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SCSL-03-01-T  
(9734-9746)

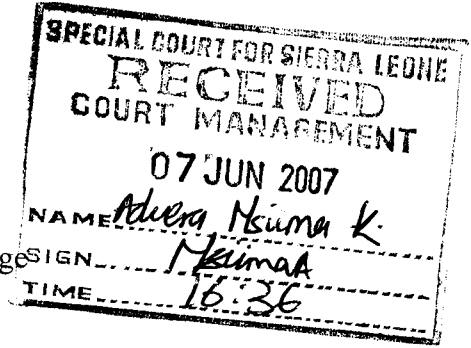
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**SPECIAL COURT FOR SIERRA LEONE**  
**OFFICE OF THE PROSECUTOR**  
Freetown – Sierra Leone

Before: Justice Julia Sebutinde, Presiding  
Justice Richard Lussick  
Justice Teresa Doherty  
Justice El Hadji Malick Sow, Alternate Judge

Acting Registrar: Mr. Herman von Hebel

Date filed: 7 June 2007



**THE PROSECUTOR**

**Against**

**Charles Taylor**

Case No. SCSL-03-01-T

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**PUBLIC and URGENT**

**PROSECUTION'S MOTION REGARDING LEGAL REPRESENTATION OF THE ACCUSED**

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Office of the Prosecutor:  
Ms. Brenda J. Hollis  
Ms. Ann Sutherland

Counsel for the Accused:  
Mr. Karim A.A. Khan

Copy to:  
Office of the Principal Defender

**I. INTRODUCTION**

- 1. In light of the Trial Chamber order that the Prosecution begin presenting evidence in its case on 25 June 2007, the Prosecution files this motion, pursuant to Rule 73 of the Rules of Procedure and Evidence (“Rules”), requesting urgent relief in order to fulfil its on-going disclosure obligations<sup>1</sup> and to efficiently prepare to present its evidence.<sup>2</sup> The Prosecution requests that the Trial Chamber issue an order that Mr. Khan is to continue to act in the capacity of lead defence counsel and in that capacity, accept service of disclosure and other service issued pursuant to the Statute and Rules.
- 2. The Chamber is aware of the extensive preparation and cost that is required for the Prosecution to commence leading evidence on 25 June 2007. The Prosecution is concerned that should the matter of counsel not be resolved by this date, any delay would come with significant consequences. The Prosecution anticipates calling up to ten witnesses in the first session, four of whom will be tendered as experts. The witnesses generally will be flown from North America, Africa and Europe. Witnesses’ travel has either been arranged or is being arranged at this time by the Witness and Victim Section in Freetown.

**II. BACKGROUND**

- 3. During the court proceedings on 4 June 2007 (“Proceedings”), Mr. Khan read out parts of a letter from the Accused in which the Accused concluded that he “will not receive a fair trial before the Special Court”, and the Accused “must decline to attend any further hearings in this case until

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<sup>1</sup> The obligations of the Prosecution include and are not limited to: (1) disclosure of the identity and unredacted statements of the protected witnesses it intends to call 42 days before their anticipated testimony. The Prosecution is in possession of a package that requires urgent delivery to the Defence in order to meet its obligations to disclose unredacted statements related to witnesses scheduled to testify in the first session; (2) notice of experts along with their reports 21 days before their scheduled testimony pursuant to Rule 94*bis* of the Rules; and (3) providing notice two weeks in advance of the calling of scheduled witnesses upon which the Prosecution intends to rely, as agreed at the pre-trial conference on 7 May 2007.

<sup>2</sup> The Prosecution is awaiting responses from the Defence to two outstanding motions, namely, (1) Prosecution’s Motion for Admission of Material Pursuant to Rules 89(C) and 92*bis*, and (2) Prosecution’s Motion for Judicial Notice.

adequate time and facilities are provided to my Defence team [...].”<sup>3</sup> In the letter, the Accused stated that “[i]t follows that I must terminate instructions to my legal representatives in this matter. Despite my complete confidence in their ability and competence, I must ask that they cease to represent me before the Special Court and instruct them accordingly.”<sup>4</sup> Further, Mr. Khan stated during the Proceedings that “Mr. Taylor has complied with this rule and has given in writing a notice to the Registrar in which he has terminated [m]y representation and is representing himself.”<sup>5</sup>

4. During the Proceedings, Mr. Khan stated to the Trial Chamber that his legal representation has been “terminated” by the Accused, and that, pursuant to his own professional responsibilities, he could no longer represent the Accused.<sup>6</sup>
5. On 4 June 2007, after Mr. Khan advised the Trial Chamber that his services had been terminated and after he left the courtroom, the Defence filed (10.30 a.m. Freetown time; 12.30 p.m. Hague time) six pleadings, all of them listing Mr. Khan as lead counsel, or counsel for the Accused, five of them bearing his apparent signature:
  - (a) Defence Motion to Exclude, and in the Alternative, Limit the Admittance of Stephen Ellis’ Testimony and Expert Report (SCSL-03-01-272);
  - (b) Defence Reply to Prosecutor’s “Document dated 25 May 2007 Addressed to the Council of Judges by Defence Counsel for the Accused Charles Taylor, Entitled “Corrected Version: Defence Motion Before the Council of Judges to Review the President’s Decision to Transfer the Venue of Mr. Taylor’s Trial” (SCSL-03-01-273);
  - (c) Defence Response to “Prosecution’s Motion for an Order Establishing Guidelines for the Conduct of Trial Proceedings” (SCSL-03-01-274);

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<sup>3</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, 4 June 2007, Transcript (“T.”) 10 (lines 15-19).

<sup>4</sup> T. 10 (lines 20-22).

<sup>5</sup> T. 21 (lines 1-3).

<sup>6</sup> T. 21 (lines 5-9).

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- (d) Defence Application Pursuant to Rule 47(G) Requesting the President to Reverse the Registrar’s “Decision on the Prosecution Request for Restrictions and Conditions on Visits and Communications by the Accused, Charles Ghankay Taylor” (SCSL-03-01-275);
  - (e) Defence Application for Leave to Appeal the 29 May 2007 “Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Unsworn Statement from the Dock” (SCSL-03-01-276); and
  - (f) Defence Motion Seeking Special Measures with Regard to Resolutions 1521 and 1532 of the United Nations Security Council (Rule 8 and 54 of the Rules of Procedure and Evidence) (SCSL-03-01-277).
6. On 4 June 2007, shortly after the Proceedings concluded, the Prosecution spoke briefly by telephone with Mr. Khan. Mr. Khan informed the Prosecution that he considered himself no longer acting as defence counsel for the Accused pursuant to the abovementioned termination of instructions. On 5 June 2007, the Prosecution again spoke briefly with Mr. Khan at which time the latter confirmed that he would not accept service of disclosure as he was not instructed to do so.
7. Based on information and belief, representatives of the Principal Defender’s Office (“PDO”) have been in The Hague and in contact with the Accused for some time. To date, the Prosecution has received no notification that the Principal Defender has issued any decision withdrawing Mr. Khan’s assignment as defence counsel.

**III. APPLICABLE LAW**

8. Rules 44 and 45 of the Rules apply to the assignment of counsel. Rule 44(B) states that assigned counsel are subject to the basic documents and

regulations issued by the SCSL,<sup>7</sup> and if applicable, the *Directive on the Assignment of Defence Counsel*.<sup>8</sup> Rule 45 (E) provides that:

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“...Counsel will represent the accused and conduct the case to finality. [...] Counsel shall only be permitted to withdraw from the case to which he has been assigned in the most exceptional circumstances. ...”

9. Rule 45 *bis* (B) provides that “[i]f a suspect or an accused elects to conduct his own defence, he shall so notify the Registrar in writing at the first opportunity.”
10. Article 18 of the Code specifically deals with the termination of counsel. Article 18 (A)(i) provides that Defence Counsel shall not represent a client if representation is terminated by the client. However, Article 18 (A) is subject to Article 18 (B) which provides that representation may only be terminated with the leave of a Judge or Chamber upon demonstration of good cause and where withdrawal is in the interests of justice. Further, Article 18 (D) provides that termination shall not take effect until replacement Defence Counsel is engaged by the client or assigned by the Principal Defender, or the client has notified the Registrar in writing of his intention to conduct his own defence.
11. Article 24 of the Directive provides that assigned counsel remain counsel until such time as the assignment is withdrawn by the Principal Defender. With respect to the operation of this provision, Trial Chamber I in the *Prosecutor v. Sesay et al* case, held that the administrative discretion conferred on the Principal Defender by virtue of Article 24 (A)(i) of the Directive is subject to review by the Presiding Judge of the Chamber, and that this discretion of the Principal Defender is separate and distinct from the discretionary authority vested in the Chamber pursuant to Rule 45 (D) of the Rules to replace an assigned Counsel under exceptional circumstances.<sup>9</sup>

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<sup>7</sup> Which includes the Agreement, Statute, Rules, Rules of Detention, Headquarters Agreement, the *Code of Professional Conduct for Counsel with the Right of Audience before the Special Court for Sierra Leone* (“Code”) and the codes of practice and ethics governing their profession.

<sup>8</sup> *Directive on the Assignment of Defence Counsel* issued by the Registrar on 1 October 2003 (“Directive”).

<sup>9</sup> *Prosecutor v. Sesay et al.*, SCSL-04-15-T-584, Written Reasons for the Decision on Application by Counsel for the Third Accused to Withdraw from the Case, 19 June 2006.

12. In other words, in order to cease to be counsel, what is required is either a decision of the Presiding Judge of the Trial Chamber, or a decision of the Principal Defender (the latter being subject to review by the Presiding Judge of the Trial Chamber).

#### IV. SUBMISSIONS

13. Mr. Khan has no basis to refuse to continue to act as lead defence counsel at this time. This purported termination is a disingenuous argument in light of the fact that subsequent to informing the Trial Chamber that he was not representing the Accused, he not only filed a response and a reply, but two motions and two applications requesting various forms of relief. He filed these in his capacity as lead defence counsel. There is nothing to indicate that these six filings were without the consent of the Accused. This action indicates that the purported termination of counsel's services was simply an attempt to manipulate the Proceedings to the Accused's advantage and, as such, undermines the Trial Chamber's authority and interferes with the orderly conduct of proceedings.
14. Mr. Khan continues to be lead defence counsel for the Accused. There has been no showing of good cause for his termination, nor is the termination in the interests of justice. Neither the Presiding Judge nor the Trial Chamber has given leave for Mr. Khan's representation to be terminated.<sup>10</sup> Accordingly, Mr. Khan has no basis to reject service of disclosure or any other material served on him in accordance with the Statute or Rules, nor any basis to refuse to continue out his other obligations as lead defence counsel. Even should such leave be given, Mr. Khan must continue to act as lead defence counsel until the requirements of Article 18 (D) are met.
15. The Prosecution informs the Trial Chamber that it has not served disclosure on the Accused because it has not been informed that the Accused intends to represent himself (by notifying the Registrar pursuant to Rule 45 *bis* of the

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<sup>10</sup> Article 18 (B) of the Code provides: "Where Defence Counsel is appointed by a Judge or Chamber as Stand-by or Court-Appointed counsel, representation may only be withdrawn or terminated with leave of a Judge or Chamber upon demonstration of good cause and where withdrawal or termination is in the interests of justice."

Rules). Attached to this Motion and marked as Annex A is a copy of a letter from the Accused addressed to the Presiding Judge of the Trial Chamber. Despite statements made by Mr. Khan to the contrary during the Proceedings, nowhere in this letter does the Accused state that he wishes to represent himself.

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16. In the event that the Principal Defender has issued a decision withdrawing Mr. Khan's assignment as lead defence counsel, the Prosecution respectfully submits that the Trial Chamber should not allow such withdrawal because it is not in the interests of justice to do so and it is an attempt to manipulate the proceedings. Such attempts should not be rewarded.

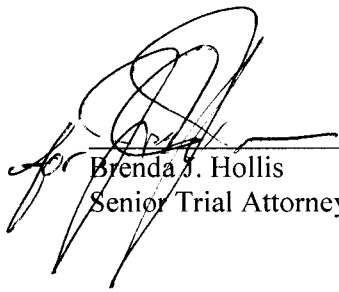
**V. RELIEF SOUGHT**

17. The Prosecution seeks the following relief:
- (a) That the Trial Chamber issue an order rejecting the purported termination of Mr. Khan's services as lead defence counsel because no good cause has been shown, it would not be in the interests of justice and the requirements of Article 18 (D) have not been met.
  - (b) That the Trial Chamber order Mr. Khan to continue to act in the capacity of lead defence counsel and in that capacity, to carry out all duties of lead defence counsel including acceptance of service of disclosure and other service issued pursuant to the Statute and the Rules.
  - (c) In the alternative, if the Trial Chamber declines to issue such orders to Mr. Khan as set out in paragraphs (a) and (b) above, the Prosecution requests that the Trial Chamber issue an order naming the personnel in the PDO who will now act as defence counsel for the Accused and order them to carry out all duties of defence counsel including acceptance of service of disclosure and service of other material filed in accordance with the Statute and the Rules.

Filed in Freetown,  
7 June 2007

For the Prosecution,

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Brenda J. Hollis  
Senior Trial Attorney

LIST OF AUTHORITIES

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*Prosecutor v. Sesay et al.*, SCSL-04-15-T-584, Written Reasons for the Decision on Application by Counsel for the Third Accused to Withdraw from the Case, 19 June 2006.



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Charles Ghankay Taylor  
ICCDU  
Scheveningen, Den Haag  
Netherlands

1 June 2007

Justice Julia Sebutinde, Presiding Judge  
Trial Chamber II  
The Special Court for Sierra Leone  
Jomo Kenyatta Road  
Freetown  
Sierra Leone

Cc: Justice Richard Lusick  
Justice Teresa Doherty

**re: Termination of Representation**

Your Honours,

It is with great sadness and regret that I write to inform you that I no longer feel able to attend and participate in the proceedings against me before the Special Court for Sierra Leone. Sadness, because at one time I hoped and had confidence in the Court's ability to dispense justice in a fair and impartial manner. Over time it has become clear that such confidence is misplaced.

Every one deserves justice. The people of Liberia and Sierra Leone, who for too many years have undergone tragic sufferings, deserve justice. The people of Africa, for whom the promise of independence was only pyrrhic, deserve justice. And I too, deserve at least the modicum of justice.

I have always, in my small way, been willing to make sacrifices for peace. I relinquished the Presidency of Liberia, and accepted exile in Nigeria, to ensure that the people of Liberia would no longer suffer war. As I said on 7 August 2003, when I left Liberia, I relinquished the Presidency because I could no longer preside over the suffering and humiliation of the Liberian people.

Till date, the Special Court has not demonstrated itself capable of delivering justice.

Justice is blind. Justice pursues truth. Justice is fair. Justice is immune to politics. It is not justice to preordain convictions. It is not justice to emaciate my defence to an extent that I am unable to launch an effective defence. It is not justice to throw all rights to a fair trial to the wind in a headlong rush to trial.

It seems apparent that there is a plain desire to reach a pre-determined decision of guilt in haste and without due regard to even the most basic fair trial rights as enshrined under international law.

Article 14 of the ICCPR and Article 7 of the African Charter on Human and People's Rights provide for the equality of arms between parties. Today marks the start of the trial against me. The Special Court's administration has been so dilatory that I have only one counsel to appear on my behalf. One counsel against a Prosecution team of nine lawyers. This is neither fair nor just. It is astonishing that, as the custodians of fairness, the Trial Chamber is prepared to countenance this position.

Given the size of the Prosecution team it is not surprising that it has been able to produce a seemingly never ending volume of material to be considered in this case. The limited defence resources have made it impossible to review all of this material and has distracted from the proper preparation of my defence.

My legal representative has not been provided the adequate time and facilities as guaranteed under Article 14 of the ICCPR and Article 7 of the African Charter. The numerous Defence requests for proper time to prepare have been ignored.

Defence preparations for trial have been further frustrated by the insidious presence of a camera in conference facilities in the Detention Unit, overseeing meetings between lawyer and client that are supposed to be privileged and confidential. The obvious result of this has been to seriously frustrate and hamper defence preparations for trial. The problem persisted continuously for three months, yet the Court granted only an 18 day extension for defence preparation.

My transfer to The Hague has left me cut off and in almost total isolation from my family and those closest to me. Their visits to The Netherlands are restricted to one visa being issued to one visitor at a time, for a maximum period of two weeks.

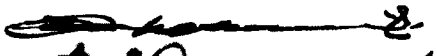
The Special Court's administration is ill-prepared to handle a trial of this magnitude in The Hague and is unwilling or unable to perform its basic functions. Despite this the Court advances with great haste to trial without any regard to the most fundamental procedural safeguards.

For all of these reasons, I am driven to the conclusion that I will not receive a fair trial before the Special Court at this point. It is therefore with great regret that I must decline to attend any further hearings in this case until adequate time and facilities are provided to my defence team and until my other long standing reasonable complaints are dealt with. It follows that I must terminate instructions to my legal representatives in this matter. Despite my complete confidence in their ability and competence, I must ask that they cease to represent me before the Special Court and instruct them accordingly.

I cannot participate in a charade that does injustice to the people of Sierra Leone and Liberia, and the people of Africa; and a disservice to the international community in whose name this court claims to speak. I choose not to be the figleaf of legitimacy for this process.

I hope and pray for a fair trial that will perhaps bring to an end these cycles of injustice. I stand ready to participate in such a trial, and let justice be done, for myself, and for those who have suffered far more than me in Liberia and Sierra Leone.

Yours Sincerely,

  
3rd June 2007  
4:35 p.m.

Charles Ghankay Taylor