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SCSL-03-01-T
(34875-34885)

34875



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: 1 March 2011

Case No.: SCSL-03-01-T

THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

SPECIAL COURT FOR SIERRA LEONE
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PUBLIC, WITH CONFIDENTIAL ANNEX A

DEFENCE RESPONSE TO URGENT PROSECUTION MOTION FOR AN INVESTIGATION INTO CONTEMPT OF THE SPECIAL COURT FOR SIERRA LEONE AND URGENT PROSECUTION REQUEST TO SUPPLEMENT THE 'PUBLIC WITH CONFIDENTIAL ANNEXES A TO E & PUBLIC ANNEX F URGENT PROSECUTION MOTION FOR AN INVESTIGATION INTO CONTEMPT OF THE SPECIAL COURT FOR SIERRA LEONE' AND URGENT PROSECUTION REQUEST TO SUPPLEMENT THE 'PUBLIC WITH CONFIDENTIAL ANNEXES A & B URGENT PROSECUTION MOTION FOR AN INVESTIGATION INTO CONTEMPT OF THE SPECIAL COURT FOR SIERRA LEONE'

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Mohamed A. Bangura
Mr. Nathan Quick

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

I. INTRODUCTION

1. The Defence files this combined Response in relation to three related Prosecution pleadings: the *Urgent Prosecution Motion for an Investigation into Contempt of the Special Court* (“Third Contempt Motion”),¹ the *Urgent Prosecution Request to Supplement the ‘Public with Confidential Annexes A to E & Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone’* (“Supplement to the First Contempt Motion”),² and the *Urgent Prosecution Request to Supplement the ‘Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone’* (“Supplement to the Second Contempt Motion”).³
2. The Defence notes that on 25 February 2011, the Trial Chamber partially granted the Prosecution’s First and Second Contempt Motions, and pursuant to Rule 77(C)(iii), directed the Registrar to appoint an experienced independent counsel to investigate the allegations that a person or persons, including Eric Senessie and/or Prince Taylor may be contempt of the Special Court by:
 - i. Disclosing information relating to proceedings in knowing violation of an order of a Chamber by revealing the identity of protected witnesses TF1-516 and TF1-585 to third parties, contrary to Rule 77(A)(ii);

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1215, Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 24 February 2011 (“**Third Contempt Motion**”).

² *Prosecutor v. Taylor*, SCSL-03-01-T-1216, Public with Confidential Annexes A & B Urgent Prosecution Request to Supplement the ‘Public with Confidential Annexes A to E & Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone’, 25 February 2011 (“**Supplement to the First Contempt Motion**”). The First Contempt Motion to which the supplement attaches is *Prosecutor v. Taylor*, SCSL-03-01-T-1185, Public with Confidential Annexes A to E & Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 3 February 2011 (“**First Contempt Motion**”).

³ *Prosecutor v. Taylor*, SCSL-03-01-T-1217, Public with Confidential Annexes A & B Urgent Prosecution Request to Supplement the ‘Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone’, 25 February 2011 (“**Supplement to Second Contempt Motion**”). The Second Contempt Motion to which the supplement attaches is *Prosecutor v. Taylor*, SCSL-03-01-T-1192, Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 7 February 2011 (“**Second Contempt Motion**”).

- ii. Offering a bribe to witnesses Mohammed Kabba, TF1-585, and Dauda Aruna Fornie (DAF), who have given evidence in proceedings before the Trial Chamber, contrary to Rules 77(A)(iv) and Rule 77(B) of the Rules; and
 - iii. “Otherwise interfering with” witnesses Aruna Gbonda, Mohammed Kabba, TF1-585 and Dauda Aruna Fornie (DAF), who have given evidence in proceedings before the Trial Chamber, by attempting to compel them to recant their testimonies, contrary to Rules 77(A)(iv) and Rule 77(B) of the Rules.⁴
3. As part of the Contempt Decision, the Trial Chamber also ordered the Parties not to contact Eric Senessie, Prince Taylor or witnesses Aruna Gbonda, Mohammed Kabba, DAF, TF1-516 and TF1-585 pending the outcome of the investigation.
 4. Also on 25 February 2011, the Trial Chamber issued an order for expedited filing in relation to the Third Contempt Motion.⁵ The Defence files this combined Response in accordance with this expedited filing order so that all of the issues pertaining to allegations of contempt and relating to the investigation as recently directed by the Trial Chamber in the Contempt Decision can be resolved as expeditiously as possible.

II. SUBMISSIONS

Third Contempt Motion

5. In the Third Contempt Motion, the Prosecution alleges that Eric Senessie contacted TF1-516 on 1 February 2011 and asked protected Prosecution Witness TF1-516 to recant his testimony in exchange for money; further that in doing so Eric Senessie held himself out as an agent of the Taylor Defence team.⁶

⁴ *Prosecutor v. Taylor*, SCSL-03-01-T-1218, Decision on Public with Confidential Annexes A to E & Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone and Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 25 February 2011 (“**Contempt Decision**”), p. 19-20.

⁵ *Prosecutor v. Taylor*, SCSL-03-01-T-1219, Order for Expedited Filing, 25 February 2011 (ordering the Defence to respond to the Third Contempt Motion by 16:00 on Tuesday, 1 March 2011).

⁶ Third Contempt Motion, para. 11 and Confidential Annex B.

6. The Prosecution alleges that the identity of TF1-516 was disclosed to third parties including Eric Senessie in violation of Rule 77(A)(ii).⁷ The Defence recalls that in the Contempt Decision, the Trial Chamber has already directed an investigation into this allegation. Without prejudice as to the merits of the allegation, the Defence does not object to the Statement of TF1-516 dated 18 February 2011 and attached as Confidential Annex B of the Third Contempt Motion being included as supplemental information material to the investigation. [REDACTED]

[REDACTED], the Defence submits that it is plausible that TF1-516 had previously disclosed to Senessie that he testified in The Hague as a Prosecution witness; thus there would be no violation of any disclosure order pertaining to his identity as a witness.

7. The Prosecution alleges that Senessie attempted to bribe or otherwise interfere with TF1-516 contrary to the provisions of Rule 77(A)(iv) and Rule 77(B).⁹ The Defence notes that TF1-516 was never given any money; even when TF1-516 asked for a phone so that Senessie could be in touch with him, Senessie did not provide him with a phone.¹⁰ The Defence submits that this lack of payment illustrates the lack of credibility of this allegation; it certainly illustrates Senessie's financial inability to follow through on any alleged offer of a bribe. As far as the alleged interference, the Defence notes that between 1 February (when the initial contact was made) and 18 February (when TF1-516 signed the statement) there was no further contact made by Senessie with TF1-516.¹¹ The Defence submits that this lack of follow-up contact shows that Senessie's intention was not to interfere with TF1-516.

8. The Prosecution alleges that Eric Senessie and others not yet identified violated court ordered protective measures forbidding direct and indirect contact by the Defence

⁷ Third Contempt Motion, para. 15.

⁸ Third Contempt Motion, Confidential Annex B.

⁹ Third Contempt Motion, para. 16.

¹⁰ Third Contempt Motion, Confidential Annex B.

¹¹ Third Contempt Motion, Confidential Annex B.

Team with TF1-516, in violation of Rule 77(A) and (B). The Defence recalls that on the basis of similar allegations in the First and Second Contempt Motions, the Trial Chamber found that there was “no reason to believe that either Senessie or Prince Taylor was acting on behalf of, or in accordance with instructions from, the Defence Team in contacting these witnesses” and that therefore, such contact does not constitute a violation of the provisions of the protective measures orders applicable to such witnesses.¹² The Defence reasserts that Senessie has never worked for the Defence Team, though he may purport to be acting on its behalf.¹³ Consequently, there is likewise no reason to believe that Senessie or anyone else was acting on behalf of or in accordance with instructions from the Defence Team in contacting TF1-516. The allegations under this heading must fail and should not be included as part of the investigation ordered with respect to the First and Second Contempt Motions or with respect to any new investigation which may be ordered.

9. The Prosecution requests urgent interim measures¹⁴ which have now been rendered moot by the Contempt Decision.

Supplement to the First Contempt Motion

10. The Prosecution requests leave to supplement the First Contempt Motion with an audio recording and transcript of a phone call between TF1-585 and Senessie. This phone call was referenced in Confidential Annex D of the First Contempt Motion. The Trial Chamber has already ordered an investigation into allegations that Eric Senessie and/or Prince Taylor disclosed the identity of, bribed or otherwise interfered with TF1-585.¹⁵
11. Without prejudice to the merits of the allegations under investigation, the Defence does not object to this audio recording being part of the background material provided to the independent investigator to be appointed by the Registrar. However, the

¹² Contempt Decision, paras. 46-48.

¹³ Contempt Decision, paras. 56-58.

¹⁴ Third Contempt Motion, para. 22.

¹⁵ Contempt Decision, p. 19-20.

Defence submits that an official, independent transcript of the recording be made, as the Defence has listened to the (poor quality) audio recording and has noted that not all of the conversation between Senessie and TF1-585 appears to be properly captured in the transcript.

12. Furthermore, the Defence notes that the recorded conversation took place on 30 January 2011, after TF1-585 had already talked to the Prosecution investigators on 29 January 2011.¹⁶ The Defence suggests that essentially Senessie was “set-up” by the Prosecution; this perhaps casts some doubt onto the credibility of the overall allegations put forth by TF1-585.
13. The Defence further queries why TF1-585 stated to Prosecution investigators that Prince Taylor called and talked to Senessie and TF1-585 while Senessie was present with TF1-585 on 30 January 2011, yet this phone call was not captured in the recording.¹⁷ In fact, based on the audio recording, it appears that Senessie attempted to contact Prince Taylor but that he was unable to get through to him. In light of these discrepancies, the Defence submits that TF1-585’s allegations pertaining to Prince Taylor are not credible and therefore do not provide sufficient grounds to suggest that Prince Taylor was involved in any contemptuous conduct.
14. The Defence notes with concern the fact that TF1-585 in the audio recorded statement agreed that “I will be able to declare such thing” in relation to Senessie’s request that TF1-585 recant previously given testimony, as TF1-585 indicated “it is money that we are looking for I hope it is a genuine programme”.¹⁸ The Defence suggests this opportunism may be indicative of TF1-585’s approach to testimony as a whole.

¹⁶ Supplement to the First Contempt Motion, Confidential Annex B and First Contempt Motion, Confidential Annex D, p. 3.

¹⁷ First Contempt Motion, Confidential Annex D, p. 3; Contempt Decision, para. 38.

¹⁸ Supplement to the First Contempt Motion, Confidential Annex B, p. 2-3.

Supplement to the Second Contempt Motion

15. The Prosecution requests leave to supplement the Second Contempt Motion with two signed and affirmed statements from TF1-274 (DAF) from 17 February 2011. The Trial Chamber, Justice Sebutinde partially dissenting, has already ordered an investigation into allegations that Eric Senessie and/or Prince Taylor offered a bribe to or otherwise interfered with DAF.¹⁹ Justice Sebutinde, *inter alia*, dissented on the basis that the Prosecution had not attached a statement from DAF himself;²⁰ the Prosecution has now attached such statements.²¹ The Defence otherwise concurs with Justice Sebutinde's overall analysis of the credibility of DAF with respect to these allegations.²²
16. Without prejudice to the merits of the allegations under investigation, the Defence does not object to these signed and affirmed statements being part of the background material provided to the independent investigator to be appointed by the Registrar.
17. The Defence questions why it was only during what appears to be the third statement that DAF gave to the Prosecution investigators did DAF tell them it was Prince Taylor who asked Senessie to contact him; this negatively impacts DAF's overall credibility with respect to these allegations.

III. CONCLUSION AND RELIEF REQUESTED

18. The Prosecution has failed to provide reason to believe that contemptuous conduct may have occurred in relation to allegations raised in the Third Contempt Motion and not already covered by the Contempt Decision.
19. Without prejudice to its position on the merits of the allegations, the Defence does not object to the supplemental materials being considered in the investigation which has

¹⁹ Contempt Decision, p. 19-20; Partially Dissenting Opinion of Judge Julia Sebutinde on the Prosecution's Second Contempt Motion ("Partially Dissenting Opinion").

²⁰ Partially Dissenting Opinion, para. 7.

²¹ Supplement to the Second Contempt Motion, Con

²² Partially Dissenting Opinion, para.

already been ordered by the Trial Chamber in respect to the First and Second Contempt Motions.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'C. Griffiths'.

Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 1st Day of March 2011,
The Hague, The Netherlands

Table of Authorities

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T-1219, Order for Expedited Filing, 25 February 2011

Prosecutor v. Taylor, SCSL-03-01-T-1218, Decision on Public with Confidential Annexes A to E & Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone and Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 25 February 2011

Prosecutor v. Taylor, SCSL-03-01-T-1217, Public with Confidential Annexes A & B Urgent Prosecution Request to Supplement the ‘Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone’, 25 February 2011

Prosecutor v. Taylor, SCSL-03-01-T-1216, Public with Confidential Annexes A & B Urgent Prosecution Request to Supplement the ‘Public with Confidential Annexes A to E & Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone’, 25 February 2011

Prosecutor v. Taylor, SCSL-03-01-T-1215, Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 24 February 2011

Prosecutor v. Taylor, SCSL-03-01-T-1192, Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 7 February 2011

Prosecutor v. Taylor, SCSL-03-01-T-1185, Public with Confidential Annexes A to E & Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 3 February 2011



SPECIAL COURT FOR SIERRA LEONE

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Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the Confidential Case File.

Case Name: **The Prosecutor – v- Charles Ghankay Taylor**

Case Number: **SCSL-03-01-T**

Document Index Number: **1221**

Document Date: **01 March 2011**

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Document Type: **Confidential Annex A**

Number of Pages: **2** Number from: **34884-34885**

- Application
- Order
- Indictment
- Response**
- Motion
- Correspondence

Document Title:

Defence Response to Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone and Urgent Prosecution Request to Supplement the ‘Public with Confidential Annexes A to E & Public Annex F Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone’ and Urgent Prosecution Request to Supplement the ‘Public with Confidential Annexes A & B Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone’

Name of Officer:

Alhassan Fornah

Signed: