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SCSL-03-01-T  
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**THE SPECIAL COURT FOR SIERRA LEONE**

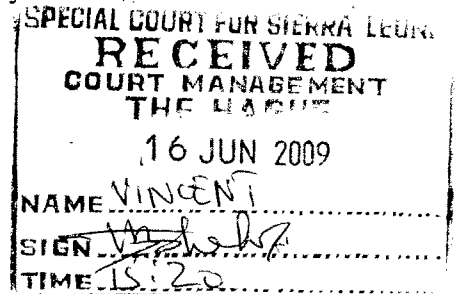
**Trial Chamber II**

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

**Acting Registrar:** Ms. Binta Mansaray

**Date:** 16 June 2009

**Case No.:** SCSL-03-01-T



**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

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**PUBLIC**

**DEFENCE REPLY TO CONFIDENTIAL "PROSECUTION RESPONSE TO URGENT DEFENCE MOTION FOR ADJOURNMENT OF TRIAL START DATE -- DUE TO INABILITY TO TAKE INSTRUCTIONS FROM THE ACCUSED CHARLES, GHANKAY TAYLOR"**

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**Office of the Prosecutor:**

Ms. Brenda J. Hollis  
Mr. Nicholas Koumjian

**Counsel for Charles G. Taylor:**

Mr. Courtenay Griffiths, Q.C.  
Mr. Terry Munyard  
Mr. Andrew Cayley  
Mr. Morris Anyah  
Mr. Silas Chekera  
Mr. James Supuwood

## I. INTRODUCTION

1. This is the Defence's Reply<sup>1</sup> to the "Prosecution Response to Urgent Defence Motion for Adjournment of Trial Start Date -- Due to Inability to Take Instructions from the Accused Charles, Ghankay Taylor".<sup>2</sup> The Defence's Motion<sup>3</sup> was filed on 12 June 2009 and sought relief from the Trial Chamber pursuant to, *inter alia*, Rule 54 of the Rules of Procedure and Evidence.
2. The proceedings in relation to the Motion are expedited and the Defence recognises that the Prosecution has had very limited time to compose and file its Response and appreciates the Prosecution's promptness in doing so.
3. Nevertheless, the Defence is left with the unwavering conviction that the relief sought by the Motion should be sustained.

## II. ARGUMENT

4. The Defence is surprised by the tone of the Response, given the seriousness of the situation. The Response not only disagrees with the length of adjournment proposed by the Defence, but with any adjournment at all. The Defence submits that, given the totality of the circumstances, such a position is unreasonable in the extreme.

### A. The Situation is On-Going and Merits the Defence's Caution

5. In the Motion, the Defence argued that the discovery of the legionella bacteria at the Detention Centre has caused an inevitable delay in the preparation of the Defence case because the Defence cannot take instructions from the Accused.<sup>4</sup> The Response contends that the discovery has caused no such delay and states that the contamination problem (as it puts it) was resolved within one day. The Response attaches evidence purporting to support that position. The evidence does no such thing. Indeed, the Response cites the Chief Custody Officer's statement that it will take twelve days to obtain the results of the tests of the water samples taken at the

<sup>1</sup> ("Reply")

<sup>2</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-795, "Prosecution Response to Urgent Defence Motion for Adjournment of Trial Start Date -- Due to Inability to take Instructions from the Accused Charles, Ghankay Taylor", 15 June 2009. ("Response"). The Response and its four annexes were filed confidentially.

<sup>3</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-792, "Urgent Defence Motion for Adjournment of Trial Start-Date Due to Inability to Take Instructions from the Accused, Charles Ghankay Taylor", 12 June 2009 ("Motion").

<sup>4</sup> Motion, paras 7-8.

Detention Centre and to confirm whether the bacteria are or are not present.<sup>5</sup> It is evident that the situation was not resolved within one day but is, in fact, on-going.

6. Whilst it is on-going, the Detention Centre, along with the Defence, are taking abundant precautions belying the Response's assertion that there is no risk. If there really is no risk, it makes no sense for the Detention Centre to impose safeguards such as the "installation of filters in showers" and "constant observation of detained persons".<sup>6</sup> The only report attached by the Prosecution written by a medical professional states that, "no one was allowed to use the showers or any warm water tap from the moment of detection of the bacterium",<sup>7</sup> suggesting that there is a risk that those who used the showers or warm water taps beforehand were exposed to the bacteria, which is why the detainees are under "constant observation". Again the Prosecution's own evidence quotes the medical officer's opinion that the situation was "under control"<sup>8</sup> which is not the same as "resolved" and does not justify the Prosecution's own assertions.
7. As previously mentioned in the Motion, the Defence does not wish to engage in speculation, but it seems sensible to err on the side of caution with respect to what may or may not have happened and the degree to which any individual, including the Accused, was exposed to the bacteria and/ or related side-effects. In this regard, the emails and letters attached by both Prosecution and Defence hardly count as full health and safety reports. As Lead Defence Counsel has stated, the Defence will wait for this matter to be resolved which, contrary to the Response's assertions, is after the test results have been obtained.
8. In respect of the Response's assertion that the Defence could apply to the Trial Chamber to authorise meeting the Accused elsewhere,<sup>9</sup> the Defence submits that such a possibility is, in practice, unworkable. The Defence respectfully submits the Prosecution has raised this simply for the sake of argument. All parties well know the security situation in relation to the Accused and the difficulty of changing it at short

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<sup>5</sup> Response, para 5 and Annex B.

<sup>6</sup> Response, Annex C.

<sup>7</sup> Response, Annex D.

<sup>8</sup> Response, Annex C.

<sup>9</sup> Response, para 10.

notice – changing that would likely bring with it its own delay and subsequent need for further adjournment.

9. Likewise, the Response raises the issue of the arrangements in respect of other detainees of the ICC and ICTY.<sup>10</sup> However, it is not the Defence's responsibility to protect the safety of other detainees, who may take what risks they please and, as a consequence, the Prosecution's point is in that regard irrelevant.
10. The Defence notes that the Prosecution does not oppose the Defence's argument that an inability to take instructions merits an adjournment; the Prosecution merely argues that, in the circumstances, the Defence has no reason not to take instructions from the Accused. The Defence can only restate its position that to refrain from visiting the Accused is reasonable; the situation is on-going and it is necessary and appropriate to err on the side of caution and, as a consequence, the Defence has been unable to take instructions from the Accused.

#### **B. The Appropriate Length of an Adjournment**

11. The Defence notes that the Response makes no arguments with respect to the possible length an adjournment might take, should one be granted, other than to criticise the Defence's own suggestion. Further, it states that the date proposed by the Defence "bears no relation to any of the facts regarding the situation at the Detention Centre".<sup>11</sup> This, however, is a blanket allegation unsupported by any corresponding argument. The Response fails to tackle any of the reasons put forward in the Motion in support of the 17 August 2009 as an appropriate date.<sup>12</sup>
12. The Defence reiterates the reasons given in the Motion and submits that, given the circumstances, 17 August 2009 is an appropriate date for the commencement of the Defence case. However, and at the very least, the trial should be adjourned the same number of days as is lost by the Defence until the Detention Centre is finally declared safe. If the test results reveal no bacteria remaining in the Centre and the results are, in fact, available when expected, this delay would be twelve days.

### **III. CONCLUSION**

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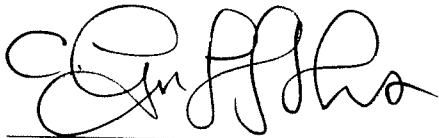
<sup>10</sup> Response, para 12.

<sup>11</sup> Response, para 11.

<sup>12</sup> Motion, para 10.

13. For all the foregoing reasons, the Defence respectfully submits that it has satisfied the need for an adjournment and respectfully requests that the Trial Chamber grant it the relief requested in the Motion.

Respectfully Submitted,



**Courtenay Griffiths, Q.C.**  
**Lead Counsel for Charles G. Taylor**

Dated this 16th Day of June 2009,  
The Hague, The Netherlands

**List of Authorities**

Statute of the Special Court.

Rules of Procedure and Evidence.

Practice Direction on dealing with Documents in The Hague Sub-Office, 16 January 2008 (as amended 25 April 2008).

*Prosecutor v. Taylor*, SCSL-03-01-T-792, “Urgent Defence Motion for Adjournment of Trial Start-Date Due to Inability to Take Instructions from the Accused, Charles Ghankay Taylor”, 12 June 2009.

*Prosecutor v. Taylor*, SCSL-03-01-T-795, “Prosecution Reponse to Urgent Defence Motion for Adjournment of Trial Start Date -- Due to Inability to Take Instructions from the Accused Charles, Ghankay Taylor”, 15 June 2009.