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SCSL-03-01-T  
(26912-26916)

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**THE SPECIAL COURT FOR SIERRA LEONE**

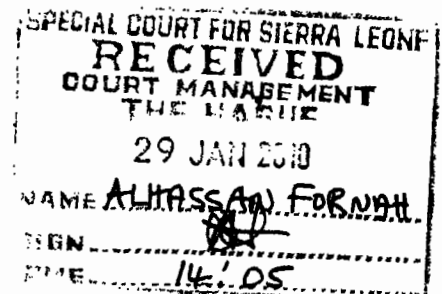
**Trial Chamber II**

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

**Acting Registrar:** Ms. Binta Mansaray

**Date:** 29 January 2010

**Case No.:** SCSL-03-01-T



**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

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**PUBLIC**

**DEFENCE RESPONSE TO "URGENT APPLICATION FOR LEAVE TO  
APPEAL ORAL DECISIONS OF 21 JANUARY 2010 ON USE OF DOCUMENTS  
IN CROSS-EXAMINATION"**

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**Office of the Prosecutor:**

Ms. Brenda J. Hollis  
Mr. Nicholas Koumjian  
Ms. Nina Jørgensen  
Ms. Kathryn Howarth  
Mr. Christopher Santora

**Counsel for Charles G. Taylor:**

Mr. Courtenay Griffiths, Q.C.  
Mr. Terry Munyard  
Mr. Morris Anyah  
Mr. Silas Chekera  
Mr. James Supuwood

## I. INTRODUCTION

1. This is the Defence Response to the Prosecution's Urgent Application for Leave to Appeal Oral Decisions of 21 January 2010 on Use of Documents in Cross-examination.<sup>1</sup>
2. The Application concerns the use of two documents in court, footnote 18 and footnote 19 from the book entitled *ECOMOG: A Sub-Regional Experience in Conflict Resolution Management and Peacekeeping in Liberia*, by Festus Aboagye.<sup>2</sup>
3. In its oral decisions of 21 January 2010, the Trial Chamber applied the test it had laid down in a previous decision relating to the use of documents containing fresh evidence during cross-examination.<sup>3</sup> In the present Application the Prosecution argues that in making those oral decisions, the Trial Chamber erred in its application of the Documents Decision test as it relates to the use of fresh evidence for purposes of cross-examination ("the use test"). Those errors, the Prosecution argues, amount to "exceptional circumstances" and could result in "irreparable prejudice".<sup>4</sup>
4. The Defence submits that the Application does not meet the conjunctive standards of exceptional circumstances and irreparable prejudice under Rule 73(B) of the Rules of Procedure and Evidence. Therefore, leave to appeal should be denied.

## II. APPLICABLE LEGAL STANDARD

5. In terms of applicable law, the Defence adopts and incorporates the standard as referenced in its earlier filings of 22 January 2010 and 27 January 2010.<sup>5</sup>

<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-889, "Urgent Application for Leave to Appeal Oral Decisions of 21 January 2010 on Use of Documents in Cross-examination", 25 January 2010 ("the Application").

<sup>2</sup> Application, para. 1.

<sup>3</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-865, "Decision on Prosecution Motion in Relation to the Applicable Legal Standards governing the Use and Admission of Documents by the Prosecution during Cross-Examination", 30 November 2009 ("Documents Decision").

<sup>4</sup> Application, paras. 12-16.

<sup>5</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-883, "Defence Response to the Public with Annex A and Confidential Annex B Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-examination", 22 January 2010 ("22 January Response"); *Prosecutor v. Taylor*, SCSL-03-01-T-891, "Defence Response to the Urgent Application for Leave to Appeal Oral Decisions of 18 January 2010 on Use of Documents in Cross-examination", 27 January 2010 ("27 January Response").

### III. ARGUMENT

#### Exceptional circumstances

6. To the extent that, in the present Application, the Prosecution relies on the same legal arguments as in its previous Applications,<sup>6</sup> the Defence also relies on the legal arguments in its 22 January Response and 27 January Response.
7. In paragraph 13 of the Application, the Prosecution merely repeats the argument that the Trial Chamber erred in rejecting the Prosecution's intended use of the document over and above the nature of the material in the document. This is effectively the same contention advanced in paragraph 16 of its 18 January Application and likewise paragraph 16 of its 21 January Application. The Defence has already responded to this argument in its 22 January Response and in its 27 January Response, but for the sake of clarity, it restates that the Documents Decision contains no such discretion for the Prosecution to determine the nature of the document it wishes to use: it is the document itself which either contains material probative to guilt, or it does not. As the Presiding Judge stated on 21 January:

“in our decision of 30 November and in subsequent oral decisions, the Chamber has made it very clear that in determining objections based on the content of a document and its use in court in cross-examination, the intention or purpose for which the Prosecution intends it is immaterial and irrelevant in our determination of whether the document will or will not be used. What is relevant and what is important is whether potentially the passage contains material that is probative of guilt. It's not the intention for which it is meant but rather the content.”<sup>7</sup>

Therefore, as already argued by the Defence,<sup>8</sup> the First Impugned Decision and Second Impugned Decision do not give rise to exceptional circumstances.

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<sup>6</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-875, “Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-examination”, 18 January 2010 (“**18 January Application**”); *Prosecutor v. Taylor*, SCSL-03-01-T-882, “Urgent Application for Leave to Appeal Oral Decisions of 18 January 2010 on Use of Documents in Cross-examination”, 21 January 2010 (“**21 January Application**”).

<sup>7</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, 21 January 2010, p. 33818.

<sup>8</sup> See especially 27 January Response, para. 9.

Irreparable prejudice

8. To the extent that, in the present Application, the Prosecution relies on the same legal arguments as in its previous Applications,<sup>9</sup> the Defence also relies on the legal arguments in its Response dated 22 January 2010 and Response dated 27 January 2010.<sup>10</sup>

**IV. CONCLUSION**

9. For all or any one or more of the foregoing reasons, the Prosecution's case fails the conjunctive exceptional circumstances and irreparable prejudice test. Leave to appeal must therefore be denied and the Defence respectfully submits that the Application should be dismissed.

Respectfully Submitted,



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**Courtenay Griffiths, Q.C.**  
**Lead Counsel for Charles G. Taylor**

Dated this 29th Day of January 2010,  
The Hague, The Netherlands

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<sup>9</sup> 18 January Application; 21 January Application.

<sup>10</sup> 22 January Response; 27 January Response.

**LIST OF AUTHORITIES****Prosecutor v. Taylor**

*Prosecutor v. Taylor*, SCSL-03-01-T-865, "Decision on Prosecution Motion in Relation to the Applicable Legal Standards governing the Use and Admission of Documents by the Prosecution during Cross-Examination", 30 November 2009

*Prosecutor v. Taylor*, SCSL-03-01-T-875, "Public with Annex A and Confidential Annex B Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-Examination", 18 January 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-882, "Urgent Application for Leave to Appeal Oral Decisions of 18 January 2010 on Use of Documents in Cross-examination", 21 January 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-883, "Defence Response to the Public with Annex A and Confidential Annex B Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-examination", 22 January 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-889, "Urgent Application for Leave to Appeal Oral Decisions of 21 January 2010 on Use of Documents in Cross-examination", 25 January 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-891, "Defence Response to Urgent Application for Leave to Appeal Oral Decisions of 18 January 2010 on Use of Documents in Cross-examination", 27 January 2010