



**TRIAL CHAMBER II** ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court"), composed of Justice Richard Lussick, Presiding Judge, Justice Teresa Doherty and Justice Julia Sebutinde;

**SEISED** of the Public and Urgent Defence Motion Requesting Removal of Camera from Conference Room, filed on 28 November 2006 ("Motion"), wherein the Defence seeks an order from the Trial Chamber for the immediate removal of the surveillance camera from any conference room used for legal consultations by the Accused in the Detention Facility of the International Criminal Court ("ICC") on the grounds that:

- (i) the right of the Accused to freely communicate with his lawyer, an element of fair trial under Article 17(4)(b), is compromised by video surveillance<sup>1</sup>;
- (ii) the video surveillance of legal consultations contravenes the principle of legal professional privilege<sup>2</sup>;
- (iii) as a SCSL detainee, the Accused should be entitled to the equal protection of the Chamber, with the same rights as his fellow detainees at the Special Court Detention Facility at Freetown<sup>3</sup>;

**NOTING** that the Prosecution does not intend to file a response to the Motion<sup>4</sup>;

**RECALLING** the Order Changing Venue of Proceedings, dated 19 June 2006, whereby the President of the Special Court ("President") ordered that "Charles Ghankay Taylor be transferred to and detained in appropriate facilities in The Hague, the Netherlands, in accordance with the conditions set out in the agreements between the Registrar, the International Criminal Court and the Government of the Netherlands";

**NOTING** the provisions of the Memorandum of Understanding Regarding Administrative Arrangements Between the International Criminal Court and the Special Court for Sierra Leone, dated 13 April 2006, in particular Articles 6 and 7 thereof;

**NOTING** the Order by the Registrar Pursuant to Rule 64, dated 19 June 2006, 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*"<sup>5</sup> 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"<sup>6</sup>;

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

<sup>1</sup> Motion, para. 12.

<sup>2</sup> Motion, para. 22.

<sup>3</sup> Motion, para. 28.

<sup>4</sup> Letter from James C. Johnson, Chief of Prosecutions, to Trial Chamber II dated 29 November 2006, received on 30 November 2006.

<sup>5</sup> Order No. 2.

<sup>6</sup> Order No. 5.

NOTING that Article 16(1) of the Statute of the Special Court for Sierra Leone ("Statute") vests in the Registry the responsibility for the administration and servicing of the Special Court;

NOTING that Rule 19(A) of the Rules of Procedure and Evidence ("Rules") provides that the President shall supervise the Registry's activities, and that under Rule 33(A) 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 33(C), the Registrar is responsible for ensuring the rights of the Accused in detention and is required to be "mindful of the need to ensure respect for human rights and fundamental freedoms and particularly the presumption of innocence";

NOTING that Rule 59 of the Rules of Detention prescribes a complaints procedure in the following terms:

- (A) Each Detainee or his Counsel may make a complaint to the Chief of Detention or his representative at any time. A log of all complaints made shall be kept by the Chief of Detention.
- (B) If not satisfied with the response from the Chief of Detention, the Detainee shall have the right to make a written complaint, without censorship, to the Registrar.
- (C) Each complaint shall be dealt with promptly by the Registrar and replied to without undue delay;

NOTING that the Defence lodged a complaint to the Head of Detention and the Deputy Registrar of the Special Court on 14 November 2006 asking for the video surveillance cameras to be removed immediately from the consultation rooms, but that the Defence has not received a reply as yet<sup>7</sup>;


CONSIDERING that the jurisprudence of the Special Court establishes that it falls within the powers of the President to review decisions of the Registrar in matters relating to the detention of an Accused "especially in cases where possible breaches of rules concerning the basic rights of detainees are alleged"<sup>8</sup>;

CONSIDERING THEREFORE that only in limited circumstances may Trial Chambers review the administrative decisions of the Registrar where they are closely related to the fundamental trial rights of the accused and hence may negatively impact on his statutory rights under Article 17(2) of the Statute and therewith ultimately on the trial proceedings, but that this exercise of power by the Trial Chamber should not be used as a substitute for a general power of review which has not been expressly provided for in the rules of the Special Court<sup>9</sup>;

<sup>7</sup> Motion, para. 4.

<sup>8</sup> *Prosecutor v. Norman, Fofana, Kondewa*, Case No. SCSL04-14-PT, Decision on Motion to Reverse the Order of the Registrar under Rule 48 (c) of the Rules of Detention, 18 May 2004, para. 4; see also *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL04-16-T, Decision on the Defence Motion for the Temporary Provisional Release to Allow the Accused Santigie Borbor Kanu to Visit his Mother's Grave, 18 October 2005, para. 12.

<sup>9</sup> See as also *Prosecutor v. Blagojevic et al.*, Case No. IT-02-60-AR73.4, Public and Redacted Reasons for Decision on Appeal by Vidoje Blagojevic to Replace his Defence Team, 7 November 2003, para. 7; *Prosecutor v. Gatete*, Case No. ICTR-00-61-T, Decision on the Defence Request for Necessary Resources for Investigations, 2 November 2004.



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;

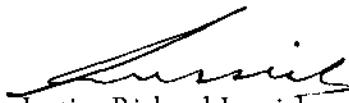
FOR THE ABOVE REASONS

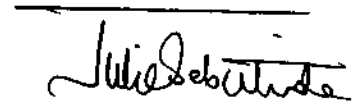
HEREBY DISMISSES the Motion and

URGES the Chief of Detention and the Registrar to deal with the matter promptly in accordance with Rule 59(C) of the Rules of Detention.

Done at Freetown, Sierra Leone, this 30<sup>th</sup> day of November 2006.

  
Justice Teresa Denerty

  
Justice Richard Lussick  
Presiding Judge

  
Justice Julia Sebutinde

