



Case No. SCSL-2003-01-PT

**THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR**

Friday, 21 July 2006
11.30am
STATUS CONFERENCE
TRIAL CHAMBER II

SITTING IN THE HAGUE,
NETHERLANDS

Before:

Judge Lussick

For the Registry:

Mr Herman von Hebel

For the Prosecution:

Ms Brenda J Hollis

For the Accused:

Mr Karim Khan

1 COURT OFFICER: Good morning, Your Honour. This is case
2 number SCSL-03-1-PT, the Prosecutor against Charles Ghankay
3 Taylor.

11:29:52

4 JUDGE LUSSICK: For the record, Ms Brenda Hollis appears
5 for the Prosecution, and Mr Khan for the accused Taylor. Good
6 morning.

7 MR KHAN: Good morning.

11:30:14

8 JUDGE LUSSICK: This is that long overdue Status
9 Conference that we attempted to hold a month ago in Freetown and,
10 as has been indicated to the parties, we will follow the
11 preliminary agenda that was originally ordered for the Status
12 Conference in Freetown. Once we have gone through those agenda
13 items, any other issues that either party wishes to raise, we
14 will deal with them.

11:30:42

15 Now, the first item was be - I'm getting a lot of
16 interference on this microphone - I don't know if anybody else
17 is, but it's quite distracting.

11:31:16

18 The first item on the agenda is an update from the parties
19 on compliance with disclosure obligations under Rules 66, 67 and
20 68 and outstanding issues, if any, in relation thereto. Mr Khan,
21 in relation to this particular agenda item we have noted your
22 Defence submission on behalf of the accused in respect of
23 preliminary motions whereby you advised that you have received
24 disclosure from the Prosecution on 17 May and you do not intend
25 to file any preliminary motions but that during the pre-trial
26 stage the Defence will try, with the Prosecution, to narrow the
27 issues in dispute and, where possible, agree upon admissions
28 pursuant to Rule 65*bis* and 73*bis*. So we've noted that, Mr Khan,
29 and I don't know whether you would be filing any special defence

1 or alibi defence under Rule 67. I presume you won't, but what do
2 you say on that?

3 MR KHAN: Your Honour, at this moment in time it is not
4 our intention to file preliminary motions or any special filings
11:32:41 5 regarding special defences. As indicated in the submission that
6 was filed, the Defence do look forward, once investigations are
7 completed, to challenging the Prosecution indictment in trial
8 itself.

9 JUDGE LUSSICK: I see. Yes, thank you, Mr Khan. Getting
11:33:00 10 back to Rule 67, can I take it that, at least at this stage,
11 there won't be any special defences filed and no alibi
12 particulars to provide?

13 MR KHAN: That's correct, Your Honour.

14 JUDGE LUSSICK: Thank you. And, Ms Hollis, what about
11:33:17 15 exculpatory material under Rule 68?

16 MS HOLLIS: Yes, your Honour, as part of the initial
17 disclosure made to the Defence we included what we considered to
18 be potential Rule 68 material as well, and we are continuing to
19 put together packages of disclosure. We have worked out
11:33:39 20 disclosure modalities with Defence counsel and will continue to
21 provide that material.

22 JUDGE LUSSICK: Yes, thank you, Ms Hollis.

23 MR KHAN: Your Honour, perhaps if you may indulge me,
24 there may be one matter arising out of that, and I don't ask for
11:33:58 25 any specific relief at the moment, and in fairness I have not
26 raised it previously with my learned friend, but I will be
27 suggesting to the Prosecution that in due course perhaps a
28 disclosure officer is appointed who can take responsibility for
29 signing off on all the exculpatory evidence. I know that in the

1 Yugoslav case of *Sefer Halilovic* the Trial Chamber made similar
2 orders. That way, of course, one individual has the
3 responsibility of certifying that they have reviewed all the
4 record and documents in the possession of the Prosecution and
11:34:37 5 certify that all exculpatory evidence in particular has been
6 properly served on the Defence in a timely manner. Your Honour,
7 I just raise that now. I will discuss it in more detail with my
8 learned friend a little later.

9 JUDGE LUSSICK: Thank you for that, Mr Khan. To me, that
11:34:54 10 sounds a very practical suggestion. What I am going to ask now
11 I think flows from the first agenda item. It could be premature,
12 but I understand, Mr Khan, that the disclosure to you was quite
13 voluminous. Is it too early for you to estimate how long the
14 Defence would need to complete its investigations?

11:35:27 15 MR KHAN: Your Honour, it is voluminous, and I've tried to
16 have a very cursory look at the documents with some perhaps
17 rather feeble attempt at the moment in separating the welter
18 evidence which constitutes the crime base, with the nexus
19 evidence relating to my client. But, your Honour, I do think
11:35:48 20 that the pre-trial stage is going to take probably - at least the
21 earliest one would think the trial could start is around July of
22 next year. Your Honour, if one looks at other cases before the
23 Yugoslav Tribunal and the ICTR, as well of course of the Special
24 Court, I think the average is about a year and a half, although
11:36:13 25 in the ICTR they have cases like *Karemera*, seven years two months
26 pre-trial stage. Your Honour, it is not our intention to seek
27 that long, but I would think that a year and a three months, a
28 year and a half, pre-trial preparation for a case of this size
29 and magnitude, particularly given the geographical displacement

1 from Sierra Leone, which puts us in a somewhat more awkward
2 position than other accused persons before the Freetown court,
3 who are united geographically with their client and united
4 geographically with the crime base, I do think the earliest this
11:36:51 5 trial could properly start is around July of next year, and
6 that's with due diligence, of course, on the part of the Defence.

7 That said, your Honour, it's a matter that could be
8 discussed and kept under review. It is my, with the greatest
9 humility, respectful submission that, often, time given in the
11:37:10 10 pre-trial stage is time saved during trial, particularly when
11 there is a genuine willingness between the parties to agree facts
12 which are not in issue and to focus on what is genuinely germane
13 and in issue.

14 Your Honours, I will be submitting in due course that we do
11:37:29 15 proper time for pre-trial preparation, particularly in a case
16 that the Prosecution has been investigating for the last three or
17 four years. We come to it fresh, and we need to set up a team to
18 start looking at the work that the Prosecution have had the huge
19 benefit of undertaking for the last three or four years. Your
11:37:46 20 Honour, I don't think I can assist further at this point.

21 JUDGE LUSSICK: Yes, thank you, Mr Khan. Ms Hollis, what
22 do you say about that projected date of commencement?

23 MS HOLLIS: Your Honour, we believe that trial would be
24 able to begin much sooner than that, and we believe that trial
11:38:04 25 would be able to begin the beginning of the year, perhaps
26 February. We certainly agree with the Defence that they need a
27 reasonable amount of time to prepare. The amount of time that
28 they need to prepare, of course, will depend in large part on the
29 extent to which we are able to reach agreement on facts and

1 matters of law. And we are in the process now of preparing
2 proposed agreed facts and matters of law for Defence
3 consideration and hope to be able to provide that to the Defence
4 in the near future.

11:38:36 5 So, once we are able to undertake discussions on that, we
6 would have, I think, a more informed opinion about the
7 commencement of trial, but it is the Prosecution's view that a
8 trial start date of February of next year would be a reasonable
9 start date.

11:38:54 10 JUDGE LUSSICK: Thank you, Ms Hollis. Yes, Mr Khan?

11 MR KHAN: Your Honour, perhaps just by way of comparison,
12 I have figures from a whole variety of international cases, but
13 just confining myself at the moment, with your leave, to the
14 Special Court of Sierra Leone, a much simpler case,
11:39:11 15 geographically confined, the *AFRC* case, with which your Honour of
16 course is intimately familiar, the pre-trial stage was one year
17 and 11 months. Your Honour, the case of *Chief Hinga Norman*,
18 again simply confined to the territory of Sierra Leone, with no
19 additional time needed for Defence counsel and investigators to
11:39:33 20 scurry around between The Hague and the Freetown court, that was
21 one year two months and 19 days. So, your Honour, if we were due
22 to start in July or thereabouts of next year it would be almost
23 the same as a far simpler geographically confined and restricted
24 case of *Hinga Norman*, and far shorter than the amount of time the
11:39:57 25 Court gave the *AFRC* case of *Brima*.

26 Your Honour, it is again far less than was given to the
27 case of *Fatmir Limaj* in the Yugoslav context or *Haradinaj* or
28 *Prlic* - the list is endless.

29 Your Honour, it is rather like the chicken and the egg

1 situation. There is a genuine willingness on the part of the
2 Defence to agree certain facts, but we can't agree facts without
3 proper preparation, because, your Honour, as you are aware from
4 domestic context, as well as your international experience, facts
11:40:33 5 which are seemingly innocuous may become very much live issues in
6 the trial once an investigation is complete and, similarly, facts
7 which may appear to be clearly in issue can become by the wayside
8 once a defence investigation is completed.

9 So, your Honour, when I talk about limiting the issues in
11:40:59 10 trial, that's going to be limited after the Defence investigation
11 is complete. It would be reckless, in my respectful submission,
12 for any Defence counsel dealing with even the most simplest of
13 cases to agree in the dark, blind - agree facts which may well be
14 in issue. So, your Honours, I will ask in due course for proper
11:41:22 15 time.

16 February 2007 is simply untenable, in my submission. I am
17 aware that the Prosecutor's press officer or political secretary
18 has been giving releases talking about a January start date.
19 We've moved down to February, which is a bit more reasonable.
11:41:40 20 Your Honour, a little more reasonableness will not come amiss.

21 JUDGE LUSSICK: This is the first pre-trial proceeding,
22 apart from the arraignment of course, so I think that at this
23 stage we ought to keep open the date of commencement, and see
24 what is achieved in the pre-trial stage itself. I quite agree
11:42:12 25 with what counsel says, that pre-trial matters can save a lot of
26 hearing time. If facts are agreed, or even if matters in issue
27 can be isolated, it can save a lot of hearing time. I certainly
28 would not suggest to you, Mr Khan, that you are not going to get
29 adequate time to prepare your case. And what I think this Court

1 should do is simply monitor the progress of the pre-trial
2 developments, and it's a little bit premature now to go
3 estimating commencement dates for the trial. But, as I say,
4 that's a matter I would like to keep open. I think we could,
11:43:05 5 perhaps towards the end of the year, come up with a fairly
6 accurate estimate, once we have disposed of matters that can be
7 disposed of, and the parties are in a much better position to
8 know exactly the extent of the dispute.

9 MR KHAN: Your Honour, I'm much obliged.

11:43:34 10 JUDGE LUSSICK: That seems to dispose of the second
11 preliminary agenda item, which was an indication from the parties
12 as to how soon they will be able to proceed with the trial.

13 There was an added agenda item from the Prosecution which
14 reads as follows: "The status and efforts to permanently assign
11:44:02 15 counsel to represent the accused in this case, including when it
16 is expected the Defence team will be assembled." I don't know
17 whether you have any comments on that at all at this stage,
18 Mr Khan.

19 MR KHAN: Your Honour, one is always gratified when the
11:44:21 20 Prosecution show such a caring interest in the Defence team.
21 Your Honour, efforts are ongoing. A legal assistant has been
22 requested, but the legal team will be finally composed, when it
23 is finally composed with the agreement of the client. At this
24 point there is simply no prejudice, in my respectful submission,
11:44:47 25 to the Prosecution. Efforts are under way to prepare and
26 organise this case. The current composition is not delaying
27 matters, but, your Honour, it is of course a matter which is of
28 great concern to the client. It is no secret that attempts are
29 being made to obtain private funds, to get funds together to

1 ensure that this case can be prepared and resourced in the manner
2 that it merits.

3 Your Honour, that task is being made more difficult, in all
4 candour, by the sudden transplantation of my client from Africa
11:45:24 5 to Europe, and it's been made even more difficult by the
6 detention regime operating in The Hague. Simply put, my client
7 cannot receive phone calls in the same way that he received phone
8 calls in Freetown, in the same way that all other accused before
9 the Special Court can make and receive phone calls. So, your

11:45:47 10 Honour, that has had a practical effect in delaying attempts to
11 see what is the state of play regarding funding, because of
12 course it is not within my personal gift, it is not within the
13 personal gift of my client. Funds have to be brought together
14 and that is being made more arduous by the inability of my client
11:46:07 15 to receive phone calls that all other detainees before the
16 Special Court are able to receive.

17 Your Honour, as an aside, messages - so there is no
18 misrepresentation - the procedure is that people that want to
19 speak to my client leave a message with the ICC detention staff
11:46:25 20 and then he has a certain number of minutes every month that he
21 can phone them back. The difficulty is two-fold at least: one is
22 the financial aspect. Calls are extremely expensive to Africa -
23 I'm told approximately 10 Euros for three or four minutes - so it
24 is extremely expensive to call. But the second is the delay in
11:46:52 25 transmitting the messages. There have been occasions where, I am
26 told, a two-day delay has arisen between somebody ringing and
27 leaving a message and the message being conveyed to my client.

28 Your Honour, even when a few hours is the delay, very often
29 the people then that need to be spoken to - and all these are

1 monitored calls; there is no objection at all to that monitoring
2 of the phone calls - but very often when my client then seeks, at
3 his own expense mostly, to ring these individuals, they are no
4 longer contactable because of the delay.

11:47:26 5 I will address you in further detail a little later, with
6 your permission, but these are all matters that have been raised
7 by the Defence with the Registry of the Court to look into in
8 discharge of their own responsibilities as the custodian of
9 Mr Taylor's rights in the pre-trial stage, from an administrative
11:47:46 10 point of view. And, your Honours, I will address you, perhaps
11 with your leave, a bit later on those issues.

12 JUDGE LUSSICK: We will come back to that once we get
13 through the agenda items. Ms Hollis, did you want to add
14 anything to that suggested agenda item you put forward?

11:48:09 15 MS HOLLIS: No, your Honour, and we are appreciative of
16 the update given by Defence counsel, and we are certainly not
17 speaking as a party that has a right to go behind what is going
18 on. However, the status of those efforts is particularly
19 relevant to when a trial could be reasonably said to start, and
11:48:22 20 that's why the agenda item was proposed.

21 JUDGE LUSSICK: Yes, I understand. Thank you.

22 The next agenda item, I would imagine, has probably been
23 covered already, as much as it can be, and that is an indication
24 from the parties of points of agreement or disagreement on
11:48:50 25 matters of law and fact. I don't know if either party has
26 anything more to add. No? Thank you.

27 The fourth agenda item you might be able to help us with,
28 Ms Hollis, or you may not. That item is a preliminary indication
29 from the Prosecution on the number of witnesses it intends to

1 call *viva voce* and the number of witnesses for whom it intends to
2 tender evidence pursuant to Rule 92*bis*. Is it too early in the
3 proceedings for you to give that estimate?

11:49:33

4 MS HOLLIS: If I could give general comments, it may be of
5 assistance to the Trial Chamber.

6 JUDGE LUSSICK: Yes.

11:49:46

7 MS HOLLIS: Of course the number of witnesses that we
8 would call would depend upon agreed facts and matters of law as
9 well as perhaps judicial notice taken by the Chamber, so we are
10 unable to give an exact number. In a fully litigated case we
11 would anticipate that there could be as many as 180 witnesses.

11:50:11

12 The way the Prosecution would like to approach such a fully
13 litigated case would be to present a large amount of that
14 evidence under Rule 92*bis* in written form, either prior testimony
15 of these witnesses or statements of the witnesses, and the great
16 majority of this evidence would be evidence relating to the crime
17 base and the contextual elements of the crimes. Approximately a
18 third would relate to evidence pertaining to this

11:50:35

19 accused's individual criminal responsibility. We would hope to
20 be able to put a great deal of the contextual elements evidence
21 and crime base evidence in via Rule 92*bis*.

11:50:58

22 In addition to that, with regard to live witnesses, we
23 would also like to pursue the possibility of doing that both by
24 video link for witnesses as well as live testimony here in court.
25 So we think that that would help to make the proceedings more
26 efficient, even were it the case that we had to call a large
27 number of witnesses.

28 JUDGE LUSSICK: I think the Rule 92*bis* documents are
29 matters that possibly could be the subject of negotiations

1 between counsel at the pre-trial stage and, if necessary, I will
2 make appropriate orders. But it may not be necessary; it could
3 be a matter of agreement.

4 what do you say to that, Mr Khan?

11:51:33 5 MR KHAN: well, your Honour, no objection at all to the
6 *92bis* proposal. It's only proper practice, in my submission, for
7 the parties, in fulfilment of professional responsibilities, that
8 issues that are peripheral or that can be agreed as part of the
9 background tapestry are agreed, and the Defence will be alive to
11:51:56 10 its obligations, professionally, regarding that.

11 There is great concern, however, regarding the second limb
12 of my learned friend's proposal - an anticipated willingness or
13 eagerness by the Prosecution to rely upon video link evidence.
14 Your Honour, this is perhaps a matter to be litigated at a future
11:52:17 15 date, but if I may be permitted to put down a marker, the Defence
16 for Mr Taylor would view with the greatest concern any possible
17 attempt to conduct this trial by remote control.

18 Your Honour, it is very important, and there is numerous
19 studies to that effect - it is very important for Your Honours,
11:52:37 20 as finders of fact, as well as counsel who are cross-examining
21 witnesses or examining witnesses in-chief, to view their
22 demeanour in person, because at the end of the day, of course,
23 Your Honours, you are tasked with the responsibility of
24 determining where the locus of truth lies.

11:52:55 25 One of the principal weapons in your armoury, your Honour,
26 is the collective wisdom, knowledge and experience that your
27 Honours bring to this Court.

28 Your Honour, it is extremely important that witnesses
29 appear live, wherever possible. If, of course, there is a

1 witness in an extremely frail state, a particular situation can
2 be looked at on its merits. But as a starting point, witnesses,
3 in the Defence's submission, should appear before your Honours,
4 and before counsel for both parties.

11:53:30 5 Your Honour, the Defence of Mr Taylor are extremely
6 grateful that your Honour has taken the trouble to come over for
7 this Status Conference from Freetown. We do realise it caused
8 administrative inconvenience as well as personal difficulty, and
9 we are grateful for you and the Registry in facilitating that.

11:53:51 10 Your Honour, we were extremely concerned with a proposal that had
11 been if not bandied about, that had been mooted, that the Defence
12 for Mr Taylor would attend this Status Conference by video link,
13 with the Prosecution and your Honours in the rather cosy
14 environment or clement environment of Freetown. That's a matter
11:54:18 15 that we would not have been happy to proceed with. We think - we
16 do submit that has major implications towards equality of rights,
17 equality of arms.

18 Your Honours, perhaps the weather in The Hague at the
19 moment is rather warm and nice, but there was a very real danger,
11:54:33 20 in that avenue being pursued, that the Defence, in every way,
21 would be left out in the cold of Europe while the real events
22 were proceeding in Freetown. So, your Honour, we are grateful
23 with the manner that you have decided to deal with this Status
24 Conference today, and I think that perhaps the specific merits of
11:54:51 25 any application can be dealt with when the Prosecution make any
26 application regarding video link, but they should not be
27 surprised that the Defence will fight that as an issue of
28 principle.

29 JUDGE LUSSICK: Thank you, Mr Khan. Is there anything

1 else that you wanted to add on to that video link mention?

2 MS HOLLIS: Very briefly. Your Honour will not be
3 surprised that the Prosecution's position on video link is
4 different than that espoused by Defence counsel. We do believe
11:55:22 5 that it is live testimony which affords you the ability to judge
6 the demeanour and we would be happy for this to be a litigated
7 issue. We do believe - and what we envision - in case it is not
8 clear, what we envision is that the Court, the accused and the
9 counsel would be here, but the witnesses would be elsewhere,
11:55:40 10 predominantly Freetown. Thank you, your Honour.

11 JUDGE LUSSICK: Yes, thank you. I can see that this would
12 be a litigated matter and it may get to the stage, Mr Khan, where
13 you would consider filing a Rule 73 motion and obtaining a
14 definitive decision from the Court on the use of video links. In
11:56:06 15 any event, that is something along the way from here at the
16 moment.

17 MR KHAN: Thank you, your Honour.

18 JUDGE LUSSICK: That finishes the preliminary agenda that
19 I wanted to raise at this first Status Conference, but the only
11:56:26 20 other matter is any issues now that the parties wish to raise in
21 relation to the case. What about the Prosecution? I'm talking
22 generally now rather than specific agenda items.

23 MS HOLLIS: Your Honour, the Prosecution has no additional
24 issues at this time.

11:56:46 25 JUDGE LUSSICK: Thank you. Mr Khan?

26 MR KHAN: Your Honour, briefly, I did touch, on the last
27 occasion that we appeared together in Freetown, on the issue of
28 conditions of detention. Your Honour, these are matters that
29 have been raised with the Registry, but your Honour may wish to

1 have a brief overview of developments.

2 Your Honour, if that's of assistance, I can very briefly
3 review some of the problems that remain. Your Honour, the
4 principal concern is that there is still a wide disparity in
11:57:22 5 treatment afforded to detainees before the Special Court for
6 Sierra Leone in Freetown and those that are afforded to my
7 client, a detainee of the Special Court for Sierra Leone here in
8 The Hague. Your Honour, those differences are multifarious.

9 They extend, as I mentioned earlier, to the making and receiving
11:57:43 10 of phone calls. They continue to the lock-down hours. The
11 amount of time that my client is made to remain locked in a room
12 is far more draconian despite, I think, the intervention of the
13 ICRC - are far more draconian than operates in Freetown.

14 The starting point will not surprise you, your Honour. The
11:58:08 15 starting point of the Defence is that all things being equal
16 Mr Taylor should be afforded the same rights, the same
17 privileges, the same regime in accordance with the presumption of
18 innocence and equality of treatment that are afforded to all
19 other detained persons under the custody of the Special Court for
11:58:32 20 Sierra Leone.

21 Your Honour, there is an issue regarding food. This is
22 still a rather Eurocentric detention facility. There is one
23 other detainee at the moment of the ICC. Mr Taylor is the only
24 detainee, of course, from Sierra Leone. The diet is European;
11:58:50 25 the dietary facilities are very different from Freetown.

26 Your Honour, all these matters need to be addressed.

27 Your Honour, I won't go through all the minutiae. Suffice it to
28 say that the Registry is seized of the matter. Progress is going
29 on, but extremely slowly. These are matters that, on many

1 occasions - they are not rocket science - that with a modicum of
2 goodwill, a modicum of commonsense between the parties, the
3 Special Court and the ICC, and a willingness to resolve these
4 issues, they can, in my respectful submission, all be resolved
11:59:39 5 without a huge amount of controversy. But there must be a
6 willingness on both sides - the ICC and the Special Court - to do
7 so.

8 Your Honour, the other matter goes to the resources that
9 are provided to the Defence. Your Honour, under the MOU - under
11:59:55 10 the memorandum of understanding between the ICC and the Special
11 Court which is, in fact, on a reading at least, a rather strange
12 document because on various places it seems to give all the
13 responsibility to the ICC and on other occasions it tells the
14 Special Court that they are fully responsible, but, your Honour,
12:00:17 15 under that memorandum of understanding the Court is obligated at
16 6.4, and I'll read it out:

17 *"The Special Court shall retain full legal control and*
18 *authority over the detainee and shall assume full legal*
19 *responsibility for the custody of the detainee. In particular,*
12:00:40 20 *the Special Court shall remain fully responsible for all aspects*
21 *arising out of the provision of the day-to-day detention services*
22 *and facilities under this Article, including the well-being of*
23 *the detainee."*

24 Your Honour, at the moment, there is nobody that has a
12:01:02 25 particular responsibility, as I understand it, to look after the
26 welfare of my client from an administrative point of view. Of
27 course he has a lawyer. But, your Honour, there is a whole
28 panoply of other matters that other detainees in Freetown are
29 afforded that Mr Taylor is not. I understand that there are

1 resource implications, but this of course is a corollary of the
2 transfer to The Hague. I think there is one Registry official
3 here who is trying to look at accommodation issues, look at
4 premises issues, look at technical issues, so there's an awful
12:01:39 5 lot for one person. I think that, in due course, your Honour, it
6 may well be the case that further infrastructure is required to
7 ensure that the basic rights of Mr Taylor are afforded from an
8 organisational point of view from the Court.

9 Your Honour, if I may be permitted, I think there is a
12:01:56 10 proposal that some detention officers from Freetown may be - at
11 least proposed from the Defence - that some detention officers
12 from Freetown or internationals from Freetown come over, or be
13 seconded to the ICC to provide additional resources to assist the
14 ICC in taking care of Mr Taylor. Your Honour, one of the reasons
12:02:19 15 for the very long lock-down - at the beginning, it was 16 hours
16 on a Saturday, 14 hours on Sunday - was resources on the weekend.
17 There was overtime, I presume, and therefore they had less staff
18 on duty, which was resolved by making sure that the detainees
19 were deprived of movement rights of that severity.

12:02:45 20 Your Honour, as far as you are able in your dealings with
21 the Registry, and as far as you are able to use your influence
22 when it comes to resource allocation, I do impress upon your
23 Honours, as you would be aware, of the need to ensure that these
24 type of matters are given a priority from the Court. And there
12:03:03 25 may well be financial implications for the Court, but I think one
26 cannot shy away from that.

27 Your Honour, the only other point I would make, with your
28 leave, arises out of the comments of the Secretary-general of the
29 United Nations, his Excellency Kofi Annan, when he visited the

1 Court on 3 July. Your Honour, the Defence of Mr Taylor would
2 fully endorse the eloquent comments of lead counsel for Mr Sesay
3 that were made I believe on 5 July before Trial Chamber I.
4 Your Honour, if I can read out what the Secretary-General said
12:03:50 5 when he addressed the court staff in Freetown in Sierra Leone at
6 the court premises. Your Honour, I will read out only the
7 relevant section. The Secretary-General said:

8 *"We now have a court which is alive, a court that is*
9 *putting on trial criminals who have done lots of damage to the*
12:04:12 10 *country; criminals who have terrorised the population, destroyed*
11 *the economy and the social fabric of this country that we are*
12 *trying to put together. It is also important that it was this*
13 *court that indicted Charles Taylor, who was a powerful warlord in*
14 *the region and a former head of State. And that also sends a*
12:04:37 15 *message around the continent and around the world that who ever*
16 *you are, how ever powerful you are, you may have to account for*
17 *your misdeeds."*

18 Your Honour, shocking comments from the leader, the head
19 civil servant of a United Nations supposedly intent on ensuring
12:05:02 20 and establishing the rule of law, not only in the continent of
21 Africa but everywhere in the world. For the political head of
22 the United Nations to be permitted to come to the court and speak
23 to court staff, members of chambers staff, Registry staff and
24 members of the Prosecution in these terms is not just unseemly;
12:05:26 25 it is repugnant to justice, in my submission.

26 Your Honour, it is not only repugnant because it has the
27 potential to give a sense of unfairness, it is repugnant, in my
28 submission, because those type of comments coming from the most
29 senior members of the United Nations creates a chilling effect

1 not just for Defence investigations, not just for the Defence
2 gaining cooperation from witnesses, but the willingness of
3 witnesses to speak to the Defence is often totally ignored - it
4 is not as if the Prosecution have difficulties - for people to be
12:06:12 5 brave enough to come and speak to the Defence for an individual
6 who has already, in many quarters, been hung, drawn and quartered
7 should not be lost upon this Trial Chamber.

8 Your Honour, in addition to that, it sends a signal to
9 members of staff, some of whom may be very experienced and may be
12:06:33 10 immune from such protestations from such an eminent person as the
11 Secretary-General, but of course it is a court that also has more
12 junior members fulfilling extremely important jobs. And for
13 those individuals to have a signal that individuals who are
14 presumed innocent, whose guilt has not been pronounced in
12:06:50 15 relation to any of the trials - the *CDF*, the *AFRC*, the *RUF* or
16 *Mr Taylor* - by any court of law, that these individuals have
17 already been found to be guilty by the Secretary-General is
18 downright unacceptable.

19 Your Honour, it is a lamentable day - that was a lamentable
12:07:13 20 day for international justice when the Secretary-General made
21 those remarks. It is unfortunate perhaps that nobody present at
22 the time had the fortitude to stand up and distance themselves
23 from those wholly unacceptable comments. But, your Honour, I do
24 invite your Honour and Trial Chamber II to do exactly that, to
12:07:32 25 distance yourselves, in the most unequivocal way, from the
26 comments of the Secretary-General of the United Nations which
27 made inroads and arrogated to himself a fact-finding
28 responsibility that lies only with you after you have heard the
29 evidence of the Prosecution, after it has been tested by the

1 Defence, and after you have heard the Defence evidence and
2 deliberated properly and carefully to the required standard.

3 Your Honour, I would invite your Honour, today if possible,
4 but otherwise at a suitable opportunity after conferring with
12:08:09 5 other members of Trial Chamber II, to dissociate and depart from
6 the comments of the Secretary-General as being most unfortunate
7 and downright unacceptable. Your Honour, those are my
8 submissions on the additional matter that I wished to bring to
9 your Honour's attention.

12:08:33 10 JUDGE LUSSICK: Thank you, Mr Khan. Ms Hollis, I'll give
11 you an opportunity if you wish to say something on what Mr Khan
12 has just raised.

13 MS HOLLIS: Very briefly, your Honour. This Trial Chamber
14 and the Special Court do not work for the Secretary-General. You
12:08:52 15 are professional judges; you are independent. The Prosecution
16 sees no reason for you to affirm that. We all work under that
17 premise and actually, your Honour, in candour to the Court,
18 I find the points raised by the Defence perhaps more in the frame
19 of a political commentary than raising legitimate issues here.

12:09:16 20 We certainly believe that this Court will continue to act
21 independently regardless of who may make any comments that
22 prejudice a person appearing before you. Thank you, your Honour.

23 JUDGE LUSSICK: Yes. Thank you, Ms Hollis.

24 MR KHAN: Your Honour, with the greatest of respect,
12:09:33 25 I simply must respond to that. Your Honour, they may have a
26 political impact, but then this whole Court does, because the
27 reason we are here today was not the result of any legal
28 decision, any legal scrutiny of the merits of this trial taking
29 place here in Europe or in Freetown with the other detainees. It

1 was the result of political machinations or political decisions
2 in New York by politicians, so there is a political context.
3 But, your Honour, it would be as unacceptable for the
4 Secretary-General, speaking in an official capacity to officials
12:10:08 5 of the Court, to make these allegations as it would be for me to
6 go to Sierra Leone or go to Liberia and say that anybody who
7 speaks for the Defence is a liar and slander them or make
8 accusations against them.

9 The Prosecution would be the first to stand up and say:
12:10:23 10 The Defence are making comments that have a chilling effect on
11 the preparation of the Prosecution. I'm doing no more, your
12 Honour, than saying what is sauce for the goose is sauce for the
13 gander, to use, with the greatest of respect, an American
14 expression.

12:10:46 15 JUDGE LUSSICK: The matters raised by Mr Khan fall under
16 two heads. I'll address very briefly the latter matter that has
17 just been mentioned. I think I should emphasise here something
18 that we are all very familiar with, and that is that among the
19 fundamental rights guaranteed to Mr Taylor under our Statute is
12:11:15 20 the right to be presumed innocent until proven guilty. I can't
21 emphasise strongly enough that Mr Taylor will be tried in this
22 Court in Trial Chamber II; he won't be tried in the media, and he
23 won't be tried by the content of what people say outside the
24 Court.

12:11:40 25 Myself and my colleagues, as Mr Khan has already pointed
26 out, are professional judges and our focus, and our only focus,
27 is to ensure that Mr Taylor receives a fair trial, which is his
28 right under the Statute and by all humanitarian laws. He is
29 entitled to be presumed innocent and to receive a fair trial, and

1 that's what's going to happen. As professional judges we are
2 totally uninfluenced by what people might say outside of the
3 courtroom.

12:12:39 4 Now, Mr Khan, the other head of matters - you've raised
5 quite a few concerns relating to conditions of detention, and
6 I fully appreciate what you say that perhaps conditions here are
7 different from Freetown, and I would not like anybody listening
8 to those submissions to think that Freetown is the Riviera of the
9 detention system, but certainly it does have different rules than
12:13:13 10 Mr Taylor is experiencing here.

11 Now, as you know, unless these conditions go to fair trial
12 issues, my Trial Chamber is fairly circumscribed as to what it
13 can order, because the jurisdiction on detention matters goes
14 through another channel. As you know, there is a complaints
12:13:39 15 procedure under the rules of detention and, if satisfaction is
16 not gleaned using that system, the complaints can find their way
17 to the President rather than the Trial Chamber.

18 But, of course, as I have already said, if any of these
19 conditions affect Mr Taylor's right to a fair trial, then my
12:14:08 20 Trial Chamber can deal with the matters. So if you are of that
21 view, you can apply to the Trial Chamber at any time.

22 MR KHAN: I'm most grateful, your Honour.

23 JUDGE LUSSICK: And we will issue the appropriate orders.

24 what I am suggesting at the moment that might improve
12:14:36 25 matters is if I refer this whole transcript to the Registrar and
26 ask him to address the issues raised by the Defence today. If
27 you think there are any specific orders that this Court can make
28 in relation to those matters today, by all means submit them and
29 I will see whether we can make them.

1 MR KHAN: Your Honour, I'm most grateful. If I may say
2 so, that is extremely constructive. Your Honour, we are of
3 course alive to the various options that we have. I did allude
4 to the fact that the issuance of receiving phone calls does have
12:15:16 5 an impact on the preparedness of the Defence to have information
6 regarding the availability of private funds. But, your Honours,
7 at this moment in time I think we are content to leave this
8 matter to the Registry of the Special Court to discuss with their
9 counterparts, the Registry and detention officials of the ICC,
12:15:37 10 and hopefully between the two of them - between the two organs of
11 the two different courts - a mutually satisfactory and sensible
12 solution can be reached, as I said, with good sense and goodwill.
13 Your Honours, if that fails, of course, we may have to bother the
14 Trial Chamber and of course perhaps the President, your Honour,
12:15:57 15 but I am grateful for the indication.

16 JUDGE LUSSICK: Thank you, Mr Khan. I will direct that
17 today's transcript and the matters raised by Mr Khan be brought
18 to the Registrar's attention. I repeat what I say, Mr Khan: you
19 are free to apply at any time if you need the assistance of the
12:16:20 20 Trial Chamber.

21 MR KHAN: I'm obliged.

22 JUDGE LUSSICK: There's only one other matter now. Now
23 that we have started the pre-trial procedure, I would like to
24 keep a finger on the pulse of how matters are developing. So
12:16:36 25 I think it is appropriate today to fix another date for a
26 pre-trial conference. I would like to be guided by the parties
27 to some extent here. I had in mind perhaps another pre-trial
28 conference towards the end of September, but I am open to
29 whatever submissions the Defence and Prosecution may have as

1 regards dates. Ms Hollis, do you have any views on what is an
2 appropriate time for another pre-trial?

3 MS HOLLIS: We have no preference as to the next date for
4 a pre-trial. We are perfectly happy to appear whenever the
12:17:24 5 Chamber sets a schedule, and the end of September would be fine
6 as far as we're concerned.

7 JUDGE LUSSICK: Thank you. What about you, Mr Khan?

8 MR KHAN: Your Honour, it is most gracious of you to ask.
9 Your Honour, whatever is convenient for the Court would be
12:17:41 10 convenient for us. September seems a sensible period of time.

11 JUDGE LUSSICK: The Trial Chamber will issue a formal
12 scheduling order, but the date I'm thinking of is Friday,
13 29 September, unless either party has some other commitments on
14 that date.

12:18:13 15 If there are no other matters, we will adjourn the Court
16 today. As I said, the Court will issue a formal scheduling
17 order, but I will appoint now a Status Conference to be held on
18 Friday, 29 September, and it will be, I presume, in this same
19 courtroom here at The Hague.

12:18:46 20 MR KHAN: I do apologise. There was at least one
21 oversight on my part. It is a matter that the Registry are
22 intimately aware of, but as the transcript is going to them
23 formally, I would ask, with your leave, that particular attention
24 be made regarding securing visas for Mr Taylor's family. They
12:19:06 25 are all outside of The Netherlands. His wife is six months
26 pregnant and, of course, there is not a huge window of
27 opportunity for her to travel here before it becomes difficult to
28 get on an aeroplane. So, your Honours I know that the Registrar
29 and the Deputy Registrar are alive to this issue. I think

1 meetings are planned, but as the transcript is going to be
2 delivered, I think it is only right that the client remind me
3 that that is a matter that is of extreme importance to him, given
4 the fact that he has not had the opportunity to say goodbye to
12:19:43 5 his family before he left Africa. He is, of course, keen on
6 seeing his wife and family again.

7 JUDGE LUSSICK: Thank you, Mr Khan.

8 MR KHAN: I'm grateful. I apologise for omitting it
9 earlier.

12:19:55 10 JUDGE LUSSICK: As a matter of fact I do know something is
11 being done about those visas, but I do agree it is a very
12 important matter to Mr Taylor, and I emphasise, for the benefit
13 of the Registry, that they ought to give this matter some urgent
14 attention. Mr Taylor now has been one month in The Hague today,
12:20:20 15 I think, so as I say, the transcript will be referred to the
16 Registrar, and I would urge him to look into this visa matter as
17 a matter of urgency.

18 I think that concludes our business today. We will adjourn
19 these proceedings until 29 September. Thank you.

12:20:41 20 [12:20 p.m.]

21 (The Trial Chamber adjourned until 29 September 2006)

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