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SCSL-03-01-T  
(31027-31034)

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**SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR**

**TRIAL CHAMBER II**

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

Registrar: Ms. Binta Mansaray

Date filed: 19 November 2010

SPECIAL COURT FOR SIERRA LEONE	
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**THE PROSECUTOR**

**Against**

**Charles Ghankay Taylor**

Case No. SCSL-03-01-T

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**PUBLIC**

**PROSECUTION RESPONSE TO PUBLIC WITH ANNEX A DEFENCE MOTION FOR  
RECONSIDERATION OF DECISION ON DEFENCE MOTION REQUESTING AN INVESTIGATION INTO  
CONTEMPT OF COURT BY THE OFFICE OF THE PROSECUTOR AND ITS INVESTIGATORS**

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Office of the Prosecutor:  
Ms. Brenda J. Hollis  
Ms. Leigh Lawrie

Counsel for the Accused:  
Mr. Courtenay Griffiths, Q.C.  
Mr. Terry Munyard  
Mr. Morris Anyah  
Mr. Silas Chekera  
Mr. James Supuwood

## I. INTRODUCTION

1. The “Public with Annex A Defence Motion for Reconsideration of Decision on Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators”<sup>1</sup> should be dismissed as it fails to establish that there has been a clear error of reasoning in the Decision<sup>2</sup> or that reconsideration is necessary to prevent an injustice.

## II. SUBMISSIONS

### A. No Failure to Appreciate the Inherent Responsibility of the Court as the Arbiter of Justice to Safeguard the Accused’s Rights

2. The Defence submissions at paragraph 11 of the Motion and its reliance on the *Der Spiegel* article at several points throughout the Motion<sup>3</sup> are superfluous to the matter at issue and add nothing of legal substance. Indeed, the worrying tenor of the Defence “arguments” in this regard seem to be that unless the Judges find in the Defence’s favour they lack “courage”<sup>4</sup> or fairness and also that the Judges should apply something other than the law. This is the only logical explanation for the otherwise unnecessary and unprofessional references to media comments and the dismissive references to “legal technicalities”. Despite the Defence’s persistent efforts to conduct a parallel, one sided media “trial”, the courtroom of Trial Chamber II is the only locus which matters. Professional judges, mandated to rule impartially and independently based on the facts and the law, are not going to be swayed by negative media commentary to decide one way or another. Further, the Defence complaint that the Judges are “overly focused on legal technicalities”, for which one can read “appropriate legal standards and jurisprudence”, is counterintuitive and, thus, irrelevant.<sup>5</sup>

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<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1123, Public with Annex A Defence Motion for Reconsideration of Decision on Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 15 November 2010 (“**Motion**”).

<sup>2</sup> “Decision” is defined at Motion, p. 2, footnote 1.

<sup>3</sup> Motion, paras. 11 & 20.

<sup>4</sup> Motion, para. 20.

<sup>5</sup> Motion, para. 11. See also Motion, para. 20: “...that it did not do so reflects a focus on technical rules of pleadings that are counterproductive to the Court’s inherent responsibility to do justice.”

(i) *Undue Delay*

3. None of the Defence arguments under this head establish that the Trial Chamber must reconsider its Decision due to a “clear error of reasoning” or “to prevent an injustice”, the applicable standards for such a request.
4. At paragraph 14 of the Motion, the Defence argues that the Trial Chamber failed to take into account the reluctance of individuals to bring forward allegations against the Prosecution as an explanation for the undue delay in bringing the original motion requesting a contempt investigation.<sup>6</sup> A review of the documents accompanying the Original Motion, however, does not provide any support for this assertion. None of the individuals mention reluctance. The Defence argument is, therefore, based on pure speculation and seeks to provide a retrospective justification for the delay. However, *esto* the Trial Chamber was to reconsider its decision on this point (which the Prosecution denies it is required to do), no prejudice to the Accused has resulted. The Trial Chamber went on to consider the allegations made by each individual specifically referred to in the Original Motion and did not base any finding of lack of credibility on delay alone.
5. The introductory comments at paragraph 15 of the Motion have no relevance to the issues at hand but also ignore the fact that the Court did not exist until 2002, issued indictments in 2003 and proceedings in the current case only started in 2006 because up until that point the Accused had been at large. The only relevant legal argument which emerges from this paragraph of the Motion is that “[t]he relevant inquiry should have been focused on *when* ... the Defence learned of the criminal conduct and not how long ago they occurred.” This argument should be dismissed as the Defence does not demonstrate a “clear error of reasoning” in the Decision on this point. Instead, the Defence misapprehend or ignore that the issue of undue delay is relevant when considering allegations of contempt for two reasons. First, the parties are under an obligation to bring allegations to the attention of the Trial Chamber as soon as possible and to provide an explanation for any failure to do so. Second, where individuals have delayed in bringing

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<sup>6</sup> The original motion requesting a contempt investigation is *Prosecutor v. Taylor*, SCSL-03-01-T-1089, Public, with Confidential Annexes A-J and Public Annexes K-O, Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 24 September 2010, as corrected by the corrigendum set out in *Prosecutor v. Taylor*, SCSL-03-01-T-1090, Public, with Confidential Annexes A-J and Public Annexes K-O, Corrigendum to Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 27 September 2010 (together the “**Original Motion**”).

forward allegations of misconduct, such delay is a valid factor in assessing the individual's credibility. An explanation of the delay again is crucial. In relation to these points, the Defence's original pleadings provided no information about *when* it learned of the allegations save in respect of DCT-192<sup>7</sup> or why the individuals delayed reporting the alleged misconduct, apparently even to the Defence. Rather than provide this information or explanation, the Defence instead argued that "the conduct complained of in this case is different" as it "does not arise from a single incident or an isolated event".<sup>8</sup> The Defence's original strategy in challenging the issue of delay was, therefore, to focus on the cumulative nature of the conduct and not to argue recent knowledge. In the absence of any other information or explanation, the Trial Chamber was accordingly entitled to proceed on the basis that, save in respect of DCT-192, the Defence and/or the individuals had unduly delayed. The Trial Chamber would have been required to deal in inappropriate speculation to have concluded otherwise. In so far as DCT-192's allegations are concerned, it is clear that no error of reasoning occurred as the Trial Chamber took into consideration the recent revelation of his allegations to the Defence.<sup>9</sup> However, as noted at paragraph 26 of the Decision "no satisfactory explanation for the inordinate delay [was] offered by the Defence." A review of the pleadings confirms that this is correct.

6. The Defence arguments at paragraph 16 of the Motion are difficult to decipher. The thrust appears to be the erroneous complaint that the Trial Chamber failed to appreciate the Defence's original argument that individual acts, only when seen relative to one another, somehow create a critical mass suggesting the body of these acts as a whole are contemptuous. This argument should be dismissed as it is a retrospective amendment to the original Defence pleadings. The Defence Reply clearly emphasizes that it is the cumulative nature of the conduct rather than the individual incident that "elevates ... [it]

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<sup>7</sup> Original Motion, Confidential Annex B, paras. 1 & 2.

<sup>8</sup> Reply, paras. 8 & 9. "Reply" is defined at Motion, p. 3, fn. 5.

<sup>9</sup> It is clear that the Trial Chamber took into consideration *when* the Defence learned of DCT-192's allegations and, further, understood that the allegations had only recently been revealed on analysis of the Decision. Paragraph 45 of the Decision states: "...this incident is **only now** being alleged" (emphasis added). This is to be compared with the Chamber's approach to DCT-102, for example, where at paragraph 50 of the Decision it is observed that: "the allegation relates to events dating back to 2003, but was **not brought to the attention of the Court until now**" (emphasis added).

... to a level of contempt that cannot be ignored”.<sup>10</sup> The Trial Chamber correctly rejected this self-serving argument. That conduct might only become clearly potentially contemptuous at a date only the Defence is able to determine is without merit and encourages speculation and delay. In any event, as noted in the *esto* argument at paragraph 4 above, the allegations of each individual were considered by the Chamber and none were found to lack credibility by reason of delay alone. Accordingly, no clear error of reasoning is demonstrated nor is any reconsideration necessary to prevent an injustice.

(ii) *Ambit of Rule 77*

7. The Defence’s first argument under this head made at paragraphs 19 to 21 of the Motion does not establish that the Trial Chamber must reconsider its Decision due to a clear error of reasoning or to prevent an injustice. The Chamber’s conclusion that the Original Motion basically amounted to a “general audit of the operations of the Prosecution” focuses correctly on the imprecision of the Defence’s allegations. General principles of law and also the jurisprudence of the ICTR establish that precision is required when making allegations, particularly allegations as serious as contempt.<sup>11</sup> Precision is required no matter whether contempt is alleged under Rule 77 or the inherent power of the Court.
8. The Defence’s second argument regarding the scope of Rule 77 is contradicted by the plain language of the Original Motion.<sup>12</sup> The Original Motion clearly made sweeping allegations against individuals, former and current Prosecutors and their subordinates and/or agents, and requested an independent investigation into the conduct of all the Prosecution’s employees or agents since the inception of the Court.<sup>13</sup> No request for an investigation into the conduct of the “Office of the Prosecutor” was ever made in the Original Motion. This revisionist argument must, therefore, be dismissed.
9. As the third argument regarding the scope of Rule 77 directly conflicts with the Defence’s own arguments in the Reply, this argument should also be dismissed. The Prosecution clearly raised the issue of the imprecision of the relief requested by the Defence in its

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<sup>10</sup> Reply, para. 10.

<sup>11</sup> *Prosecutor v. Nyiramasuhuko et al.*, ICTR-97-21-T, Decision on the Prosecution’s Allegations of Contempt, the Harmonisation of the Witness Protection Measures and Warning to the Prosecutor’s Counsel, 10 July 2001, para. 8.

<sup>12</sup> Motion, para. 22.

<sup>13</sup> Original Motion, paras. 11 & 30.

Response.<sup>14</sup> In the Reply, the Defence confirmed the Prosecution's approach and stated "the [Original] Motion is one for contempt of court," with the other accusations of wrong doing being raised only "to highlight the extent and gravity" of the Prosecution's conduct. This third argument is, therefore, a blatant example of back-tracking and should be dismissed as such.

#### B. No Application of Disparate & Unfair Legal Standards to Defence Evidence

10. The Defence arguments under this head do not withstand scrutiny and do not establish any ground for reconsideration.<sup>15</sup>
11. In support of its claims of unfairness, the Defence seeks to compare an officer of the court, the Prosecutor who signed the Response, with an individual previously unknown to the Court. These are not appropriate comparators. The special position occupied by officers of the court and the reliance which might be placed on the submissions they make was noted in the *Aleksovski* case: "No court can function efficiently without a relationship of trust between counsel and the judges. Counsel is an officer of the court, and in judicial proceedings quite often the court must act on counsel's word, which given as an officer of the court, is accepted as trust, unless there is good reason to doubt his *bona fides*."<sup>16</sup> In this case, no basis has been established on which to doubt the *bona fides* of the Prosecutor as, at the time the Response was filed, the allegations against *inter alia* her were simply allegations. As the Defence are wont to stress, innocent until proven guilty. As the position of the Prosecutor cannot be compared with that of an individual who has not taken any oath before the Court or been shown to have any independent duty of candor to the Court, it is clear that the Defence arguments are erroneous and do not satisfy the test for reconsideration.

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<sup>14</sup> Response, para. 4. "Response" is defined at Motion, p. 3, fn. 4.

<sup>15</sup> Motion, para. 24-25.

<sup>16</sup> *Prosecutor v. Aleksovski*, IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile Against Finding of Contempt, 30 May 2001, Separate Opinion of Judge Patrick Robinson, para. 2.

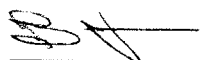
**III. CONCLUSION**

12. For the reasons set out above, the Defence has failed to establish clear errors of reasoning or that reconsideration is necessary to prevent an injustice. Accordingly, the Motion should be dismissed.

Filed in The Hague,

19 November 2010,

For the Prosecution,



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Brenda J. Hollis  
The Prosecutor

**INDEX OF AUTHORITIES****SCSL*****Prosecutor v. Taylor***

*Prosecutor v. Taylor*, SCSL-03-01-T-1089, Public, with Confidential Annexes A-J and Public Annexes K-O, Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 24 September 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-1090, Public, with Confidential Annexes A-J and Public Annexes K-O, Corrigendum to Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 27 September 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-1123, Public with Annex A Defence Motion for Reconsideration of Decision on Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 15 November 2010

**ICTY**

*Prosecutor v. Aleksovski*, IT-95-14/1-AR77, Judgment on Appeal by Anto Nobile Against Finding of Contempt, 30 May 2001

<http://www.icty.org/x/cases/aleksovski/acjug/en/nob-aj010530e.pdf>

**ICTR**

*Prosecutor v. Nyiramasuhuko et al.*, ICTR-97-21-T, Decision on the Prosecution's Allegations of Contempt, the Harmonisation of the Witness Protection Measures and Warning to the Prosecutor's Counsel, 10 July 2001

<http://www.unicttr.org/Portals/0/Case/English/Nyira/decisions/100701b.pdf>