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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: 3 March 2011

SPECIAL COURT FOR SIERRA LEONE	
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**THE PROSECUTOR**

**Against**

**Charles Ghankay Taylor**

Case No. SCSL-03-01-T

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**PUBLIC**

**PROSECUTION REPLY TO 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'**

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## I. INTRODUCTION

1. The Prosecution files this reply to the “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’” (“**Response**”).<sup>1</sup> The Response fails to refute the reasons to believe that Eric Senesie and/or others not yet identified may have engaged in contemptuous contact and conduct in relation to TF1-516 and in violation of Rules 77(A) and (B).
2. Additionally, the Requests to Supplement<sup>2</sup> are relevant to this Chamber’s consideration of the Third Contempt Motion<sup>3</sup> insofar as they further demonstrate an on-going, concerted course of action directed against Prosecution witnesses, in the interests of the Accused, and by, and/or on behalf of, alleged Defence Team members and/or agents.<sup>4</sup>

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<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1221, 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,’ 1 March 2011 (“**Response**”). This reply to the Response is filed in accordance with the expedited filing schedule ordered by this Chamber. See *Prosecutor v. Taylor*, SCSL-03-01-T-1219, Order for Expedited Filing, 25 February 2011.

<sup>2</sup> *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 (“**First Request to Supplement**”); *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 (“**Second Request to Supplement**”). The First and Second Requests to Supplement are hereinafter referred to collectively as the “**Requests to Supplement**.”

<sup>3</sup> *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**”).

<sup>4</sup> e.g. First Request to Supplement, Confidential Annex B, p. 1 (Senesie read and asked TF1-585 to sign a document, thereby agreeing to speak to the “Defence” and swearing to “defend Charles Taylor before the Special Court”), p. 2 (Senesie identified Prince Taylor as his Defence contact), p. 3 (Senesie explained that “the case” was being delayed until they “get” 30 or more witnesses like TF1-585 in at least two districts in Sierra Leone); Second Request to Supplement, Confidential Annex A, (Senesie identified himself as an agent of the Defence and urged DAF to recant his testimony); Confidential Annex B, (Senesie identified Prince Taylor as a member of the Defence Team and explained that Prince Taylor would soon be coming). See also *Prosecutor v.*

3. Finally, as the Defence suggests, these supplemental materials should be provided to the independent investigator designated to conduct an investigation in accordance with this Chamber's recent Contempt Decision.<sup>5</sup> Although the Contempt Decision resolved the motions underlying the Requests to Supplement, and the Defence had no objection to the supplemental information, the Defence nonetheless made submissions in relation to this supplemental material. To the extent the Trial Chamber considers those submissions relevant to the Motion at issue herein, the submissions do not refute the reasons to believe Eric Senesie and/or unidentified others engaged in contemptuous conduct. To the extent the Trial Chamber determines the Defence submissions are relevant to the ordered investigations, the Defence submissions do not detract from the credibility of the information supporting an investigation.

## II. SUBMISSIONS

### Third Contempt Motion

#### *Disclosure of Identifying Information (Rule 77(A)(ii))*

4. As the Defence correctly notes, this Chamber has already ordered an investigation into the disclosure of identifying information in relation to TF1-516 regarding a violation of Rule 77(A)(ii).<sup>6</sup>
5. Therefore, the Defence submissions regarding the credibility of the allegations underlying the decision to investigate are irrelevant as to whether an investigation should be ordered. Moreover, insofar as the Defence does not object to the statement of TF1-516<sup>7</sup> being provided as "supplemental information material to the ordered investigation," such submissions are presumptively being made to the Independent

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*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**"), para. 2, Confidential Annexes B-E; *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**"), paras. 2-3, Confidential Annex B; Third Contempt Motion, para. 2, Confidential Annex B.

<sup>5</sup> *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**"), pp. 19-20.

<sup>6</sup> Response, para. 6. Contempt Decision, para. 40 & p. 19.

<sup>7</sup> Third Contempt Motion, Confidential Annex B.

Investigator and appear to be an attempt to influence the investigations.<sup>8</sup>

6. The Prosecution notes that Defence submissions similar to those contained at paragraphs 6 and Confidential Annex A of the Response did not detract from this Chamber's finding that there was reason to believe that identifying information relating to TF1-516 may have been disclosed in violation of Rule 77(A)(ii).<sup>9</sup> The possibility, therefore, that a person knew a protected witness in another setting, not as a witness, does not detract from the contemptuous nature of the disclosure of that individual's status as a witness.<sup>10</sup> As the applicable protective measures state, identifying information "shall not *under any circumstances* be disclosed."<sup>11</sup> Accordingly and logically, speculation about a person's ability to independently discover witness identities does not excuse a *per se* violation of protective measures orders. The willful and knowing, and/or recklessly indifferent, disclosure of a protected witness's identity alone and "*under any circumstances*" is a violation of Rule 77(A)(ii).

*Offers of Bribes and/or Other Interference (Rule 77(A)(iv))*

7. The Defence's arguments regarding offers of bribes to Prosecution witnesses are without merit.<sup>12</sup> This Chamber has already determined that the fact that money was not actually provided does not detract from reason to believe that an *offer* of a bribe was made in exchange for recantation of previous sworn testimony in violation of Rule

<sup>8</sup> See similar submissions regarding the Requests to Supplement at paras. 12-17 of this reply, *infra*.

<sup>9</sup> Contempt Decision, paras. 10. The Defence made a similar argument in relation to TF1-585 which also did not prevent the Chamber from finding reason to believe that contemptuous disclosure occurred. Contempt Decision, paras. 10, 25. For, the Trial Chamber's consideration of allegations of disclosure violation in relation to TF1-516 and TF1-585, see Contempt Decision, paras. 37-40, 53.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-120, Decision on Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure, 15 September 2006 referring to and granting the measures contained in *Prosecutor v. Taylor*, SCSL-03-01-T-99, Decision on Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures and on Confidential Prosecution Motion for Leave to Substitute a Corrected and Supplemented List as Annex A of the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures, 5 May 2006 (emphasis added). See also Third Contempt Motion, Confidential Annex A.

<sup>12</sup> Response, para. 7. See also the same argument made in *Prosecutor v. Taylor*, SCSL-03-01-T-1201, Confidential with Annexes A and B Defence Response to Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 11 February 2011, paras. 7-8; *Prosecutor v. Taylor*, SCSL-03-01-T-1205, Confidential, with Annexes A-C Defence Response to Second Urgent Prosecution Motion for an Investigation into Contempt of the Special Court Sierra Leone, 14 February 2011, para. 11..

77(A)(iv).<sup>13</sup> Moreover, speculation as to the financial ability of Senesie or the Taylor Defence team - whom Senesie said would provide and/or pay the money<sup>14</sup> - to “follow through on any alleged offer of a bribe” is unhelpful.<sup>15</sup> Indeed, as with previous allegations of bribe offers to Prosecution witnesses by Senesie,<sup>16</sup> Senesie stated that he would first put TF1-516 in contact with the Defence Team before any bribe was actually paid.<sup>17</sup> Therefore, in the instant case, based on reported facts, not speculation, there is reason to believe that a bribe was offered.

8. The Defence also fails to rebut any reason to believe that Senesie and/or others not yet identified may have otherwise interfered with TF1-516 in violation of Rules 77(A)(iv) and/or B.<sup>18</sup> This Chamber found reason to believe a witness may have been otherwise interfered with where Senesie made repeated attempts at contact, promised further meetings, and “actually urged” a witness to recant his sworn testimony.<sup>19</sup> Similarly, in the instant scenario, Senesie “went in search” of TF1-516, asked people about TF1-516’s location, approached him at his work-place, offered a bribe to TF1-516 and urged him to recant his sworn testimony, insisting on a follow-up meeting when TF1-516 was uncooperative, declared “he was going to come back,” and told TF1-516 to think about his request.<sup>20</sup> Further, the failure of Senesie to engage in additional contemptuous contact and/or conduct between 1 and 18 February does not negate or justify his prior conduct.<sup>21</sup> This does not demonstrate that Senesie and/or others not yet identified may not have already been otherwise interfering with TF1-516, or may not have continued to do so, in violation of Rules 77(A)(iv) and/or B. Indeed and as noted earlier, Senesie promised further contact.
9. Therefore, there is reason to believe that Senesie may have offered a bribe to, and/or otherwise interfered with, protected Prosecution witness TF1-516 in violation of Rules

<sup>13</sup> Contempt Decision, para. 42, 54.

<sup>14</sup> Third Contempt Motion, Confidential Annex B.

<sup>15</sup> Response, para. 7.

<sup>16</sup> e.g. First Contempt Motion, Confidential Annex B, p. 2, Confidential Annex C, p. 1, Confidential Annex D, p. 1; Second Contempt Motion, Confidential Annex B; First Request to Supplement, Confidential Annex B, pp. 1-2; Second Request to Supplement, Confidential Annex A.

<sup>17</sup> Third Contempt Motion, Confidential Annex B.

<sup>18</sup> Response, para. 7.

<sup>19</sup> Contempt Decision, paras. 44, 55.

<sup>20</sup> Third Contempt Motion, Confidential Annex B.

<sup>21</sup> Response, para. 7.

77(A)(iv) and/or (B).

*Violations of Court Orders (Rule 77(A))*

10. Defence claims that Senesie is not acting as a Defence agent<sup>22</sup> must be weighed against Senesie's conduct as a *de facto* Defence agent with regard to at least five Prosecution witnesses. The Defence denial does not detract from the *repeated* and *affirmed* reports of Prosecution witnesses – repeated and affirmed reason to believe – that Senesie was acting as a *de facto*, if not official, Defence team agent or member.<sup>23</sup> Indeed, the statements, transcript and recording provided in the Requests to Supplement further demonstrate and corroborate the identification of Senesie and others as agents and/or members of the Defence Team.<sup>24</sup> Senesie also states on the recording contained at Confidential Annex A of the First Request to Supplement that he and others have been tasked to “get” 30 or more Prosecution witnesses while “the case” is being delayed.<sup>25</sup> Thus, in his own words, Senesie further demonstrates reason to believe his connection to the Defence Team. Thus there is reason to believe that Senesie is a *de facto* agent of the Defence. The Defence may not, directly through official team members or indirectly through third party agents, contact protected Prosecution witnesses in violation of existing orders.<sup>26</sup> Accordingly, there is reason to believe that alleged Defence Team agent Senesie and/or others not yet identified, engaged in unauthorized direct and/or *indirect* contact with Prosecution witnesses. This violation of court orders constitutes an interference with the administration of justice in violation of Rules 77(A) and/or (B).

*Urgent Interim Measures*

11. As the Defence correctly notes, this Chamber has already ordered the urgent interim measures requested in the Third Contempt Motion.<sup>27</sup>

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<sup>22</sup> Response, para. 8.

<sup>23</sup> Third Contempt Motion, Confidential Annex B. See also First Contempt Motion, Confidential Annexes B to E; Second Contempt Motion, Confidential Annex B.

<sup>24</sup> First Request to Supplement, Confidential Annex A, p. 1-3; Second Request to Supplement, Confidential Annexes A and B.

<sup>25</sup> First Request to Supplement, Confidential Annex B, p. 3.

<sup>26</sup> See First Contempt Motion, Confidential Annex A; Second Contempt Motion, Confidential Annex A; Third Contempt Motion, Confidential Annex A.

<sup>27</sup> Response, para. 9. See also Third Contempt Motion, para. 22; Contempt Decision, para. 60 (forbidding the parties from contacting TF1-516 and four other witnesses).

Requests to Supplement

12. The Prosecution highlights that the Defence does not object to the inclusion of any material provided in the annexes to the Requests to Supplement as “background information” to investigations already ordered by the recent Contempt Decision.<sup>28</sup> Further, the Defence notes that Justice Sebutinde partially dissented from the majority decision in relation to the Second Contempt Motion<sup>29</sup> “on the basis that the Prosecution had not attached a statement of DAF himself; the Prosecution has now attached such statements.”<sup>30</sup> Accordingly, the recording and transcript<sup>31</sup> at Confidential Annexes A and B of the First Request to Supplement and both the statements of TF1-274 (“DAF”) at Confidential Annexes A and B of the Second Request to Supplement should be made available to the Independent Investigator.
13. The Defence submissions regarding the credibility of these materials and the allegations contained therein, however, are irrelevant to the Trial Chamber’s previous decision to order investigations. These submissions amount to a Defence attempt to influence the investigation. Regardless and as set out below, the Defence “notes” and “queries” are unfounded.

Supplement to the First Contempt Motion

14. The Defence claim that the telephone recording of the conversation between TF1-585 and Senesie was “set up” is unsupported.<sup>32</sup> TF1-585’s statement explains that, after repeated contact attempts by Senesie,<sup>33</sup> TF1-585 first met with Senesie on 27 January 2011.<sup>34</sup> Thereafter, TF1-585 “dodged meeting Eric on January 28, 2011 as he promise[d] to meet with [TF1-585] that day again.”<sup>35</sup> Thereafter, on 30 January, when

<sup>28</sup> Response, paras. 10, 16, 19.

<sup>29</sup> Contempt Decision, Partially Dissenting Opinion of Judge Julia Sebutinde on the Prosecution’s Second Contempt Motion, paras. 1, 3-7.

<sup>30</sup> Response, para. 15.

<sup>31</sup> The Prosecution does not object to the Defence submission at paragraph 11 that an “official, independent” transcript of the recording of the conversation between Senesie and TF1-585 should be made. However, the unofficial transcript at Confidential Annex B of the First Request to Supplement should be made available to the independent investigator as it may still be of assistance.

<sup>32</sup> Response, para. 12.

<sup>33</sup> First Contempt Motion, Confidential Annex D, p. 1.

<sup>34</sup> First Contempt Motion, Confidential Annex D, pp. 1-2.

<sup>35</sup> First Contempt Motion, Confidential Annex D, p. 2.

the recording was made, Senesie, uninvited and unsolicited, “showed up again in the evening at my house seeking to get my consent.”<sup>36</sup> Accordingly, Senesie had been persistently pursuing TF1-585, a witness who saw any contact with him as a threat,<sup>37</sup> for at least five days<sup>38</sup> and showed up uninvited and unsolicited on 30 January when the recording was made. Additionally, the Prosecution would have first, been remiss in its duties to TF1-585, and second, acting with reckless indifference to orders of this Court if it had not requested that TF1-585 notify the Prosecution of any further contact or attempted contacts by Senesie. Such a request, therefore, would not indicate a “set-up.” Thus there is no support for the bald Defence assertion of a Prosecution “set-up” of the recording provided at Confidential Annex A of the First Request to Supplement.

15. Moreover, contrary to the Defence submission in paragraph 13, there is no reason to doubt the credibility of TF1-585’s allegations in relation to Prince Taylor. As the Defence admits, the recording confirms that Senesie attempted to contact Prince Taylor during the 30 January meeting. Moreover, TF1-585 never claimed to have captured the entire meeting with Senesie. Therefore, there is no reason, prior to an investigation, to doubt that TF1-585 did not talk to Prince Taylor on Senesie’s phone after the recording ended.
16. Finally, the Defence characterization of TF1-585’s motives and intentions as opportunistic also lacks any merit.<sup>39</sup> In fact, TF1-585 explained that the recording was made as proof of Senesie’s contacts with TF1-585. TF1-585 also hoped to record the names of the witnesses Senesie was tasked with contacting, as well as the name of the Defence Team member passing instructions to Senesie.<sup>40</sup> Additionally, TF1-585 initially “told Eric that [TF1-585 would] think over the request [to recant sworn testimony] with the pretext of buying time to get on to OTP or WVS staff to inform them about what was going on and to seek advice.”<sup>41</sup> TF1-585 likely took these steps as Senesie’s contact was frightening and viewed by TF1-585 as a threat to the witness’s

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<sup>36</sup> First Contempt Motion, Confidential Annex D, p. 3.

<sup>37</sup> First Contempt Motion, Confidential Annex D, p. 2.

<sup>38</sup> Beginning at least on 25 January through the meeting on 30 January. Third Contempt Motion, Confidential Annex D, pp. 1, 3.

<sup>39</sup> Response, para. 14.

<sup>40</sup> First Contempt Motion, Confidential Annex D, p. 3.

<sup>41</sup> First Contempt Motion, Confidential Annex D, p. 2.



life.<sup>42</sup> Therefore, TF1-585 has already explained why certain representations, which alone may seem opportunistic, were made to Senesie. The Defence ignores these explanations and its characterization of TF1-585's motives is unfounded and self-serving.

### *Supplement to the Second Contempt Motion*

17. The Defence also fails to negatively impact the credibility of the allegations made by DAF.<sup>43</sup> The statement at Confidential Annex B of the Second Request to Supplement<sup>44</sup> was made solely in reference to the 10 February meeting between DAF and Senesie. This meeting was the first time Prince Taylor was identified to DAF as the Defence Team member giving Senesie instructions. Such information, first revealed on 10 February, could not have been included in the investigator's declaration of 4 February 2011.<sup>45</sup> Moreover, it was reasonably not included in the statement provided at Confidential Annex A of the Second Request to Supplement which, like the investigator's declaration, solely concerned the meetings between Senesie and DAF prior to 4 February. Accordingly, the *additional* 10 February contact was properly included in an *additional* statement.

### **III. CONCLUSION**

18. The Trial Chamber should order an investigation for contempt of court in relation to the conduct and contacts engaged in by Eric Senesie and/or others not yet identified. Such contact and conduct in relation to TF1-516, as set out above and in the Third Contempt Motion, is in violation of Rules 77(A) and (B).
19. Additionally, the materials contained in the annexes of the Third Contempt Motion and the Requests to Supplement should be considered insofar as they further demonstrate an on-going, concerted course of action by, and/or on behalf, of Defence Team members and/or agents.

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<sup>42</sup> First Contempt Motion, Confidential Annex D, pp. 1-2.

<sup>43</sup> Response, para. 17.

<sup>44</sup> The "third statement" to which the Defence refers at Response, para. 17.


<sup>45</sup> First Contempt Motion, Confidential Annex E.

20. Finally, the materials contained in the annexes of the Third Contempt Motion and the Requests to Supplement should also be provided to the independent investigator as they are relevant to any ensuing investigation already ordered, or to be ordered, by this Chamber.

Filed in The Hague,

3 March 2011

For the Prosecution,



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Brenda J. Hollis  
The Prosecutor

## INDEX OF AUTHORITIES

SCSL Cases

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*Prosecutor v. Taylor, Case No. SCSL-03-01-T*

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*Prosecutor v. Taylor*, SCSL-03-01-T-120, Decision on Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure, 15 September 2006

*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

*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-1201, Confidential with Annexes A and B Defence Response to Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 11 February 2011

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