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SCSL-03-01-A
(10403 - 10416)

10403



THE SPECIAL COURT FOR SIERRA LEONE

THE APPEALS CHAMBER

Before: Justice Shireen Avis Fisher, Presiding Judge
Justice Emmanuel Ayoola
Justice Renate Winter
Justice George Gelaga King
Justice Jon M. Kamanda
Justice Philip Nyamu Waki, Alternate Judge

Registrar: Ms. Binta Mansaray

Date: 30 November 2012

Case No.: SCSL-2003-01-A

THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC WITH ANNEX A

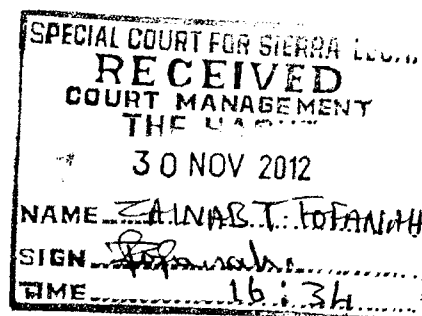
CHARLES GHANKAY TAYLOR'S MOTION FOR DISQUALIFICATION OF JUSTICE SHIREEN AVIS FISHER FROM DECIDING THE DEFENCE MOTION TO PRESENT ADDITIONAL EVIDENCE PURSUANT TO RULE 115

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Mr. Mohamed A. Bangura
Ms. Nina Tavakoli
Ms. Ruth Mary Hackler
Ms. Ula Nathai-Lutchman
Mr. James Pace
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Counsel for Charles G. Taylor:

Mr. Morris Anyah
Mr. Eugene O'Sullivan
Mr. Christopher Gosnell
Ms. Kate Gibson
Ms. Magda Karagiannakis



A. Summary and Request for Relief

1. The Defence for Charles Ghankay Taylor respectfully requests that, pursuant to Rule 15(A) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“Rules” or “Rule”)¹, Justice Shireen Avis Fisher who is the Pre-Hearing Judge² in the Appeal of Mr. Taylor, be disqualified from deciding upon the Defence Motion to Present Additional Evidence Pursuant to Rule 115 (“Additional Evidence Motion”),³ in respect Mr. Taylor’s Appeal (“Grounds of Appeal”).⁴ The Defence further requests that Justice Fisher be required to refrain from consulting with the Secretary-General of the United Nations (UN) or his representatives regarding any waiver of immunity for the purposes of permitting Justice Sow to testify in the appeal of Mr. Taylor pursuant to Rule 115.

2. This motion for disqualification is brought before the Appeals Chamber because Rule 15(B) provides that a motion for disqualification of a Judge shall be decided by the Chamber of which the Judge is a member.⁵

3. The basis of this motion is a legitimate reason to fear that Justice Fisher lacks impartiality, which can be objectively justified on the basis of her conduct and words during the Appeal of Mr. Taylor. Justice Fisher made statements at a status conference and in a scheduling order that give rise to an apprehension that she has a negative pre-disposition to, and has made an adverse pre-judgment of, issues for her consideration in determining a Rule 115 Motion in respect of the availability of evidence during trial and the timing of the motion. Second, the Pre-Appeal Judge has revealed *ex parte* communications with the UN regarding a potential waiver of immunity for Justice Sow. Third, these statements and the communications with the UN were made at a time

¹ Rules of Procedure and Evidence of the Special Court for Sierra Leone (Amended on 31 May 2012).

² *Prosecutor v. Taylor*, SCSL-03-01-A-1297, Order Designating a Pre-Hearing Judge Pursuant to Rule 109 of the Rules of Procedure and Evidence, 21 June 2012.

³ *Prosecutor v. Taylor*, SCSL-03-01-A, Defence Motion to Present Additional Evidence Pursuant to Rule 115, 30 November 2012.

⁴ *Prosecutor v. Taylor*, SCSL-03-01-A-1301, Notice of Appeal of Charles Ghankay Taylor, 19 July 2012; Corrigendum to Notice of Appeal, SCSL-03-01-A-1304 (“Notice of Appeal”) & *Prosecutor v. Taylor*, SCSL-03-01-A-1331, Corrigendum to Appellant’s Submissions of Charles Ghankay Taylor, 8 October 2012; Confidential Annex A and Public Annexes B and C to *Prosecutor v. Taylor*, SCSL-03-01-A-1326, Appellant’s Submissions of Charles Ghankay Taylor, 1 October 2012; and *Prosecutor v. Taylor*, SCSL-03-01-A-1348, Amended Book of Authorities to the Defence Rule 111 Submissions, 31 October 2012 (“Defence Appellant’s Submissions”), Grounds of Appeal 36, 37 and 38.

⁵ *Prosecutor v. Taylor*, SCSL-03-01-A-1-1323, Decision on Charles Ghankay Taylor’s Motion for Partial Voluntary Withdrawal or Disqualification of Appeals Judges, 13 September 2012 (“Taylor Disqualification Decision”), para. 22.

when Justice Fisher was not seized of, and therefore not empowered to consider, the Additional Evidence Motion.

B. Applicable Law

4. Mr. Taylor's right to be tried by an independent and impartial tribunal is integral to his right to a fair trial guaranteed under Article 17 of the Statute.⁶ Pursuant to Rule 15(A), a judge may not sit on an appeal in a case in which "his impartiality might reasonably be doubted on any substantial ground."

5. This Appeals Chamber has held that the applicable test under Rule 15(B) is whether an independent bystander or reasonable person would have a legitimate reason to fear that the judge lacks impartiality; in other words, whether one can apprehend bias.⁷ What must be demonstrated is that there is a legitimate reason to fear that the Judge in question lacks impartiality which can be objectively justified.⁸

6. This Appeals Chamber has held that the reasonable person "is an informed person, with knowledge of all the relevant circumstances, including the traditions of integrity and impartiality that form a part of the background, and apprised also of the fact that impartiality is one of the duties that judges swear to uphold."⁹ A reasonable person is a hypothetical fair-minded observer who has sufficient knowledge of the circumstances to make a reasonable judgement. They are aware that a Judge is trained to put out of their minds evidence other than that presented at trial. Therefore a Judge's prior judicial contact with the facts of a case would generally not be sufficient to find an unacceptable appearance of bias. A fair minded observer would know that a Judge's role can differ from one judicial context to another.¹⁰

7. A party seeking disqualification of a Judge at the Special Court bears the heavy burden of displacing the burden of judicial impartiality and must support any application with ascertainable facts and firm evidence. Evidence that is remote, irrelevant, capable of being disabused in the

⁶ Taylor Disqualification Decision, paras. 23-24.

⁷ Taylor Disqualification Decision, para. 16.

⁸ Taylor Disqualification Decision, para. 16.

⁹ Taylor Disqualification Decision, para. 17.

¹⁰ Taylor Disqualification Decision, para. 17.

mind of Judges or speculative is not sufficient.¹¹ When “some indicia of bias is found the logical and reasonable conclusion must be that a Judge is disqualified.”¹²

C. Submissions

Justice Fisher will make and participate in making two important decisions regarding whether or not Justice Sow will testify before the Appeals Chamber pursuant to the Additional Evidence Motion

8. This motion for disqualification is based on the words and conduct of Justice Fisher as evidenced on the public record which objectively justify a legitimate reason to fear that Justice Fisher lacks impartiality on the questions of whether the Additional Evidence Motion should be granted, and whether Justice Sow should be granted a waiver of immunity by the UN to testify.

9. In the Additional Evidence Motion the Defence seeks the admission of evidence related to the Defence submission that the Trial Chamber was irregularly constituted. Under this ground it is submitted that the fair trial rights of the Mr. Taylor were breached because Justice Sebutinde continued to sit as a Special Court Judge in his trial, while contemporaneously being a Judge of the International Court of Justice.¹³

10. In the Additional Evidence Motion the Defence seeks, *inter alia*, an order that Justice Sow be permitted to testify in the appeal in order to address any egregious errors in the trial process against Mr. Taylor, as set out in the Grounds of Appeal. The first error is that the Trial Chamber failed to deliberate pursuant to the Rules of the SCSL and breached Mr. Taylor’s right to a fair trial. The second error is that the process against Mr. Taylor was conducted in a manner inconsistent with fundamental principles and values of international criminal law, and therefore breached Mr. Taylor’s fair trial rights. His testimony is direct, relevant and compelling evidence which is not available from another witness.¹⁴

11. In order for Justice Sow to testify two decisions must be made. First, his testimony must be admitted as additional evidence and second, the Secretary-General of the UN must waive his immunity to facilitate his testimony. The initial decision regarding the admission of the Judge’s

¹¹ Taylor Disqualification Decision, para. 19.

¹² Taylor Disqualification Decision, para. 16.

¹³ Defence Appellant’s Submissions, Ground of Appeal 38.

¹⁴ Defence Appellant’s Submissions, Grounds of Appeal 36 and 37.

testimony as additional evidence will be made by the Pre-Appeals Judge pursuant to Rule 115(A), who in this case is Justice Fisher.¹⁵

12. If the evidence is deemed admissible under Rule 115, then the next decision as to whether the UN will waive immunity will be made by the Secretary-General of the UN, in consultation with the President of the Special Court. The current President of the Special Court is Justice Fisher.

13. In this regard, the Defence has requested that the Secretary-General of the UN, through his representatives in the Office of Legal Affairs, waive Justice Sow's immunity in order to permit him to testify before the Appeals Chamber of the Special Court. The Secretary-General's representative has responded that the request is "premature", and that "the waiver request would be considered only after there is an indication that the Appeals Chamber will admit additional evidence and hear witness testimony."¹⁶ Critically, the Secretary-General's representative stated that "*the right and the duty to waive the immunity, in any case where it can be waived without prejudice to the purpose for which it is accorded, shall lie with the Secretary-General, in consultation with the President of the SCSL.*"¹⁷

14. In summary and in the absence of a decision to disqualify by the Appeals Chamber, Justice Fisher will be called upon to make and participate in making two important decisions regarding whether or not the Additional Evidence Motion will be granted permitting Justice Sow to testify before the Appeals Chamber.

There is legitimate reason to fear that Justice Fisher lacks impartiality in relation to the Additional Evidence Motion, which can be objectively justified on the basis of her conduct and words during the appeal of Mr. Taylor

15. On 25 October 2012 Justice Fisher conducted a status conference in her capacity as the Pre-Appeal Judge in the appeal of Mr. Taylor ("Status Conference").¹⁸ During that hearing Justice Fisher asked Lead Counsel for the Defence when "we [are] going to see the 115

¹⁵ The decision of the Pre-Hearing Judge on additional evidence can be reviewed by the full bench of the Appeals Chamber pursuant to Rule 115(C).

¹⁶ Letter from Madam Patricia O'Brien, Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations dated 26 November 2012 (Public Annex A).

¹⁷ (Emphasis added.) Public Annex A.

¹⁸ Appeal Transcript, 25 Oct. 2012.

Motion.”¹⁹ Counsel explained the manner in which the Defence had given notice of its intention to present additional evidence,²⁰ and that this “was a reservation of rights as we saw it. At least some indication of what was forthcoming.”²¹

16. Defence Counsel then raised the issue that Her Honour had “indicated in different ways, in different orders or decisions”²² concerns about how the Defence was proceeding with additional evidence. He quoted Justice Fisher’s statement that “[a] party has no right to intentionally delay the filing of Rule 115 motions in order to lengthen the proceedings or limit the time available to the opposing party to identify rebuttal material.”²³ Defence Counsel indicated that he did not disagree with the statement.²⁴ However he noted that Her Honour’s statement “suggests that perhaps we’re engaging in such conduct in this case, and that’s where we disagree because, Madam President, it is more appropriate to say that the Defence has identified sources with evidence that we believe falls under Rule 115 and that is not the same as saying we have that evidence in our possession at the moment. So we are not deliberately delaying filing a motion.”²⁵

17. After further discussion, Justice Fisher asked Defence Counsel “I’m asking you: are you saying you do not have that evidence?”²⁶ in relation to the Defence proffer²⁷ as to the potential additional evidence Justice Sow could provide pursuant to his public Statement made on 26 April 2012 at the delivery of the trial Judgement.²⁸ Counsel replied that “well at this time we are making diligent effort to obtain it.”²⁹ Justice Fisher then stated:

Mr Anyah, okay. Here's my scepticism, all right: This case has been going on now with the Defence team that you were a part of since July of 2007. You were given full opportunities to thoroughly investigate the evidence in the case. It is now October of 2012 and you're telling me that you still have to investigate evidence? There has been a judgement. You're saying that there is evidence that has -- that is apparent to you only since that judgement, which is May 31st. After five years of investigation and trial, you're saying that you still have to investigate

¹⁹ Appeal Transcript, 25 Oct. 2012, p. 49815, line 19.

²⁰ Appeal Transcript, 25 Oct. 2012, p. 49815-7. Also see Notice of Appeal, para. 104; Defence Appellant’s Submissions, para. 16.

²¹ Appeal Transcript, 25 Oct. 2012, T. 49817, lines 1-3.

²² Appeal Transcript, 25 Oct. 2012, T. 49817, lines 8-11.

²³ Appeal Transcript, 25 Oct. 2012, p. 49817, lines 11-16. *Prosecutor v. Taylor*, SCSL-03-01-A-1328, Scheduling Order for Filings and Submissions, 4 October 2012, (Scheduling Order), para. 4.

²⁴ Appeal Transcript, 25 Oct. 2012, p. 49817, lines 17-22.

²⁵ Appeal Transcript, 25 Oct. 2012, p. 49817, lines 23-29.

²⁶ Appeal Transcript, 25 Oct. 2012, p. 49817, lines 23-29.

²⁷ *Prosecutor v. Taylor*, SCSL-03-01-A-1319, Submission in Response to the Order for Clarification of 15 August 2012, 17 August 2012.

²⁸ Appeal Transcript, 25 Oct. 2012, T. 49818, lines 23-29.

²⁹ Appeal Transcript, 25 Oct. 2012, p. 49818, lines 27-8.

*additional evidence and you don't have it and we're within weeks of concluding the filings in the appeal case? I just don't understand.*³⁰

18. With this statement Justice Fisher expressed scepticism about the Defence efforts in obtaining evidence over 5 years of trial. This was consistent with another statement Her Honour had previously made in the Scheduling Order that “*As peculiar as it may seem that evidence relevant to one-fourth of the 45 appeal grounds raised by Taylor was not available during the five years of trial, and this has only become available in the past few months, we trust that notice has been given in good faith and is not speculative.*”³¹

19. Pursuant to Rule 115(A) a party may apply to present additional evidence “which was not available to it at the trial.” Thus, the availability of evidence during the 5 years of trial is a factor to be taken into account by Pre-Appeal Judge when considering whether or not to grant such a motion pursuant to Rule 115(B). However, the Pre-Appeal Judge was not seized of the Additional Evidence Motion at the time she made these statements in the Status Conference or the Scheduling Order

20. Furthermore, it was unfounded for Justice Fisher to express skepticism about Defence attempts to obtain additional evidence in relation to Justice Sow’s statement during the 5 years of trial because that statement did not exist at the time of trial. Justice Sow’s public statement only became known after delivery of the Trial Judgment on 26 April 2012.³²

21. In the Status Conference, Defence Counsel went on to indicate that various steps must be undertaken prior to the testimony of a former judge. He said that the Defence was diligently pursuing all avenues to obtain the evidence but that this had to be done thoroughly and with respect for judicial principles.³³ Justice Fisher then stated that this action had to be taken expeditiously. Counsel replied “yes we are doing that.” The Pre-Appeal Judge then stated:

And what have you done in terms of his immunity? *The last I checked with the UN there had been no request for immunity waivers.*³⁴

22. By this statement Justice Fisher, acting as the Pre-Hearing Judge in the Status Conference, revealed she had initiated more than one *ex parte* communication with the UN regarding a

³⁰ Appeal Transcript 25 Oct. 2012, T. 49819, lines 2-13.

³¹ (Emphasis added.) Scheduling Order, para. 4

³² Appeal Transcript, 25 Oct. 2012, p. 49819, lines 22-23.

³³ Appeal Transcript, 25 Oct. 2012, p. 49819, lines 22-23.

³⁴ (Emphasis added.) Appeal Transcript 25 October 2012, p. 49819, line 29- p. 49819, line 2.

potential request for a waiver of immunity for the testimony of Justice Sow. She had these communications at a time when she was not seized of any motion for additional evidence in respect of his proposed testimony.

23. It is unclear whether Justice Fisher engaged in these *ex parte* communications with the UN in her role as the Pre-Hearing Judge who will decide the Additional Evidence Motion, or as President of the Special Court who is required to consult on the waiver of Justice Sow's immunity. Regardless, pre-emptively consulted with the UN on an *ex parte* basis regarding the immunity of a potential Rule 115 witness for the Defence, is of extreme concern to Mr. Taylor and the Defence. Justice Fisher did so before the Defence had filed a request for waiver of immunity to the UN. Evidently, the necessary "consultation" between the Secretary-General and the President of the Special Court should properly be prompted by a request for waiver of immunity, and should concern the basis upon which such a request is made. Engaging in *ex parte* consultations prior to a request being filed is improper, and risks giving an appearance of pre-judgement of the issue in questions. The potential prejudice and appearance of partiality is compounded by Justice Fisher also being the Pre-Appeal Judge who will be ultimately decide the Additional Evidence Motion.

24. After Justice Fisher made the abovementioned statement regarding UN waivers in the Status Conference, she had the following exchange with Defence Counsel:³⁵

MR ANYAH:And if Your Honour looks at the precedent in this instance of the Special Court, Your Honour will find that in Sesay the two Defence accused, the two accused who moved under Rule 115 for additional evidence, did so on the last possible day given them in the Rule. Now Issa Sesay --

PRESIDING JUDGE: *And did they succeed? Did they succeed?*

MR ANYAH: *Well, the issue is when they moved for it.*

PRESIDING JUDGE: *Did they succeed?*

MR ANYAH: *They did not succeed.*

PRESIDING JUDGE: *Okay.*

MR ANYAH: But they moved for it consistent with the Rule, consistent with our Rule 115.

PRESIDING JUDGE: Your interpretation of that Rule.

MR ANYAH: Well, the Rule says a party has until the day of the filing of the submissions and reply to move for additional evidence.

³⁵ Appeal Transcript, 25 Oct. 2012, p. 49820, lines 9-24.

25. In this exchange Defence Counsel was seeking to point out that parties, according to Rule 115 and according to previous practice, had until the day of filing submission in reply to move for additional evidence. Her Honour's words, when viewed together and in context,³⁶ foreshadowed that the filing of an additional evidence motion by the Defence on the last of day of the deadline for filing such motions, was highly unlikely to succeed, because it wouldn't have been filed expeditiously, despite the express terms of Rule 115.

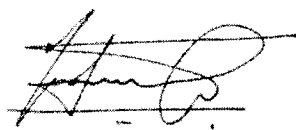
26. In summary, Justice Fisher made statements at the Status Conference and in the Scheduling Order, providing an objectively justifiable basis for concluding that there is a legitimate reason to fear that she has a negative pre-disposition to, and has made a negative pre-judgment upon, the Additional Evidence Motion in respect of issues of the availability of evidence during trial and the timing of the motion. Second, the Pre-Appeal Judge had *ex parte* communications with the UN regarding a potential waiver of immunity for Justice Sow. Third, these statements and the communications with the UN were made at a time when Justice Fisher was not seized of, and therefore had no power to consider, the Additional Evidence Motion and any issue of waiver of immunity.

³⁶ In the Scheduling Order, Justice Fisher issued a truncated filing schedule bringing forward filing deadlines. In particular it brought forward the time for filing of the Defence Rule 115 motion by four (4) weeks before the deadline stipulated by Rule 115(A). According to Justice Fisher's Scheduling Order, the Defence Rule 115 motion was scheduled to be filed by 2 November 2012, see Scheduling Order, para. 7. Rule 115(A) provides that such motion should be filed no later than the deadline for filing the submissions in reply, which in this case for the Defence was 30 November 2012. See *Prosecutor v. Taylor*, SCSL-03-01-A-1320, Decision on Defence Motion for Reconsideration or Review of "Decision on Prosecution and Defence Motions for Extension of Time and Page Limits Pursuant to Rules 111, 112 and 113 and Final Order on Extension of Time for Filing Submissions", 21 August 2012, pp. 3-4. A majority of the Appeals Chamber reversed Justice Fisher's Scheduling Order and reinstated the original filing timetable by the Appeals Chamber, which effectively conformed with the express terms of Rule 115, in respect of timetabling. *Prosecutor v. Taylor*, SCSL-03-01-A-1339, Decision on Prosecution Motion for Reconsideration or Review of the Pre-Hearing Judge's 4 October 2012 "Scheduling Order for Filings and Submissions", 16 October 2012, p. 3.

D. Conclusion

27. For the forgoing reasons, Justice Fisher should be disqualified from deciding the Additional Evidence Motion. She should also be required to refrain from consultations with the UN Secretary-General or his representatives regarding a waiver of immunity for the purposes of Justice Sow's Additional Evidence, if such evidence is admitted.

Respectfully submitted,



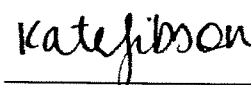
Morris Anyah
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Christopher Gosnell
Co-Counsel for
Charles G. Taylor



Kate Gibson
Co-Counsel for
Charles G. Taylor

Dated this 30th Day of November 2012, The Hague, The Netherlands.

List of Authorities

SCSL

- *Rules of Procedure and Evidence of the Special Court for Sierra Leone*, as amended on 31 May 2012;

Prosecutor v. Taylor, SCSL-03-01-A

- *Prosecutor v. Taylor*, SCSL-03-01-A, Defence Motion to Present Additional Evidence Pursuant to Rule 115, 30 November 2012;
- *Prosecutor v. Taylor*, SCSL-03-01-A-1339, Decision on Prosecution Motion for Reconsideration or review of the Pre-Hearing Judge's 4 October 2012 "Scheduling Order for Filings and Submissions", 16 October 2012;
- *Prosecutor v. Taylor*, SCSL-03-01-A-1331, Corrigendum to Appellant's Submissions of Charles Ghankay Taylor, 8 October 2012; Confidential Annex A and Public Annexes B and C to *Prosecutor v. Taylor*, SCSL-03-01-A-1326, Appellant's Submissions of Charles Ghankay Taylor, 1 October 2012; and *Prosecutor v. Taylor*, SCSL-03-01-A-1348, Amended Book of Authorities to the Defence Rule 111 Submissions, 31 October 2012 (collectively, "Defence Appellant's Submissions");
- *Prosecutor v. Taylor*, SCSL-03-01-A-1328, Scheduling Order for Filings and Submissions, 4 October 2012;
- *Prosecutor v. Taylor*, SCSL-03-01-A-1323, Decision on Charles Ghankay Taylor's Motion for Partial Voluntary Withdrawal or Disqualification of Appeals Judges, 13 September 2012;
- *Prosecutor v. Taylor*, SCSL-03-01-A-1320, Decision on Defence Motion for Reconsideration of Review of "Decision on Prosecution and Defence Motions for Extension of Time and Page Limits Pursuant to Rules 111, 112 and 113 and Final Order on Extension of Time for Filing Submissions", 21 August 2012;
- *Prosecutor v. Taylor*, SCSL-03-01-A-1319, Submission in Response to the Order for Clarification of 15 August 2012, 17 August 2012;
- *Prosecutor v. Taylor*, SCSL-03-01-A-1304, Corrigendum to Notice of Appeal of Charles Ghankay Taylor, 23 July 2012;
- *Prosecutor v. Taylor*, SCSL-03-01-A-1301, Notice of Appeal of Charles Ghankay Taylor, 19 July 2012;
- *Prosecutor v. Taylor*, SCSL-03-01-A-1297, Order Designating a Pre-Hearing Judge Pursuant to Rule 109 of the Rules of Procedure and Evidence, 21 June 2012;

Transcripts

- Appeal Transcript, Status Conference, 25 October 2012

Public Annex A

Letter from Patricia O'Brien, Under-Secretary-
General for Legal Affairs and Legal Counsel of the
United Nations, dated 26 November 2012

United Nations  Nations Unies

HEADQUARTERS · SIEGE NEW YORK, NY 10017

TEL.: 1 (212) [REDACTED] · FAX: 1 (212) [REDACTED]

REFERENCE:

26 November 2012


Dear Mr. Anyah,

I refer to your letters of 19 and 26 November 2012, in which you request that the Secretary-General waive the immunity of Justice El Hadji Malick Sow so that he may give testimony in the appeal in the case of the *Prosecutor v Charles Taylor* before the Special Court for Sierra Leone.

As an alternate judge of the SCSL, Justice Sow enjoys the privileges and immunities, exemptions and facilities accorded to diplomatic agents in accordance with the 1961 Vienna Convention on Diplomatic Relations, pursuant to article 12, paragraph 1 of the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone. Pursuant to paragraph 2 of the same article, the privileges and immunities are accorded in the interest of the SCSL and not for the personal benefit of the individuals themselves; and the right and the duty to waive the immunity, in any case where it can be waived without prejudice to the purpose for which it is accorded, shall lie with the Secretary-General, in consultation with the President of the SCSL.

The United Nations does indeed pursue a policy of cooperating to the maximum extent possible with international criminal tribunals, and the prosecutors and defence counsel who appear before them. In the present case, it is premature for the Secretary-General to consider the request for the waiver of the immunity of Justice Sow. The waiver request would be considered only after there is an indication that the Appeals Chamber will admit additional evidence and hear witness testimony.

Yours sincerely,



Patricia O'Brien
Under-Secretary-General for Legal Affairs
The Legal Counsel

Mr. Morris Anyah
Lead Counsel for Mr. Charles Taylor
Special Court for Sierra Leone
The Hague