar, has sole responsibility for all aspects of the daily management of the Detention Facility, and that pursuant to the Registrar's Order all detention officers of the ICC shall act as representatives of the Chief of Detention of the Special Court<sup>2</sup>;

**NOTING** that Rule 59 of the Rules of Detention establishes a complaints procedure whereby a detainee or his counsel may complain to the Chief of Detention and, if not satisfied with his response, can make a written complaint to the Registrar;

**NOTING** that Regulation 97(1) of the ICC Regulations provides: "A detained person shall be informed of his or her right to communicate fully, where necessary with the assistance of an interpreter, with his or her defence counsel or assistants to his or her defence counsel as referred to in regulation 68";

**NOTING** that Regulation 99(1)(i) of the ICC Regulations provides: "Every detained person shall be entitled, inter alia, to the following: (i) to communicate by letter or telephone with his or her family or other persons";

**CONSIDERING** that it is well established that a Trial Chamber does not have jurisdiction to instruct the Registrar in administrative matters that are within his primary competence,<sup>3</sup> except where such matters affect the fundamental right of an accused to a fair trial<sup>4</sup>;

**SATISFIED** that in the present case, the fact that the Accused and his Counsel could not communicate with one another contravenes the right of the Accused under Article 17(4)(b) of the Statute to communicate with his counsel, an issue related to the right of the Accused to a fair trial;

**HOLDING** that the authority of the Trial Chamber to oversee an administrative act of the Registrar is limited to situations where fair trial rights are involved, and that complaints that the Accused cannot make or receive telephone calls to or from persons other than his counsel do not impact upon

<sup>2</sup> Order by the Registrar Pursuant to Rule 64, Order 3.

<sup>3</sup> See, for example, Prosecutor v. Brima et al., Case No. SCSL-2004-16-AR73, Decision on Brima-Kamara Defence Appeal Motion, dated 8 December 2005, para.71, and Separate and Concurring Opinion of Justice Robertson, paras.91- 94 and cases noted there; Prosecutor v. Gatete, ICTR-2000-61-1, Decision on the Defence Request for Necessary Resources for Investigations, dated 2 November 2004, para.5; Prosecutor v. Norman et al., SCSL-04-16-T, Decision on Confidential Motion on Detention Issue, dated 3 March 2005, paras.8-10.

<sup>4</sup> See cases cited in previous footnote.

his rights to a fair trial and must follow the complaints procedure prescribed by Rule 59 of the Rules of Detention;

**HOLDING FURTHER** that any failure by the Registrar to facilitate visas for the family members of the Accused does not affect or concern any fair trial rights of the Accused and that therefore the Trial Chamber does not have jurisdiction to entertain that particular application;

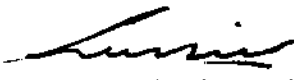
**RECOGNISING** that among the rights guaranteed to the Accused by Article 17 of the Statute is the right under Article 17(4)(c) to be tried without undue delay;

**HEREBY GRANTS** the Defence application in part and **ORDERS** as follows:

1. The Registrar is directed to ensure as a matter of urgency that facilities are in place to enable the Accused to communicate fully with his counsel.
2. The Registrar is directed to ascertain the earliest date possible for the holding of a Status Conference in The Hague and to notify the Trial Chamber accordingly.
3. The other orders sought by the Defence are not within the jurisdiction of the Trial Chamber and are denied.

Done at Freetown, Sierra Leone, this 23<sup>rd</sup> day of June, 2006.

  
Justice Teresa Doherty

  
Justice Richard Lussick  
Presiding Judge

  
Justice Julia Sebutinde

