



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

TUESDAY, 19 AUGUST 2008
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Teresa Doherty, Presiding
Justice Richard Lussick
Justice Julia Sebutinde
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr William Romans
Ms Sidney Thompson

For the Registry:

Mr Gregory Townsend
Ms Advera Kamuzora
Ms Rachel Irura

For the Prosecution:

Ms Brenda J Hollis
Mr Nicholas Koumjian
Ms Maja Dimitrova

For the accused Charles Ghankay Taylor:

Mr Courtenay Griffiths QC
Mr Morris Anyah

For the Office of the Principal Defender:

Mr Silas Chekera

1 Tuesday, 19 August 2008

2 [Open session]

3 [The accused not present]

4 [Upon commencing at 9.30 a.m.]

09:27:40 5 PRESIDING JUDGE: Good morning. I note the accused is not
6 present in court. I will take appearances and then ask for the
7 report as directed yesterday. Appearances, Ms Hollis, please?

8 MS HOLLIS: Good morning, Madam President, your Honours,
9 opposing counsel. Brenda J Hollis, Nicholas Koumjian and Maja
09:28:05 10 Dimitrova appear this morning for the Prosecution.

11 PRESIDING JUDGE: Thank you. Mr Griffiths?

12 MR GRIFFITHS: Good morning, Madam President, your Honours,
13 opposing counsel. For the Defence today are myself Courtenay
14 Griffiths, my learned friend Mr Morris Anyah and Mr Silas

09:28:22 15 Chekera.

16 PRESIDING JUDGE: And I am correct in noting that your
17 client is not present, Mr Griffiths?

18 MR GRIFFITHS: Your Honour, yes.

19 PRESIDING JUDGE: Thank you. I note, Mr Townsend, that you
09:28:33 20 are here in court. If you could please inform us of the outcome
21 of the directions yesterday. Mr Griffiths, were you on your feet
22 or are you - I inadvertently did not --

23 MR GRIFFITHS: Your Honour, it may be of greater assistance
24 if I could address your Honour for a moment on two pressing
09:28:53 25 problems that we have on the Defence side of the Court today.

26 First of all, Mr Taylor is not present today. When we rose
27 yesterday, I went to visit him at the detention facility and at
28 that meeting he continued to express his concerns at the new
29 security regime which had been imposed. I thereafter liaised

1 with Mr Townsend regarding his contact with those responsible for
2 Mr Taylor's detention and he informed me very helpfully that,
3 despite him speaking to various individuals within the hierarchy
4 of the detention facility, they were totally unprepared to budge
09:29:51 5 in terms of demonstrating any flexibility towards the transport
6 regime for Mr Taylor.

7 At or about 20 past nine this morning, I received a call
8 from Mr Taylor. He continued to express his disgust at the
9 prospect of having to travel to court under such conditions.

09:30:21 10 However, because of his anxiety that the trial should continue
11 uninterrupted, he tells me that he would be willing to attend
12 court tomorrow, despite the continuation of that regime, so long
13 as attention is given to seeking to remove those conditions at
14 some time in the future.

09:30:52 15 But we have a further difficulty today, your Honours, and
16 it's this. Mr Munyard telephoned me at 7.30 this morning to
17 inform me that he was suffering - he'd been suffering from
18 diarrhoea and vomiting all night and felt unable to attend court
19 this morning.

09:31:12 20 Now your Honours will be aware that Mr Munyard has charge
21 of the current witness and so that poses a major difficulty for
22 the Defence so that, even if your Honours were minded in the
23 absence of Mr Taylor as you were invited to yesterday by
24 my learned friend Ms Hollis to continue in the accused's absence,
09:31:35 25 it does create a major difficulty for the Defence in that all
26 preparation for this particular witness has been carried out by
27 Mr Munyard. He's ready and prepared to cross-examine the
28 witness, but unfortunately due to his current disposition is
29 unable to be in court and so there is that further difficulty

1 that we face today and I apologise for that. So that is the
2 current situation, your Honours.

3 PRESIDING JUDGE: Thank you. That's most helpful,
4 Mr Griffiths. Allow me to confer before I invite replies.

09:32:15 5 [Trial Chamber conferred]

6 I will seek Mr Townsend's report before I invite your
7 reply, Ms Hollis, as it may be more helpful to do it that way.
8 Mr Townsend, you are aware of yesterday's directive. Please
9 advise us.

09:33:07 10 MR TOWNSEND: May it please the Trial Chamber, in
11 compliance with yesterday's order I have submitted a written
12 report and I'm happy to circulate that time - circulate that
13 report at this time if you'd like, your Honours, and I can also
14 just make some brief oral submissions and you can review it
09:33:22 15 later. I also have in my possession the Special Court absence
16 from court form for today which indicates that Mr Taylor declined
17 to come to court today and that his lawyers would handle it, I
18 think that's the language used on the form, and both those items
19 could be put into the record at least.

09:33:46 20 PRESIDING JUDGE: If you can please at least give us an
21 outline or the highlight of the report.

22 MR TOWNSEND: Indeed, your Honours. I spoke yesterday at
23 great length with various representatives of the Dutch transport
24 and support service, what's known by the Dutch acronym DV&O,
09:34:07 25 about the two objections that Mr Taylor has to particular
26 procedures of his high security or maximum security transport.
27 Now, this is a gratis service provided to the Special Court by
28 the government of the Netherlands and the Special Court is
29 obliged to rely on the DV&O for the transport of Mr Taylor to and

1 from the court. Now, depending on a recent risk assessment from
2 another entity of the Department of Justice, DV&O upgraded
3 Mr Taylor's security transport to a maximum level and on
4 approximately 12 August this information was conveyed to the ICC
09:34:55 5 and then subsequently to Mr Taylor and the court representatives.

6 Now this risk assessment was increased based on grounded
7 and material security concerns, the details of which I'm not at
8 liberty to discuss in open court. This reinstatement of maximum
9 level security was not singled out for Mr Taylor, but one other
09:35:22 10 ICC detainee has been placed under that regime effective also
11 yesterday and one ICTY detainee is under the same regime
12 presently as well.

13 Now this - it's the Registry's understanding that this
14 change in security is not attributable to any alleged misconduct
09:35:41 15 by Mr Taylor while in custody, but rather this is just reflective
16 of a change in security situation on the ground.

17 In the report, which I'll submit to the parties and the
18 Trial Chamber, the DV&O outlined several standard operating
19 procedures, some of which they've been able to exempt Mr Taylor
09:36:03 20 from, but the two to which the Defence object they say are not
21 subject to negotiation and they are security related concerns.
22 Some of these relate to tactical and operational aspects of the
23 high or maximum security transport.

24 To date there has been no complaint from Mr Taylor under
09:36:32 25 rule 59 of the rules of detention, namely that procedure as
26 mentioned by the Court on 18 July 2008 that obliges a detainee if
27 having a complaint against detention - and it's our submission
28 that transport relates to detention - that that complaint would
29 be first properly lodged with Mr Ray Cardinal, the chief of

1 detention in Freetown. If the detainee sought a remedy against
2 that it would go to the Registrar and that could be appealed next
3 to the President, as opposed to bringing such a complaint
4 directly to the Trial Chamber.

09:37:17 5 As I mentioned, we have both yesterday and today's absence
6 from court forms. Yesterday we also viewed the vehicle in which
7 the maximum security transport is conducted to have a better
8 first-hand understanding of these tactical and operational
9 aspects to which the Defence have at least one of their
09:37:42 10 objections. At the highest levels of the DV&O they have again
11 expressed their inability to waive these procedures for Mr Taylor
12 in light of the recent upgrading of the security, and on that
13 basis I'd submit and I'd suggest that the report fleshes this out
14 in greater detail, your Honours.

09:38:14 15 PRESIDING JUDGE: Sorry, I didn't quite understand what you
16 mean.

17 MR TOWNSEND: There are greater details to what I have
18 submitted orally in the written report, your Honours, and I
19 suggest due to the confidential nature it's best to have those
09:38:28 20 matters reviewed in a written format, rather than hear me orally.

21 PRESIDING JUDGE: Has this report been circulated to the
22 parties, Mr Townsend?

23 MR TOWNSEND: Not as of yet. It was just completed for
24 court this morning. I would like the opportunity to indeed
09:38:43 25 circulate it.

26 PRESIDING JUDGE: And you've heard Mr Griffiths's remark
27 that - I'm just looking at my notes - Mr Taylor has indicated if
28 the conditions would be removed in the near future. Have you had
29 any indication how long this regime is likely to last?

1 MR TOWNSEND: The placement of maximum security transport
2 for Mr Taylor is of a duration that only the Dutch security will
3 know and not release publicly, so I'm not in a position to know
4 that and we don't have that information. We know that it was
09:39:23 5 previously removed when a subsequent risk assessment was
6 conducted and that risk went down. We do appreciate and we are
7 grateful to Mr Taylor's willingness to attend court tomorrow, and
8 I understand Mr Griffiths's prayer is stating that that
9 attendance in court would be conditioned on further efforts by
09:39:47 10 the Registry to seek to remove the objectionable procedures and I
11 would represent that I would so endeavour and we wish Mr Munyard
12 a speedy recovery.

13 PRESIDING JUDGE: Thank you.

14 JUDGE LUSSICK: Mr Townsend, you said that the risk
09:40:07 15 assessment was increased based on grounded and material security
16 concerns, details of which you are not at liberty to discuss in
17 open court. Do I take it that you can discuss these details in
18 closed session?

19 MR TOWNSEND: Only in camera, your Honours, and not in open
09:40:29 20 - closed session.

21 JUDGE LUSSICK: What do you mean in camera? In chambers?

22 MR TOWNSEND: Exactly, your Honours.

23 JUDGE LUSSICK: So you've been made privy to the reasons
24 behind all of this, of which the Court knows nothing, and you're
09:40:46 25 able to tell the Court if you come to our chambers, is that
26 right?

27 MR TOWNSEND: That's exactly correct, your Honours.

28 JUDGE SEBUTINDE: Mr Townsend, are these reasons contained
29 in your written report?

1 MR TOWNSEND: They're not spelled out, your Honours. This
2 report is for consumption of all the parties.

3 JUDGE LUSSICK: Look, I don't know what's going on here, or
4 why the security arrangements for transport have been upgraded.

09:41:31 5 From your talks with the people concerned was it apparent to you
6 that at least Mr Taylor knows why he's being treated like this?

7 MR TOWNSEND: I can tell you again that I believe around 12
8 August, as soon as that decision was made, that the upgrading of
9 the security was communicated to Mr Taylor by the ICC detention
09:41:53 10 staff. Now, the actual basis is never conveyed to any detainee
11 because these are confidential security considerations on the
12 highest levels of Dutch security.

13 PRESIDING JUDGE: In effect you are saying the decision was
14 conveyed to him, but not the reasons.

09:42:13 15 MR TOWNSEND: That's exactly correct.

16 JUDGE LUSSICK: Just to get this clear, Mr Townsend, you
17 now have the reasons and you're prepared to tell the Court that
18 in chambers. Is that correct?

19 MR TOWNSEND: Yes, your Honour. I have two bases I've been
09:42:29 20 told on a confidential basis that underlie the upgrading of the
21 high security transport. Again they don't relate to Mr Taylor
22 specifically, but to rather security on the ground and the same
23 imposition of high security has been in position for one ICC
24 detainee and one ICTY detainee. This is the normal procedure and
09:42:58 25 protocol for the Dutch maximum security transport agency, the
26 DV&O.

27 MR GRIFFITHS: Your Honour, I wonder if I might intervene
28 at this stage hopefully helpfully to suggest this. It seems to
29 us on this side of the court that the Court should be armed with

1 all relevant information in order to make an informed decision
2 with regard to this and, as far as we're concerned on this side
3 of the court, we're perfectly happy for Mr Townsend to
4 communicate to your Honours, absent the other parties, the
09:43:40 5 reasons so that at least then your Honours will be armed with the
6 overall situation and be in a better position to arrive at a
7 judicious decision in this matter.

8 PRESIDING JUDGE: Thank you, Mr Griffiths. That's most
9 helpful. Ms Hollis, you've heard both the oral report and
09:44:04 10 Mr Griffiths's various submissions. Your reply?

11 MS HOLLIS: Thank you, Madam President. The Prosecution
12 would not only be happy for this to happen, we would encourage
13 it, that you be given the information in chambers. We don't
14 believe that this is a matter pertaining to the trial so that
09:44:22 15 full disclosure is not required, and in many instances we believe
16 the withholding of such disclosure would be prudent and necessary
17 when dealing with risk assessments and perhaps the basis for
18 those assessments and so we believe that would be a perfectly
19 appropriate vehicle for use.

09:44:37 20 We do reiterate our position that the accused's voluntary
21 absence should not prevent the trial from moving forward. We
22 also understand that Mr Munyard was the counsel, or is the
23 counsel, who will be conducting this cross-examination, and in
24 his absence we could not go forward and we do believe that it is
09:44:57 25 most efficient if we do deal with the cross-examination of this
26 witness before moving on to other witnesses. So because of
27 Mr Munyard's absence we would say that we would not be able to
28 move forward today, but again our position would be that as soon
29 as Mr Munyard is able to be in court and conduct the

1 cross-examination we move forward even if the accused continues
2 to refuse to attend.

3 MR GRIFFITHS: Your Honour, on that last point can I just
4 make this suggestion again hopefully helpfully. Mr Taylor having
09:45:31 5 indicated his willingness to attend court tomorrow despite the
6 continuation of this regime, we are anxious that we don't waste
7 time. If he is willing to subject himself to those restraints
8 and come to court, we're anxious that we do use the available
9 time.

09:45:53 10 Now there is uncertainty as to how quickly Mr Munyard will
11 recover, so can I suggest that in light of my learned friend's
12 comment that the next witness be made available tomorrow to be
13 called in-chief if necessary so that we can make use of the
14 available time. I don't know whether that poses logistical
09:46:11 15 difficulties for the Prosecution, but I'm merely anxious in
16 making this suggestion that we make best use of the time
17 available.

18 PRESIDING JUDGE: Thank you, Mr Griffiths.

19 MS HOLLIS: Your Honours, if I can just say that would pose
09:46:30 20 no logistical difficulties and, if your Honours are inclined to
21 do that, we would ask that that examination be interrupted when
22 Mr Munyard is available to cross-examine this witness who is
23 scheduled to be recalled for cross-examination.

24 PRESIDING JUDGE: Thank you. That's most helpful, counsel.
09:46:47 25 I will now confer with my colleagues.

26 [Trial Chamber conferred]

27 We will retire to confer and to take the information that
28 Mr Townsend is ready to give us in chambers and we will resume
29 court as soon as is practical. You will be notified. Please

1 adjourn court until then. In the meantime the report will be
2 circulated, Mr Townsend, of course.

3 [Break taken at 9.50 a.m.]

4 [Upon resuming at 11.15 a.m.]

11:14:48 5 PRESIDING JUDGE: We have considered the confidential
6 report made on behalf of the Registrar, the submissions of the
7 parties and the confidential information provided to us in
8 chambers. In the light of these considerations, the Trial
9 Chamber is still not satisfied that there is any rational basis
11:15:26 10 or justification for Mr Taylor being subjected to the increased
11 security measures. We register our concern that if this
12 situation is not resolved it could result in serious disruption
13 of the trial. Accordingly, we direct the Registrar to continue
14 to investigate a speedy resolution of the situation and direct
11:15:57 15 that he reports to us by 9.30 a.m. on 25 August, that is Monday,
16 on what he has achieved. We note the advice of Defence counsel
17 that Mr Taylor will be in attendance at court tomorrow, but has
18 indicated that his continued attendance is conditional upon the
19 security measures complained of being removed.

11:16:34 20 We therefore adjourn the case to tomorrow at 9.30. We note
21 that Mr Munyard is ill and that the Prosecution is prepared to
22 proceed with another witness if Mr Munyard is still unable to
23 attend. We adjourn the case.

24 Please adjourn the case until 9.30 tomorrow.

11:17:02 25 [Whereupon the hearing adjourned at 11.17 a.m.
26 to be reconvened on Wednesday, 20 August 2008
27 at 9.30 a.m.]

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