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

TRIAL CHAMBER II

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

Registrar: Ms. Binta Mansaray

Date filed: 7 February 2012

THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

**PROSECUTION RESPONSE TO DEFENCE MOTION TO RE-OPEN ITS CASE IN ORDER TO
SEEK ADMISSION OF PANEL OF EXPERTS REPORT ON LIBERIA**

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I. INTRODUCTION

1. The Urgent Defence Motion to Re-Open its Case in Order to Seek Admission of the Panel of Experts Report on Liberia (“Motion”)¹ is devoid of merit and should be dismissed. The Defence fails to satisfy the test enunciated by this Trial Chamber to re-open its case,² in particular:
 - i) the Motion is untimely;
 - ii) the excerpts of the UN Panel of Experts Report on Liberia (“Report Excerpts”)³ contradict the purpose for which the **Defence** seeks their admission. The Report Excerpts instead confirm “...**support provided by Taylor for anti-Gbagbo rebel movements in Côte d’Ivoire**”.⁴ The only specific reference to the Accused’s role in Côte d’Ivoire, therefore, confirms, not contradicts, the Prosecution evidence. Hence, the Report Excerpts have no probative value or relevance to support the Defence arguments and
 - iii) the Report Excerpts include evidence related to the acts and conduct of the Accused which is inadmissible under Rule 92bis of the Rules of Procedure and Evidence (“Rules”).
2. For all these reasons, the Motion lacks merit to the extent that it is frivolous, will unnecessarily expend judicial time and resources, and should be dismissed.

II. ARGUMENTS

The Defence does not meet the Standard to Re-Open its Case

3. The test to re-open a case as enunciated by this Trial Chamber is that the moving party must show that the evidence could not, with reasonable diligence, have been identified and presented during its case in-chief. If information becomes available after the party closes its case in-chief, the party must also act with due diligence

¹ Urgent and Public with Annex Defence Motion to Re-Open its Case in order to Seek Admission of Panel of Experts Report on Liberia, SCSL-2003-01-T-1260, 31 January 2012.

² Decision on Public with Confidential Annexes A and B Defence Motion to Re-Open Its Case In Order To Seek Admission of Two Documents, SCSL-2003-01-T-1258, 21 December 2011 (“Taylor Decision to Re-Open”), paras. 5-6.

³ For the purposes of this Response, those excerpts submitted by the Defence shall be referred to as the “Report Excerpts” while the entire Panel of Experts Report (S/2011/757) dated 7 December 2011, including those portions not submitted, shall be referred to as the “Report”.

⁴ Report Excerpts, para. 24.

once the documents are published.⁵ In addition, the Trial Chamber must be of the view that the probative value of the evidence is not substantially outweighed by the need to ensure a fair trial.⁶

The Defence did not Act with Due Diligence

4. Even though the Defence could not have offered the Report Excerpts during its case-in-chief, it failed to act with due diligence once the Report was published on the UN website on 7 December 2011. Indeed, it took the Defence eight weeks after publication of the Report to file its Motion on 31 January 2012. As discussed below, the Defence fails to give any satisfactory justification for this delay.
5. First, the Prosecution recalls that the Report is only 122 pages plus annexes, far from being a long document requiring eight weeks to review. Second, the Defence incorrectly implies the Trial Chamber declared a December judicial recess that would have prevented it from filing its Motion before 31 January 2012. In fact, the Trial Chamber declared no such recess. Third, accepting *arguendo* the Defence's unsubstantiated assertion that it had difficulties consulting with the Accused "in the last week" before the Motion was filed,⁷ the Defence does not justify why it did not file the Motion in the previous seven weeks when there was no such interruption.
6. In light of the above, it is clear that the Defence neglected its responsibility to act with due diligence once the Report was published on 7 December 2011.

The Probative Value of the Report Excerpts is Substantially Outweighed by the Need to Ensure a Fair Trial

7. The guarantee of a fair trial applies to both parties; admission at this advanced stage prejudices the Prosecution, which will have no opportunity to address the issues before the Trial Judgement is delivered.⁸

⁵ Taylor Decision to Re-Open, paras. 5, 9.

⁶ Decision on Public with Confidential Annexes A and B Prosecution Motion to Call Three Additional Witnesses, SCSL-03-01-T-993, 29 June 2010, para. 8; *Prosecutor v. Delalić et al.*, ICTY-IT-96-21-A, Appeal Judgement, 20 February 2001, para. 283.

⁷ Motion, para. 11.

⁸ *Prosecutor v. Milutinović et al.*, IT-05-87-T, Decision on Prosecution's Request for Certification of Rule 73bis for Appeal, 30 August 2006, para 10; *Prosecutor v. Karemera et al.*, ICTR-98-44-T, Severance of André Rwamakuba and Amendments of the Indictment, 7 December 2004, para. 26.

The Proposed Evidence has No Probative Value

8. The Defence observation that the only references to Mr. Taylor in the Report Excerpts are indirect, intentionally or negligently omits the specific reference to the Accused's role in Côte d'Ivoire found at paragraph 24, wherein the Panel of Experts specifically confirms Taylor's support for the anti-Gbagbo rebel movements in that country. This specific confirmation negates the Report Excerpts' probative value for the purposes the **Defence** seeks to have them admitted.⁹
9. In this circumstance, where the information specifically referring to Charles Taylor's role in Côte d'Ivoire contradicts rather than supports the Defence arguments, the probative value of the Report Excerpts is *nil*.
10. In addition, the other information contained in the Report Excerpts has no probative value or relevance to the current proceedings. For example, the so-called "key factual findings...of general relevance to the Defence case"¹⁰ unequivocally refer to events in Liberia and Côte d'Ivoire under Ellen Johnson Sirleaf's government in 2011, eight years after the Accused stepped down from power. This is especially true where, unlike the evidence in this case, there is no indication that Johnson Sirleaf's government was interfering in the affairs of its neighbour.

The Proceedings are at an Advanced Stage

11. Given that the proceedings are at an advanced stage, admitting the proposed evidence now could delay the completion of the judicial process.¹¹

The Proposed Evidence is Inadmissible under Rule 92bis

12. Rule 92bis requires that the proposed evidence be "relevant to the purpose for which it is submitted" and "not go to proof of the acts and conduct of the Accused".¹² Evidence goes to proof of the Accused's acts and conduct if it tends to prove or disprove the Accused's acts and conduct as charged.¹³
13. As discussed above, the information in the Report Excerpts is not relevant to the purpose for which it is submitted. Moreover, the Report Excerpts go to proof of the

⁹ Motion, para. 18; Report Excerpts, para. 24.

¹⁰ Motion, para. 16.

¹¹ Taylor Decision to Re-Open, paras. 5, 10.

¹² Rule 92bis (A), (B) of the Rules.

¹³ Decision on Defence Appeal Regarding the Decision on the Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, SCSL-03-01-T-1168, 25 January 2011 ("JPK Appeal Decision"), para. 31.

acts and conduct of the Accused. The Defence alleges that the Report Excerpts illustrate that “it was possible for fighters to cross from Liberia to participate in the conflict in Sierra Leone *without being under the direction or control of Mr. Taylor*”.¹⁴ Such argument purportedly rebuts Prosecution allegations regarding the acts and conduct of the Accused, specifically his control of Liberian fighters in Sierra Leone. Under Rule 92*bis*, such rebuttal evidence is inadmissible.¹⁵

14. In addition, this proposed evidence is aimed at challenging the credibility of Prosecution witnesses who testified in relation to this aspect of the Accused’s acts and conduct.¹⁶ The Appeals Chamber determined in the JPK Appeal Decision that evidence going to proof of the Accused’s acts and conduct under Rule 92*bis* includes evidence affecting the credibility of Prosecution assertions as to the Accused’s guilt.¹⁷ Accordingly, as the Report Excerpts go to proof of the acts and conduct of the Accused, they are inadmissible under Rule 92*bis*.

III. CONCLUSION

15. In light of the above, the Defence Motion should be dismissed as the Defence has not met the test to re-open its case. Specifically, the Defence has not acted with due diligence in filing this Motion, and the need for a fair trial substantially outweighs the probative value of the information in that the Report Excerpts are filed at a late

¹⁴ Motion, para. 14.

¹⁵ JPK Appeal Decision, para. 45.

¹⁶ For attacks on the credibility of Prosecution witnesses, see Motion, para. 15 in particular.

¹⁷ JPK Appeal Decision, paras. 41, 42.

stage of the proceedings, lack probative value and consist of evidence inadmissible under Rule 92bis.¹⁸

Filed in The Hague,

7 February 2012,

For the Prosecution,



Brenda J. Hollis

The Prosecutor

¹⁸ In similar circumstance, this Chamber recently denied a Defence Motion to Re-Open. See Taylor Decision to Re-Open, paras. 9-10 (the Chamber denied the Defence motion to re-open where it failed to exercise reasonable diligence, the trial was at an advanced stage, and the proposed evidence had minimal probative value and was largely inadmissible under Rule 92bis).

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

Urgent and Public with Annex Defence Motion to Re-Open its Case in order to Seek Admission of Panel of Experts Report on Liberia, SCSL-2003-01-T-1260, 31 January 2012.

Decision on Public with Confidential Annexes A and B Defence Motion to Re-Open Its Case In Order To Seek Admission of Two Documents, SCSL-2003-01-T-1258, 21 December 2011.

Decision on Defence Appeal Regarding the Decision on the Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, SCSL-03-01-T-1168, 25 January 2011.

Decision on Public with Confidential Annexes A and B Prosecution Motion to Call Three Additional Witnesses, SCSL-03-01-T-993, 29 June 2010.

ICTR

Prosecutor v Karemera et al., ICTR-98-44-T, Severance of André Rwamakuba and Amendments of the Indictment, 7 December 2004.

<http://www.unictr.org/Portals/0/Case/English/Karemera/trail/071204.pdf>

ICTY

Prosecutor v Milutinović et al., IT-05-87-T, Decision on Prosecution's Request for Certification of Rule 73bis for Appeal, 30 August 2006.

<http://www.icty.org/x/cases/milutinovic/tdec/en/060830a.pdf>

Prosecutor v Delalić et al., ICTY-IT-96-21-Abis, Appeal Judgement, 20 February 2001.

<http://www.icty.org/x/cases/mucic/acjug/en/cel-aj010220.pdf>