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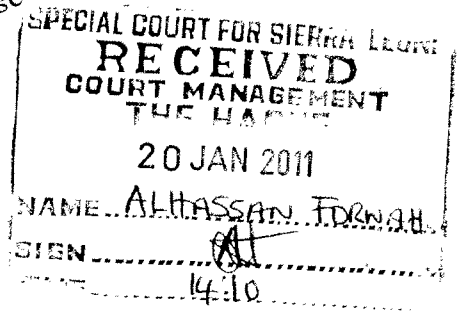
**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR**

TRIAL CHAMBER II

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

Registrar: Ms. Binta Mansaray

Date filed: 20 January 2011



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

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**

Office of the Prosecutor:

Ms. Brenda J. Hollis
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I. INTRODUCTION

1. On 10 January 2011 the Defence filed an “Urgent and Public Defence Motion to Re-Open its Case in order to Seek Admission of Documents Relating to the Relationship Between the United States Government and the Prosecution of Charles Taylor” (“Motion”).¹
2. The Prosecution files the following Response. The Prosecution opposes the Defence request to re-open its case and to admit the proposed documents. The documents are not relevant to prove any undue influence over this Court as they clearly prove the opposite – the independence of the Special Court, its judges and Prosecutor.
3. Should there be any doubt as to the Prosecution’s position regarding the allegations of misconduct, improper action and impropriety contained in the Motion,² the Prosecution underlines that it has never engaged in any conduct which violates the Statute, the Rules or any code of conduct and has never sought or received instruction from the USG or any other government or other source.³
4. Additionally, the Prosecution also incorporates by references the arguments in the related “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”.

¹ *Prosecutor v Taylor*, SCSL-2003-01-T-1146, “Public and Urgent Defence Motion to Re-Open its Case in order to Seek Admission of Documents Relating to the Relationship Between the United States Government and the Prosecution of Charles Taylor”, 10 January 2011.

² Notably at para.5 of the Motion the Defence incorporates by reference the arguments made in its “Motion for Disclosure and/or Investigation of United States Government Sources with the Trial Chamber, the Prosecution and the Registry Based on Leaked USG Cables”, 10 January 11.

³ In this regard, the Prosecution notes that it is routine practice in Defence pleadings to ignore the Prosecution’s clear denials of baseless allegations. See *Prosecutor v. Taylor*, SCSL-03-01-T-1102, “Defence Reply to Prosecution Response to Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators”, 11 October 2010, para. 17 and *Prosecutor v. Taylor*, SCSL-03-01-T-1134, “Public Notice of Appeal and Submissions Regarding the Decision on the Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators”, 10 December 2010, para. 41 both of which ignored the Prosecution’s blanket denial of all allegations of wrongdoing made in *Prosecutor v. Taylor*, SCSL-03-01-T-1097, “Public with Confidential Annexes Prosecution Response to ‘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’”, 4 October 2010, para. 25.

II. ARGUMENTS

The Defence fails to demonstrate the relevance of the documents:

5. In order to succeed in an application either to re-open or for the admission of documents under Rule 92bis, a party must establish that documents in its possession are relevant to the proceedings.⁴ The Motion fails to demonstrate the relevance of the three documents in question to the Defence allegations. The plain language of the Cables makes the independence of the Special Court for Sierra Leone clear to any objective reader.⁵ Furthermore, nothing in the Cables concerns confidential information from any organ or employee of the Special Court.

(i) Impartiality / Independence / Instructions from Governments /Other Sources:

6. The Defence allegations that the Guardian articles on purported US Cables “raise grave doubts about the independence and impartiality of the Special Court’s prosecution of Charles Taylor” and lead to the “conclusion that the indictment and trial of Mr. Taylor by the Special Court is no more than an extension of United States foreign policy interests in West Africa”⁶ are entirely devoid of merit. The documents refute, rather than support, the Defence allegation that the independence and impartiality of the Special Court is compromised by the involvement of the United States or any other government.
7. The March 2009 cable from the US Ambassador to Liberia concerns the wider political situation in Liberia, the inability of the Liberian Government to implement the UN asset-freeze on Taylor and the continuing threat that Taylor’s supporters pose to Liberia’s stability.⁷ While an objective reading of the March 2009 cable would be that the author believes that Charles Taylor at liberty would be a threat to stability in Liberia, the very fact that the author of the cable expresses those concerns and urges the USG⁸ to consider possible prosecutions for violations of US law demonstrates that the US Government has neither foreknowledge nor influence over the outcome of this trial.

⁴ *Prosecutor v Taylor*, SCSL-03-01-T-1099, “Decision on Public with Annex A Defence Motion for Admission of Documents Pursuant to Rule 92 bis- Newspaper Article”, 5 October 2010; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-2004-14-AR73, “Fofana - Decision on Appeal against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”, 16 May 2005, para. 26.

⁵ “Cables” is defined at Motion, footnote 5.

⁶ Motion, para.13.

⁷ “March 2009 cable” is defined at Motion, footnote 3.

⁸ “USG” is defined at Motion, para. 1.

8. Only the April 2009 cable specifically refers to the Trial Chamber.⁹ Moreover, for the most part, this cable simply summarises key events during the Taylor trial in the context of the life of the tribunal, the expected completion date for the trial, mechanisms of the court, and funding issues – information which is within the public domain and can be found on the Special Court’s website. As regards the allegation regarding the “*Judges Slowing Things Down*”, it is impossible to see how this relates to the Defence theory that the Special Court is apparently in cahoots with the USG. Indeed, given the history of the USG’s financial contributions to the Special Court, this particular allegation would, on the face of it, suggest the contrary as it again demonstrates the independence of the judges in running the trial.¹⁰
9. As regards the Prosecution, Article 15(1) of the Statute provides that:
 1. The Prosecutor shall be responsible for the investigation and prosecution of persons who bear the greatest responsibility for serious violations of international humanitarian law and crimes under Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996. The Prosecutor shall act independently as a separate organ of the Special Court. **He or she shall not seek or receive instructions from any Government or from any other source.** (emphasis added)
10. There is nothing in any of the documents that provides any evidentiary basis for an argument that the Prosecution is in breach of its duty of independence under Article 15(1), or, in other words, that the Prosecution has either sought, or received, instructions from the USG in relation to these proceedings.
11. Finally, the third document is a photocopy of a newspaper article entitled “Pres. Sirleaf acknowledges US Ambassador’s Apology”. While not entirely legible the article appears to simply relate that the US Ambassador apologized to President Sirleaf apparently for the publication of her comments. The document has no relevance to this trial.

⁹ “April 2009 cable” is defined at Motion, footnote 5.

¹⁰ In this section of the cable, the author states that someone “believes” that the work of the Court could have been accelerated and that contacts “speculate” that the then Presiding Judge would want to preside over the judgment and that this then could influence the timing of the completion of the case – speculation that has been proved wildly inaccurate. Nothing in the cable demonstrates any access of the USG to confidential information.

(ii) Selective prosecution:

12. The Defence argument that the documents “are relevant to the Defence theory of selective prosecution”¹¹ is likewise without merit.

13. Article 1(1) of the Statute of the Special Court provides that:

The Special Court shall, except as provided in subparagraph (2), have the power to prosecute persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996, including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone.

14. It is well established in the jurisprudence of this tribunal that the requirement in Article 1(1) of the Tribunal’s Statute that the accused persons be “persons who bear the greatest responsibility...including those leaders who, in committing such crimes, have threatened the establishment of and implementation of the peace process in Sierra Leone” is (i) a matter of prosecutorial discretion, and (ii) a jurisdictional limitation upon the Court, the determination of which is a judicial function.¹² Guidance as to the interpretation of the term “persons who bear the greatest responsibility” is to be found in the tribunal’s *travaux préparatoires*.¹³ The latter demonstrate that the employment of the term was intended to limit the focus of the Special Court to “those who played a leadership role”,¹⁴ and to direct the Prosecutor’s attention towards persons in leadership including the “political or military leadership”¹⁵ and provide “guidance to the Prosecutor in determining his or her prosecutorial strategy”.¹⁶ Thus the exercise of the Prosecutor’s broad discretion,¹⁷ is to be guided by Article 1(1) towards persons who played a

¹¹ Motion, para.4.

¹² *Prosecutor v Norman, Fofana and Kondewa*, SCSL-2004-14-PT-26, “Decision on the Preliminary Defence Motion on the Lack of Personal Jurisdiction Filed on Behalf of Accused Fofana”, (**“Fofana Decision”**) 3 March 2004.

¹³ Fofana Decision paras. 21-26, 40.

¹⁴ Fofana Decision, para.23 referring to “Letter from the President of the Security Council addressed to the Secretary-General dated 22 December 2000” and para.24 referring to the “Letter from the Secretary-General addressed to the President of the Security Council dated 12 January 2001”.

¹⁵ Fofana Decision, para.22 referring to, “Report of the Secretary General on the Establishment of the Special Court of Sierra Leone”.

¹⁶ Fofana Decision, para. 25 referring to “Letter dated 31 January 2001 from the President of the Security Council addressed to the Secretary-General”.

¹⁷ *Prosecutor v Delalic et al*, IT-96-21-A, Appeal Judgment, 20 February 2001, para. 602 (**“Delalic et al Appeal Judgment”**) and see also para. 608 where the Appeals Chamber expressed the sentiment that simply because all similarly situated persons cannot be brought to justice does not mean that there should be no indictments or trials at all.

leadership role.¹⁸ As regards the exercise of the judicial function, the requirement that accused persons be those “who bear greatest responsibility” is a consideration taken into account by the Designated Judge when the Indictment is placed before him for approval.¹⁹ The jurisprudence establishes that these issues are a preliminary matter.²⁰ Indeed other Defence teams in cases before the Special Court sought to challenge such issues at the pre-trial stage.²¹ To the extent the Accused now wishes to challenge this aspect of the Indictment, such challenge should be dismissed as untimely.

15. In bringing an Indictment against Charles Taylor the Prosecutor acted squarely within the bounds of his discretion. Likewise, in approving this Indictment, Justice Bankole-Thompson acted within the proper ambit of his judicial function. The charging documents in this case clearly delineate Charles Taylor as a person who occupied a leadership role both militarily and politically, and individually, as well as alongside other political and military leaders of the RUF and AFRC factions, including Foday Sankoh, Johnny Paul Koroma, Sam Bockarie, and Issa Sesay.²² Moreover, as demonstrated throughout this case and as set out most recently in the Prosecution Final Trial Brief,²³ Charles Taylor occupied the most important leadership role in relation to the RUF and AFRC/RUF factions during the conflict and bears the greatest responsibility for the crimes committed by these groups against the people of Sierra Leone.
16. Furthermore, given that the documents the Defence seeks to have admitted add nothing to previous, identical claims made by the Defence as reported at paragraphs 16 and 17 of the Motion, the theory of “selective prosecution” could have been adequately expounded in the Defence Final Trial Brief. The Accused through his Defence team appears not to want to address the overwhelming evidence in the case. Instead the Defence seeks to further delay the trial and divert attention from the evidence of his leading role in the atrocities in Sierra Leone.

¹⁸ Fofana Decision, para 39-40.

¹⁹ Fofana Decision, para 38.

²⁰ It is a preliminary matter because it’s relevant to the exercise of prosecutorial discretion and the judicial function, addressed already above.

²¹ Fofana Decision.

²² See for example *Prosecutor v Taylor*, SCSL-03-01-PT-263, “Public Prosecution’s Second Amended Indictment”, 29 May 2007, para. 34; *Prosecutor v Taylor*, SCSL-03-01-T-327, Prosecution Notification of Filing of Amended Case Summary, 3 August 2007, paras. 21, 24, 30, 31, 34-8, 44.1.

²³ *Prosecutor v. Taylor*, SCSL-03-01-T-1156, “Confidential Prosecution Final Trial Brief”, 14 January 2011.

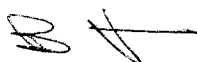
The documents contain matters of opinion rather than matters of fact:

17. In addition to being irrelevant to the Defence allegations and, indeed, disproving those allegations, the Cables are reports stating the opinions of the reporting officer and, in some cases, the opinion or speculation of those with whom the reporting officer spoke. As opinion evidence may not be admitted under Rule 92bis, the documents should be rejected on this basis as well.²⁴

III. CONCLUSION

18. For the reasons set out above, the Motion should be dismissed. However, should the Trial Chamber permit the Defence to re-open its case in order to admit the documents, the Prosecution requests that the entire March 2009 cable be admitted. The Defence limits its request to certain portions on the flawed basis that the remainder of the document relates to the acts and conduct of the Accused.²⁵ In fact the excluded portions refer to the acts and conduct of the Accused to the same extent, if not less so, than the portions selected by the Defence. Further, the portions the Defence wishes the Trial Chamber to ignore are as important as those it wishes to have admitted in order to provide the context for these selected portions.

Filed in The Hague,
20 January 2011,
For the Prosecution,



Brenda J. Hollis
The Prosecutor

²⁴*Prosecutor v. Brima, Kamara, and Kanu*, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92bis” SCSL-04-16-T, 18 November 2005, pg.3. See also *Prosecutor v. Norman, Kondewa, Fofana*, SCSL-04-14-AR73, “Fofana – Decision on Appeal against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, 16 May 2005, para. 26.

²⁵ Motion, para.20.

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