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SCSL-03-01-T
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THE SPECIAL COURT FOR SIERRA LEONE

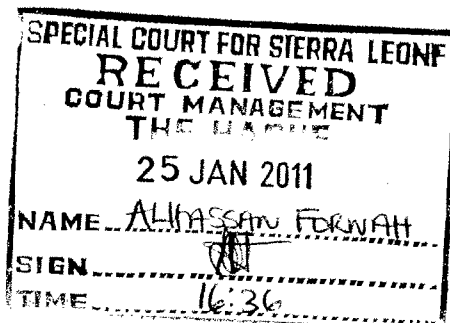
Trial Chamber II

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

Registrar: Ms. Binta Mansaray

Date: 25 January 2011

Case No.: SCSL-03-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**DEFENCE REPLY TO PROSECUTION RESPONSE TO DEFENCE MOTION
TO RE-OPEN ITS CASE TO SEEK ADMISSION OF DOCUMENTS RELATING
TO THE RELATIONSHIP BETWEEN THE UNITED STATES GOVERNMENT
AND THE PROSECUTION OF CHARLES TAYLOR**

Office of the Prosecutor:
Ms. Brenda J. Hollis

Counsel for Charles G. Taylor:
Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood
Ms. Logan Hambrick, Legal Assistant

I. INTRODUCTION

1. This is the Defence Reply to the *Prosecution Response to Defence Motion to Re-Open its Case to Seek Admission of Documents Relating to the Relationship between the United States Government and the Prosecution of Charles Taylor* (“Response”).¹
2. The Prosecution opposes the Defence Motion to re-open its case in order to seek admission of the Cables and Apology article, on the basis that they are irrelevant to questions regarding the independence and impartiality of the Special Court and the Prosecution² and/or questions regarding the selective prosecution of the Accused.³ The Prosecution also argues that the documents contain opinion evidence and thus should not be admitted.⁴ The Prosecution does not challenge the fact that the issues contained in the Cables and Apology article arose after the conclusion of the Defence case and could not have been obtained despite the due diligence of the Defence.
3. The Defence reiterates that given the pivotal nature of the content of the Cables and the Apology which authenticates one of them, and given the limited delay that their admission pursuant to Rule 92*bis* would cause to the trial, the Defence submits that it should be allowed to re-open its case for this purpose.
4. Furthermore, the Defence hereby incorporates its arguments contained in the *Reply to Prosecution Response to Defence Motion for Disclosure and/or Investigation of*

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1163, Public Prosecution Response to Defence Motion to Re-Open its Case to Seek Admission of Documents Relating to the Relationship between the United States Government and the Prosecution of Charles Taylor, 20 January 2011 (“Response”); and *Prosecutor v. Taylor*, SCSL-03-01-T-1143, Public with Annexes A-C Defence Motion to Re-Open its Case to Seek Admission of Documents Relating to the Relationship between the United States Government and the Prosecution of Charles Taylor, 10 January 2011 (“Motion”).

² Response, paras. 5-11.

³ Response, paras. 12-16.

⁴ Response, para. 17.

United States Government Sources within the Trial Chamber, the Prosecution, and the Registry Based on Leaked USG Cables, which is filed simultaneously.⁵

II. SUBMISSIONS

Cables and Apology article are Relevant

5. It is submitted that the content of the Cables raises concerns about the impartiality and independence of the Special Court. Contrary to the Prosecution's position at paragraphs 6 and 7 of its Response, the documents do not refute this allegation by the Defence. In this regard, the Defence refers to paragraphs 6-8 and 11 of its U.S. Government Sources Reply.
6. The Prosecution's additional comments at paragraph 7 of the Response are largely irrelevant as they reference portions of the March 2009 Cable for which the Defence is not seeking admission.
7. At paragraph 8 of its Response, the Prosecution suggests that as only the April 2009 Cable refers to the Trial Chamber (and to Prosecution allegations that Justice Sebutinde is slowing down the trial for personal reasons), and as it only contains information which is in the public domain, it cannot be relevant to the Defence theory that the USG is unduly influencing the trial. In making such argument the Prosecution mixes two issues. The comments themselves, made by the Prosecution to the USG outside official channels of communication and/or the public domain, suggests that the Prosecution has something to hide.
8. At paragraph 11 of its Response, the Prosecution argues that the newspaper article containing the United States' Ambassador's apology to President Sirleaf for the

⁵ *Prosecutor v. Taylor*, SCSL-03-01-T, Defence Reply to Prosecution Response to Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution, and the Registry Based on Leaked USG Cables, 25 January 2011 ("U.S. Government Sources Reply").

publication of her comments has no relevance to the trial.⁶ Yet it is obviously relevant for purposes of authenticating the information contained in the Cables.⁷ This is significant because in terms of the requirements of Rule 92bis, a document's reliability must be susceptible of confirmation.

9. The Prosecution's objections to the documents' relevance regarding selective prosecution, at paragraphs 12-16 of its Response, are premised on the basis that a Defence challenge based on selective prosecution would ultimately not be successful. At the stage of admission of documentary evidence pursuant to Rule 92bis, however, it is not for a party to prove that a document would be relied on by the Trial Chamber to successfully prove the parties' position. Rather the appropriate standard is whether the document is relevant to the Trial Chamber's eventual determination. The Defence submits that the Cables and Apology article certainly are.
10. The Prosecution at paragraph 14 of its Response further suggests that challenges relating to selective prosecution must be made at the pre-trial stage as a preliminary issue, and that consequently the Defence is somehow time-barred to raise the issue now that it has additional evidence to this effect. While this is a convenient argument for the Prosecution to make, relying further on its powers of broad prosecutorial discretion, it cannot be said that the Defence has somehow "waived" its right to raise this issue. Furthermore, the Defence is not raising this as a jurisdictional issue (which should be raised at the preliminary stage) but as an example of undue governmental influence on the prosecution of Mr. Taylor. It will be recalled that in *Delalic*, this issue was substantively addressed in the Appeals Judgement and was not discounted as a preliminary issue.

⁶ The Prosecution complains that the article was not entirely legible. However, the Defence notes that at the Prosecution's request, the Defence provided an electronic copy of the article to the Prosecution. The electronic copy, especially when magnified, makes the content of the article quite legible.

⁷ It will be recalled that the Trial Chamber previously admitted a number of documents relating to the Special Task Force which were internally corroborative and authenticating. *Prosecutor v. Taylor*, SCSL-03-01-T-1079, Decision on Public with Annexes A-J and Confidential Annexes K-L Defence Motion for Admission of Documents Pursuant to Rule 92bis – Special Task Force, 17 September 2010.


The Documents do not contain Opinion Evidence

11. At paragraph 17, the Prosecution claims that the documents should not be admitted as they simply state the opinions of the reporting officers. This position is not supported when considered in light of other code cables,⁸ humanitarian situation reports,⁹ and statements by the President of the UN Security Council,¹⁰ which have been admitted pursuant to Rule 92bis by this Trial Chamber.

III. CONCLUSION AND RELIEF REQUESTED

12. The Defence has demonstrated the probative value and thus the relevance of the content of the Cables as well as the Apology article. Thus the Defence should be granted permission to re-open its case for the limited purpose of admitting these documents pursuant to Rule 92bis.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 25th Day of January 2011,
The Hague, The Netherlands

⁸ See Exhibits D-448 and D-449, admitted through *Prosecutor v. Taylor*, SCSL-03-01-T-1064, Decision on Public with Annexes A and B Defence Motion for Admission of Documents Pursuant to Rule 92bis, 27 June 2010.

⁹ See, ex., Exhibits P-297 and P-300, admitted through *Prosecutor v. Taylor*, SCSL-03-01-T-739, Decision on Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies, 20 February 2009.

¹⁰ See, ex., Exhibit P-299 (containing a summary of political developments on the ground and the President's recommendations as to how they should be handled), admitted through *Prosecutor v. Taylor*, SCSL-03-01-T-739, Decision on Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies, 20 February 2009.

Table of Authorities

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T, Defence Reply to Prosecution Response to Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution, and the Registry Based on Leaked USG Cables, 25 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1163, Public Prosecution Response to Defence Motion to Re-Open its Case to Seek Admission of Documents Relating to the Relationship between the United States Government and the Prosecution of Charles Taylor, 20 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1143, Public with Annexes A-C Defence Motion to Re-Open its Case to Seek Admission of Documents Relating to the Relationship between the United States Government and the Prosecution of Charles Taylor, 10 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1079, Decision on Public with Annexes A-J and Confidential Annexes K-L Defence Motion for Admission of Documents Pursuant to Rule 92*bis* – Special Task Force, 17 September 2010

Prosecutor v. Taylor, SCSL-03-01-T-1064, Decision on Public with Annexes A and B Defence Motion for Admission of Documents Pursuant to Rule 92*bis*, 27 June 2010

Prosecutor v. Taylor, SCSL-03-01-T-739, Decision on Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies, 20 February 2009