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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

Registrar: Ms. Binta Mansaray

Date: 17 December 2010

Case No.: SCSL-2003-01-T

THE PROSECUTOR

—v—

CHARLES GHANKAY TAYLOR

PUBLIC WITH ANNEXES A-H AND CONFIDENTIAL ANNEXES I-J

**DEFENCE MOTION TO RECALL FOUR PROSECUTION WITNESSES
AND TO HEAR EVIDENCE FROM THE CHIEF OF WVS REGARDING
RELOCATION OF PROSECUTION WITNESSES**

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. The Defence hereby seeks leave to recall four Prosecution witnesses regarding the issue of relocation. The Defence also seeks an order from the Trial Chamber to hear evidence from Saleem Vahidy, Chief of the Witnesses and Victims Section ("WVS"), pursuant to Rule 85(A). In light of new and compelling information, the Defence requests the Trial Chamber allow the Defence to reopen cross-examination of four Prosecution witnesses in relation to the circumstances of their recent or impending relocations and any impact any promise of relocation may have had on the truthfulness of their prior testimony. The Trial Chamber should order Mr. Vahidy to give evidence on this issue, as he is the officer of the court who has the best information pertaining to the circumstances surrounding the relocation of Prosecution witnesses.
2. The extent of the Prosecution's use of relocation (absent any genuine security risk) as an inducement for witness cooperation and/ or testimony and WVS's complicity in that process is becoming increasingly clear. The Defence believes that there was and is no genuine security risk or threat to these witnesses necessitating their relocation.¹ The Defence submits that the Prosecution promised witnesses that they would be relocated after their testimony and WVS and the Prosecution purposefully delayed relocating those witnesses until recently, the assumption being that the Defence would be unable to raise the issue at trial. Furthermore, the Registry is shielding the Prosecution by failing to disclose exculpatory material regarding relocation, despite repeated requests from the Defence.
3. Information pertaining to the relocation of these witnesses was not available to the Defence when they were cross-examined during the Prosecution's case, and the Registry has subsequently refused to disclose the information. The Defence has made the issue of improper inducements to prosecution witnesses, including unwarranted promises of relocation, a mainstay of cross-examination and argumentation. Consequently, this motif bears further interrogation in light of new evidence and unfolding circumstances.
4. The Defence proposes that the following Prosecution witnesses be recalled: TF1-371, TF1-375, Abu Keita (TF1-276) and Varmuyan Sherif (TF1-406). The Defence anticipates that additional cross-examination would take no more than two hours for each witness and not more than a full day would be required for the examination of Mr. Vahidy. The entire

¹ Statement of Prince Taylor, National Investigator [Confidential Annex J].

exercise could thus be concluded in less than a week (including any possible “re-examination” by the Prosecution).

5. Consequently, and in the interests of justice in the face of these compelling circumstances, the Defence requests that these Prosecution witnesses be recalled for further cross-examination and that Mr. Vahidy be ordered to appear and give evidence before the Trial Chamber.

II. FACTUAL BACKGROUND

6. TF1-371, TF1-375, Abu Keita and Varmuyan Sherif are all insider, linkage witnesses who testified during the Prosecution’s case. Some of them were cross-examined regarding payments made to them by the Prosecution and, to some extent, expenses covered on their behalf by WVS.² In recent months, and as detailed in Confidential Annex J, the Defence has been informed by its investigator that these witnesses have been relocated post-testimony.
7. A summary of expenses relating to testifying prosecution witnesses was disclosed to the Defence by WVS in advance of each witness’s testimony during the Prosecution’s case. This was done as a matter of routine by WVS. However, and since closure of the Prosecution’s case, the Defence has diligently sought information from WVS regarding any post-testimonial benefits provided by WVS to Prosecution witnesses to no avail. More specifically, Lead Defence Counsel wrote Mr. Vahidy on 26 January 2009, requesting disclosure (on a continuing basis) of WVS witness expenditures relating to, *inter alia*, school fees, relocation/ rent, food, money disbursed, health bills, mobile phones, etc., as well as an explanation thereof.³ Given that there was no response by Mr. Vahidy, the Defence assumed that no relevant WVS expenditures had been made in those regards.
8. On 4 October 2010⁴ and 26 October 2010⁵, the Defence followed-up on its initial request to WVS. Mr. Vahidy then spoke informally to the Defence and stated that he could not and would not provide the requested information. The Defence subsequently sent Mr. Vahidy an

² See generally *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of TF1-371**, 24, 25, 28-30 Jan 2008 and 1, 4 Feb 2008. See specifically **Testimony of TF1-375**, 22 Aug 08, p. 14334, 26 Aug 08, p. 14640-6 and 14649-73, 27 Aug 08, p. 14694-7, 28 Aug 08, p. 14870-1; **Testimony of Abu Keita**, 24 Jan 08, p. 2153-7; and **Testimony of Varmuyan Sherif**, 14 Jan 08, p. 1121-6, 1146-7, 1152-4, 1162-75 and 1193.

³ Letter from Courtenay Griffiths, Q.C., to Saleem Vahidy, dated 26 January 2009 [Annex A].

⁴ Email from Logan Hambrick to Saleem Vahidy, dated 4 October 2010 [Annex B].

⁵ Email from Courtenay Griffiths, Q.C., to Saleem Vahidy, dated 26 October 2010 [Annex C].

email recapping the conversation and attempting to clarify and narrow down its request.⁶ No response was received from Mr. Vahidy for the third time.

9. On 12 November 2010, the Defence brought the request and Mr. Vahidy's lack of response to the attention to the Registrar.⁷ The Registrar responded on 17 November 2010 but stated that the Registry did not have a duty to disclose exculpatory information.⁸ A further attempt by the Defence to clarify its request⁹ was also rejected by the Registrar.¹⁰ It is this set of circumstances, the interests of justice, and the fair trial rights of the Accused that impels this motion.

III. LEGAL PRINCIPLES

Recalling Witnesses

9. Rule 90(F)(i) of the Special Court Rules of Procedure and Evidence ("Rules") mandates that the Trial Chamber exercise control over the mode and order of interrogating witnesses and presenting evidence so as to make them "effective for the ascertainment of the truth."
10. Rule 85(A) sets out the general order for the presentation of evidence, stating that after evidence for the Prosecution, the Defence, and any of the Prosecution in rebuttal,¹¹ there may be evidence as ordered by the Trial Chamber.
11. While the Rules do not contain a specific provision for recalling a witness, the criteria has been previously been determined by this Trial Chamber. Leave to recall a witness should only be granted in the most compelling of circumstances.¹² The moving party must show good cause as to why the witnesses must be recalled, demonstrating "a substantial reason amounting in law to a legal excuse for failing to perform a required act."¹³
12. When determining whether to recall a witness, a Chamber of the Special Court must consider: (i) The purpose of the proposed testimony; (ii) The party's justification for not

⁶ Email from Logan Hambrick to Saleem Vahidy, dated 27 October 2010 [Annex D].

⁷ Letter from Courtenay Griffiths, Q.C., to Binta Mansaray, dated 12 November 2010 [Annex E].

⁸ Letter from Binta Mansaray to Courtenay Griffiths, Q.C., dated 17 November 2010 [Annex F].

⁹ Letter from Courtenay Griffiths, Q.C., to Binta Mansaray, dated 22 November 2010 [Confidential Annex I].

¹⁰ Letter from Binta Mansaray to Courtenay Griffiths, Q.C., dated 30 November 2010 [Annex G].

¹¹ The Rule requires leave of the Trial Chamber before evidence in rebuttal may be presented by the Prosecution.

¹² *Prosecutor v. Brima et al*, SCSL-04-16-T-425, Decision on Defence Motion for Leave to Recall Witness TF1-023, 25 October 2005 ("AFRC Recall Decision"), para. 16 (citing *Prosecutor v. Bagosora et al*, ICTR-98-41-T, Decision on the Prosecution Motion to Recall Witness Nyanjwa, 29 September 2004, para. 6).

¹³ AFRC Recall Decision, para. 14.

offering the evidence when the witness originally testified; (iii) The right of the accused to be tried without undue delay; and (iv) Judicial economy.¹⁴

Interim and Ancillary Orders

13. The Trial Chamber has the general power to make any order necessary for the conduct of trial, pursuant to Rule 54.

Relocating Witnesses

14. Article 16(4)¹⁵ of the Statute and Rule 34(A)¹⁶ outline the functions of WVS, which operates under the authority of the Registry. The provisions envision that WVS will, *inter alia*, provide for the security of witnesses in consultation with the parties.

15. The possibility of the relocation of witnesses by WVS is arguably provided for by Article 16(4) and Rule 34(A)(ii) as part of a security arrangement or a long-term plan for a witness' protection and support. The Prosecution does not have the power to relocate *witnesses* (emphasis added). Rule 39(ii) only allows the Prosecution, as part of its investigative powers, to "take all measures deemed necessary [arguably including relocation] for the purpose of the investigation, including the taking of any special measures to provide for the safety, the support and the assistance of *potential witnesses and sources*" (emphasis added).

IV. SUBMISSIONS

This Request Does Not Constitute Reopening the Defence Case

16. The witnesses the Defence seeks to recall are Prosecution witnesses and the Defence merely wishes to cross-examine them on matters that have only come to light after they were first made available for cross-examination; accordingly, this does not constitute the re-opening of

¹⁴ AFRC Recall Decision, para. 15.

¹⁵ Article 16(4) states "The Registry shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counseling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of their testimony given by such witnesses. [...]".

¹⁶ Rule 34(A) states "[...] in consultation with the Office of the Prosecutor, for Prosecution witnesses, and the Defence Office, for Defence witnesses, shall, amongst other things, perform the following functions with respect to all witnesses, victims who appear before the Special Court and others who are at risk on account of testimony given by such witnesses, in accordance with their particular needs and circumstances:

- i. Recommend to the Special Court the adoption of protective and security measures for them;
- ii. Provide them with adequate protective measures and security arrangements and develop long- and short-term plans for their protection and support; [...]."

the Defence case.¹⁷ A similar circumstance arose at the ICTY after the close of the Accused Gvero's case when new information came to light, necessitating that the Accused file a motion to recall Prosecution witnesses for cross-examination on issues relating to the new information, and a further filing by the Accused requesting the re-opening of the Defence case to call new witnesses on issues relating to the new information.¹⁸ Accordingly, the Defence at bar only seeks to recall the relevant Prosecution witnesses.

17. The Defence's request that Mr. Vahidy be ordered to appear and testify before the Trial Chamber, pursuant to Rule 85(A)(iv), is being made at the appropriate stage of the proceedings -- i.e., after the conclusion of the Defence case and/ or any Prosecution rebuttal evidence. The request naturally and necessarily flows from the request to recall the Prosecution witnesses because Mr. Vahidy's evidence would complement theirs and is necessary for completion and the ascertainment of the truth. The Defence intends to cross-examine Mr. Vahidy and its request that he be called does not transform him into a Defence witness, bearing in mind the provisions of Rule 85(A)(iv).¹⁹

Purpose of the Proposed Testimony

18. The purpose of the proposed testimony is to enable the Trial Chamber to more fully assess the credibility of these insider linkage witnesses, especially how the promise of relocation impacted the truthfulness of their testimony. Furthermore, the Trial Chamber would be better able to understand the Prosecution's *modus operandi* in relation to the recruitment and inducement of witnesses. Besides the attached declaration which suggests that these witnesses were promised relocation at a time when they faced no genuine security risk and

¹⁷ *Prosecutor v. Karemera et al*, ICTR-98-44-T, Decision on Joseph Nzirorera's Motion to Recall Prosecution Witness BTH, 12 March 2008, para. 9 (stating, "As Witness BTH is a Prosecution witness his recall on the request of Joseph Nzirorera must be considered as a reopening of the cross-examination by the Defence").

¹⁸ *Prosecutor v. Popovic et al*, IT-05-88-T, Motion on Behalf of Milan Gvero Seeking the Recall of Certain Prosecution Witnesses and the Re-opening of Milan Gvero's Case, 12 June 2009, para. 12. The Defence notes that the Motion was subsequently denied, but for substantive rather than procedural reasons, *Prosecutor v. Popovic et al*, IT-05-88-T, Partial Decision on Gvero Motion Seeking the Recall of Certain Prosecution Witnesses and the Reopening of the Case, 15 June 2009.

¹⁹ The Defence wishes to be forthright from the start with its request that Mr. Vahidy be called to testify and be cross-examined. This is to be compared with, for example, the approach taken by the Prosecution in regard to Naomi Campbell, whom the Prosecution called as a prosecution witness during the re-opening of the Prosecution's case and then attempted to cross-examine her and classify her as "Court" witness. See *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 5 August 2010, p. 45512-4.

prior to testifying for the Prosecution, the affidavits of several potential Prosecution witnesses who were promised the same are worth noting at this juncture.²⁰

19. The Defence appreciates that the Trial Chamber has previously determined that there is “nothing inappropriate in providing security measures to a potential witness where threats to his or her security exist”²¹ and that “it is standard procedure to assure the witnesses that any fears will be taken seriously.”²² Likewise, the Defence is aware that relocation of a potential witness can properly be undertaken by the Prosecution pursuant to Rule 39(ii) and that relocation of a witness who is going to or has testified can properly be undertaken by WVS pursuant to Rule 34. However, the Defence strenuously rejects the proposition that the Prosecution can *promise* relocation (either by itself or by WVS) in exchange for a witness’ testimony, where no proper security risk assessment has been done to establish that there is a genuine threat to the witness.²³ The Defence submits that the Trial Chamber must hear evidence in relation to such inducements because it impacts the credibility of at least these four Prosecution witnesses whose evidence is crucial to the credibility of the linkage evidence in this case.
20. Recalling a witness in relation to new evidence intended to impeach his credibility is an established practice.²⁴ Specifically, it is proper to recall a Prosecution witness for further cross-examination in regard to payments or inducements to him because the issue is “relevant and probative for assessing that witness’s credibility.”²⁵ In *Prosecutor v. Karemera et al.*, the Trial Chamber held that a Prosecution witness could be recalled and cross-examined about payments made to him “by the Tribunal” which were only disclosed

²⁰ *Prosecutor v. Taylor*, SCSL-03-01-T-1090, Public with Confidential Annexes A-J and Public Annexes K-O, *Corrigendum to Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators*, 27 September 2010, Confidential Annexes C, D, F, and I. See also, *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Sam Kolley**, 3 Nov 2010, p. 48608-9 and 9 Nov 2010, p. 49062-63.

²¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1118, Decision on 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, 11 November 2010 (“**Contempt Decision**”), para. 78.

²² Contempt Decision, para. 104. See also prior discussion of and findings regarding allegations of relocation pertaining to Abu Keita, Contempt Decision, paras. 122 to 127, but note that the Defence’s challenges to these findings are currently certified on appeal in *Prosecutor v. Taylor*, SCSL-03-01-T-1134, 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 (“**Contempt Appeal**”), paras. 21 and 35.

²³ See, for example, further explanation of the Defence position in the Contempt Appeal, para. 42.

²⁴ *Prosecutor v. Bagosora et al*, ICTR-98-41-T, Decision on Bagosora Request for Certification or Reconsideration Concerning Admission of School Documents, 9 May 2007, paras. 5, 7 (stating that considerations of fairness dictate that a witness be confronted with evidence intended to discredit them).

²⁵ *Prosecutor v. Karemera et al*, ICTR-98-44-T, Decision on Joseph Nzirorera’s Motion to Recall Prosecution Witnesses ALG, AWD, G and T, 16 April 2009, para. 11.

to the Defence after his testimony had concluded, even where the Defence had generally cross-examined him on the basis of payments before.²⁶ Likewise, and notwithstanding that the Defence has generally cross-examined some of these four Prosecution witnesses in relation to inducements and payments, the Defence should be allowed to conduct further cross-examination on this point, since the issue of relocation has come to the attention of the Defence only after the conclusion of their evidence.

21. In *Karemera et al.*, an ICTR Trial Chamber determined that “[i]nformation concerning the nature of the benefits provided by the witness protection program and their duration could be relevant to the determination of the credibility of the Witness.”²⁷ In *Prosecutor v. Martić*, an ICTY Trial Chamber found that witnesses’ hope of relocation through the assistance of the Prosecution resulted in there being “significant doubt” as to the witnesses’ credibility.²⁸ Thus, the question of inducements vis-à-vis the truthfulness of the witnesses’ testimony has significant probative value and should be a matter on the record.

Good Cause: Relocation of these Witness Occurred after their Respective Testimony

22. The ICTR has defined the “good cause” which the Defence needs to demonstrate as being “a substantial reason amounting in law to a legal excuse for failing to perform a required act.”²⁹ The Defence submits that “good cause” exists to recall the witnesses and to call Mr. Vahidy, given that the Defence is in possession of new information pertaining to the recent relocation of these witnesses and could not have obtained it before. Moreover, the Registry’s intransigence has undoubtedly left the Defence with little choice than seeking the recall of these witnesses and the testimony of Mr. Vahidy at this time. In *Prosecutor v. Katanga and Ngudjolo*, an ICC Trial Chamber has ordered that a representative of the Registry appear in court and provide information regarding the amount of money spent on and for the

²⁶ Id, para. 11.

²⁷ *Prosecutor v. Karemera et al.*, ICTR-98-44-PT, Decision on Joseph Nziirorera’s Motion for a Request for Governmental Cooperation, 19 April 2005, para. 10.

²⁸ *Prosecutor v. Martić*, IT-95-11-T, Trial Judgement, 12 June 2007, paras. 36-38.

²⁹ *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-Examination, 19 September 2005, para. 2 (“**Bagosora Decision to Recall OAB**”). See also, *Prosecutor v. Niyiramasuhuko et al.*, ICTR-98-42-T, Decision on Ntahobali’s Strictly Confidential Motion to Recall Witnesses TN, QBQ, and QY for Additional Cross-Examination, 3 March 2006, para. 32; *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Bagosora Defence Motion to Recall Witness Frank Claeys for Additional Cross Examination, 19 February 2007, para. 3; *Prosecutor v. Ndindiyimana et al.*, ICTR-00-56-T, Decision on Defence Motion to Recall Witness AOE for Additional Cross Examination, 3 April 2007, para. 6.

protection of witnesses and intermediaries.³⁰ The Defence submits it is appropriate for the Trial Chamber to order the Registry to divulge such information to the parties and the Chamber at bar.

The Accused Does Not Consider Recalling these Witnesses Undue Delay

23. There is no concern on the part of the Accused regarding the time that further cross-examination of these witnesses will take. Indeed, the Accused is anxious that their testimony be heard in the interests of the truth. As this Trial Chamber logically noted in the AFRC Recall Decision, since it is the Defence that is making the application, "it must be taken to have accepted any delay that could result from such an application".³¹

Judicial Economy is a Secondary Concern given the Compelling Circumstances

24. The ICTR has previously determined that a Trial Chamber should consider whether the probative value of further cross-examination outweighs the prejudice caused by delaying the proceedings. The Defence does not wish to deplete the admittedly limited financial resources that are available to the Special Court³² by bringing witnesses back to The Hague for further cross-examination. However, the testimony which the witnesses are likely to give is of significant probative value and is not cumulative in nature, and thus such expenditure must be made in this instance.³³

25. Bearing in mind the need for judicial economy, the Defence intends to limit the scope of the additional cross-examination to the issue of relocation and any matters arising therefrom. Thus the estimated week of additional court time is not so long such that considerations of judicial economy should force the Trial Chamber to overlook an otherwise serious issue.

No Parties should be Permitted to Contact the Witnesses Prior to Cross-Examination

26. The Defence requests as an interim order that the Trial Chamber prohibit the parties and Mr. Vahidy from communicating (directly or indirectly) with the witnesses regarding the substance of their anticipated testimony upon being recalled. The Defence appreciates that WVS as a unit will have to liaise with the recall witnesses in order to process their travel

³⁰ *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-T-173-Red-ENG WT, Trial Transcript (English, Redacted), 15 July 2010, p. 78 and *Prosecutor v. Katanga and Ngudjolo*, ICC-01/04-01/07-T-180-Red-ENG, Trial Transcript (English, Redacted), 30 August 2010, p. 3-17.

³¹ AFRC Recall Decision, para. 19.

³² See article, "The U.S. Provides \$4.5 Million to Fund Special Court for Sierra Leone Trial of Charles Taylor", U.S. Department of State Office of the Spokesman, dated 23 November 2010 [Annex H].

³³ Note that in the ICTR, the Trial Chamber may only grant leave to recall witnesses if the evidence is of significant probative value and is not of a cumulative nature. See, for example, *Bagosora* Decision to Recall OAB, para. 2.

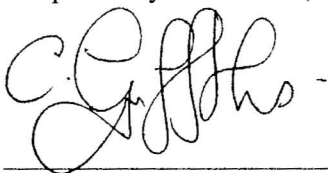
logistics, etc. However, the Defence requests that the Trial Chamber specifically order that Mr. Vahidy not be allowed to communicate or interact with the recalled witnesses at all, as he has a clear conflict of interest. This is a reasonable, practical, and necessary request, given the alleged malfeasance of the implicated parties. The Trial Chamber has the general power to issue such orders, pursuant to Rule 54. Furthermore, such no-contact orders have previously been made at the ICTR and ICTY for witnesses who are recalled.³⁴

27. The Defence requests the Trial Chamber urgently order that the no-contact provision be put in place as an interim measure, pending the final outcome of the decision on this motion, in order to preserve the integrity of the witness' testimony.

V. CONCLUSION & RELIEF REQUESTED

28. For all of the foregoing reasons, it is in the interests of justice that the Trial Chamber recall the four prosecution witnesses for further cross-examination on the limited issue of relocation and any issues arising, as well as call Mr. Vahidy to testify, given that his testimony would provide context to the circumstances surrounding the witness relocations. Refusal by the Trial Chamber to hear evidence relating to relocation of these witnesses would be a clear violation of the Accused's right to a fair trial under Article 17 of the Statute. The Defence requests that the Trial Chamber urgently issue an interim order that the parties and Mr. Vahidy not contact any of the recall witnesses before they appear in court, given the contentious nature of their anticipated evidence and the alleged malfeasance of one of the parties.

Respectfully Submitted,



Courtenay Griffiths, Q.C.

Lead Counsel for Charles G. Taylor

Dated this 17th Day of December 2010

The Hague, The Netherlands

³⁴ *Prosecutor v. Ndindiliyimana et al*, ICTR-00-56-T, Decision on Ndindiliyimana's Motion to Recall Identified Prosecution Witnesses and to Call Additional Defence Witnesses, 4 December 2008, p. 9; *Prosecutor v. Delic*, IT-04-83-T, Decision on Defence Motion to Recall Witness, 4 April 2008, paras. 3 and 7 (finding that as the witness' "scheduled re-appearance before the Tribunal is tantamount to a continuation of his previous testimony in this case, the Tribunal is of the view that both the Prosecution and Defence should abide by that [no-contact] prohibition, the rationale of which is to avoid the risk of affecting or calling into question the integrity of the testimony").

List of Authorities

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T-1134, 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

Prosecutor v. Taylor, SCSL-03-01-T-1118, Decision on 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, 11 November 2010

Prosecutor v. Taylor, SCSL-03-01-T-1090, Public with Confidential Annexes A-J and Public Annexes K-O, *Corrigendum to* Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 27 September 2010

Prosecutor v. Brima et al.

Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-T-425, Decision on Defence Motion for Leave to Recall Witness TF1-023, 25 October 2005

ICTR Jurisprudence

Prosecutor v. Bagosora et al, ICTR-98-41-T, Decision on Defence Motion to Recall Prosecution Witness OAB for Cross-Examination, 19 September 2005

<http://www.ictrcaselaw.org/docs/doc68282.pdf>

Prosecutor v. Bagosora et al, ICTR-98-41-T, Decision on Bagosora Request for Certification or Reconsideration Concerning Admission of School Documents, 9 May 2007

<http://www.ictrcaselaw.org/docs/20070509-dco-9841-02-en.pdf>

Prosecutor v. Bagosora et al, ICTR-98-41-T, Decision on the Prosecution Motion to Recall Witness Nyanjwa, 29 September 2004

<http://www.ictrcaselaw.org/docs/doc57211.pdf>

Prosecutor v. Karemera et al, ICTR-98-44-T, Decision on Joseph Nzirorera's Motion to Recall Prosecution Witnesses ALG, AWD, G and T, 16 April 2009

<http://www.ictrcaselaw.org/docs/20090416-dco-9844-01-en.pdf>

Prosecutor v. Karemera et al, ICTR-98-44-T, Decision on Joseph Nzirorera's Motion to Recall Prosecution Witness BTH, 12 March 2008

<http://www.ictrcaselaw.org/docs/20080312-dco-9844-01-en.pdf>

Prosecutor v. Karemera et al, ICTR-98-44-PT, Decision on Joseph Nzirorera's Motion for a Request for Governmental Cooperation, 19 April 2005

<http://www.ictrcaselaw.org/docs/doc63711.pdf>

Prosecutor v. Ndindiliyimana et al, ICTR-00-56-T, Decision on Ndindiliyimana's Motion to Recall Identified Prosecution Witnesses and to Call Additional Defence Witnesses, 4 December 2008

<http://www.ictrcaselaw.org/docs/20081204-dco-0056-01-en.pdf>

ICTY Jurisprudence

Prosecutor v. Delic, IT-04-83-T, Decision on Defence Motion to Recall Witness, 4 April 2008

http://icr.icty.org/exe/ZyNET.exe?ZyActionD=ZyDocument&Client=LegalRefE&Index=DecisionE&Query=&File=E%3A\Legal_Ref\BatchStore\Decision\English\ExportedText\0000000X\200016ALCR.txt&QField=DocumentId^2000254319&UseQField=DocumentId&FuzzyDegree=1&ImageQuality=r85g16%2Fr85g16%2Fx150y150g16%2Fi500&Display=hpfrw&DefSeekPage=f&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results+page&MaximumPages=1&ZyEntry=1&SeekPage=f&User=ANONYMOUS&Password=ANONYMOUS

Prosecutor v. Martić, IT-95-11-T, Trial Judgement, 12 June 2007

http://icr.icty.org/Exe/ZyNET.exe/2000161IEM.txt?ZyActionD=ZyDocument&Client=LegalRefE&Index=JudgementE&Docs=&Query=&Time=&EndTime=&SearchMethod=&TocRestrict=&Toc=&TocEntry=&QField=DocumentId^2000233294&QFieldYear=&QFieldMonth=&QFieldDay=&UseQField=DocumentId&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=E%3A\LEGAL_REF\BATCHSTORE\JUDGEMENT\ENGLISH\EXPORTEDTEXT\00000000\2000161IEM.txt&User=ANONYMOUS&Password=ANONYMOUS&SortMethod=&MaximumDocuments=0&FuzzyDegree=1&ImageQuality=r85g16/r85g16/x150y150g16/i500&Display=hpfrw&DefSeekPage=f&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=16

Prosecutor v. Popović et al, IT-05-88-T, Motion on Behalf of Milan Gvero Seeking the Recall of Certain Prosecution Witnesses and the Re-opening of Milan Gvero's Case, 12 June 2009

<http://icr.icty.org/LegalRef/CMSDocStore/Public/English/Motions/NotIndexable/IT-05-88/MOT7680R0000269652.pdf>

Prosecutor v. Popović et al, IT-05-88-T, Partial Decision on Gvero Motion Seeking the Recall of Certain Prosecution Witnesses and the Reopening of the Case, 15 June 2009

http://icr.icty.org/exe/ZyNET.exe?ZyActionD=ZyDocument&Client=LegalRefE&Index=DecisionE&Query=&File=E%3A\Legal_Ref\BatchStore\Decision\English\ExportedText\00000012\200016TXPP.txt&QField=DocumentId^2000317115&UseQField=DocumentId&FuzzyDegree=1&ImageQuality=r85g16%2Fr85g16%2Fx150y150g16%2Fi500&Display=hpfrw&DefSeekPage=f&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results+page&MaximumPages=1&ZyEntry=1

ImageQuality=r85g16%2Fr85g16%2Fx150y150g16%2Fi500&Display=hpfrw&DefSeekPage=f
&SearchBack=ZyActionL.&Back=ZyActionS&BackDesc=Results+page&MaximumPages=1&Z
yEntry=1&SeekPage=f&User=ANONYMOUS&Password=ANONYMOUS

ICC Proceedings

Prosecutor v. Katanga and Ngudjolo, ICC-01/04-01/07-T-173-Red-ENG WT, Trial Transcript
(English, Redacted), 15 July 2010

<http://www.icc-cpi.int/iccdocs/doc/doc924796.pdf>

Prosecutor v. Katanga and Ngudjolo, ICC-01/04-01/07-T-180-Red-ENG, Trial Transcript
(English, Redacted), 30 August 2010

<http://www.icc-cpi.int/iccdocs/doc/doc939621.pdf>

Annex A

31228



**SPECIAL COURT FOR SIERRA LEONE
DEFENCE FOR CHARLES TAYLOR**

The Hague Sub-Office, Binckhorstlaan 400
2516 BL The Hague, The Netherlands

Telephone: +31 70 515 9744; Facsimile: +31 70 322 2711

E-mail: Courtenay Griffiths, Q.C. (Lead Counsel): cgxqc@btinternet.com;

Salla Moilanen (Case Manager) moilanens@un.org

26 January 2009

Mr. Saleem Vahidy
Chief, Witness and Victims Section

RE: Post-Testimony WVS Witness Payments and Benefits

Dear Saleem,

The Defence would like to know if any post-testimony benefits (money, food, relocation/rent, school fees, health bills, top up cards, mobile phones, etc) have been given to any of the witnesses (or their families) who have already testified in *Prosecutor v. Taylor* at The Hague. The Defence would further like to know if any post-testimony benefits have been promised to past and/or future witnesses.

As the Defence believe the issue of witness payments and benefits affects the credibility of the witnesses' evidence, and thus has a bearing on the Accused's right to a fair trial under Article 17 of the Special Court Statute, the Defence and the Court should have access to this information, which falls under Rule 68.

If any such post-testimony payments or benefits have been or will be given to witnesses by the Witness and Victims Section, the Defence request a copy of the date, amount, and purpose of the payment or benefit given. The Defence request this Rule 68 information on a continuing basis.

We appreciate the cooperation WVS showed throughout the past year as regards the disclosure of witness expenses for upcoming witnesses, and we look forward to your continued cooperation in regard to disclosure of post-testimony witness expenses.

Kind Regards,

Courtenay Griffiths, QC

Annex B

31230



Logan Hambrick <logan.hambrick@gmail.com>

Update on Witness Expenses for Prosecution Witnesses Who Testified

Logan Hambrick <logan.hambrick@gmail.com>

Mon, Oct 4, 2010 at 6:03 PM

To: Saleem Vahidy <vahidy@un.org>

Cc: Courtenay Griffiths <cgxqc@btinternet.com>, Silas Chekera <silaschekera@gmail.com>, Salla Moilanen <moilanens@un.org>

Dear Saleem --

You will remember that in January 2009 (letter attached) we asked for an accounting of expenses paid to or on behalf of Prosecution witnesses by WVS. Could you please send us an update account in this regard?

Also, could you tell us two specifics:

- whether WVS has, or is in the process of relocating Abu Keita?
- whether WVS has rented or bought a house for Varmuyan Sheriff in Kenema or thereabout?

Courtenay has asked me to obtain these records as a matter of urgency, as they are related to various issues before the Trial Chamber.

Kind Regards,
Logan

--

Logan Christi Hambrick
Taylor Defence - Legal Assistant
Special Court for Sierra Leone
The Hague: +31 68 45 00 436

090126 Letter to WVS Re Witness Payments and Benefits.PDF
17K

Annex C

3123



Logan Hambrick <logan.hambrick@gmail.com>

Witness Expenses

C GRIFFITHS <cgxqc@btopenworld.com>

Tue, Oct 26, 20

To: Saleem Vahidy <vahidy@un.org>

Cc: Logan C Hambrick <logan.hambrick@gmail.com>

Dear Saleem,

Logan wrote to you some weeks ago regarding witness expenses. We are still awaiting a response be grateful if you could attend to this matter urgently.

We would be happy to re-forward the letter.

Courtenay Griffiths Q.C.

Lead Counsel

Confidentiality Notice: E-mail may be intercepted between the sender and the receiver and is therefore neither secure nor confidential. Your continued use of e-mail communication confirms that you accept this risk. If this is an urgent matter, please contact me at the phone number provided. This e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain private, confidential, and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient or this information has been inappropriately forwarded to you, please contact the sender by reply e-mail and destroy all copies of the original.

Annex D

31234



Logan Hambrick <logan.hambrick@gmail.com>

Update on Witness Expenses for Prosecution Witnesses Who Testified

Logan Hambrick <logan.hambrick@gmail.com>

Wed, Oct 27, 2010 at 6:06 PM

To: Saleem Vahidy <vahidy@un.org>

Cc: Courtenay Griffiths <cgxqc@btinternet.com>, Silas Chekera <silaschekera@gmail.com>, Salla Moilanen

<[REDACTED]>, Terry Munyard <terrymunyard@googlemail.com>, Morris Anyah <mazumaany@yahoo.com>

Dear Saleem --

Following our conversation, can I now make our request more specific in order to assist you to comply with it.

Our primary concern is in relation to linkage witnesses. I will send you a list of their TF1 numbers and names in a separate email. Thus, we are talking about records of approximately 40 witnesses of the 94 witnesses that traveled to give live evidence.

We are not asking for records of money WWS spent in terms of DSA or travel expenses to bring these witnesses to The Hague. We are only asking for money spent on behalf of or given to witnesses *after they testified*, such as: school fees, medical bills, job packages, rent/housing allowances, security allowances and relocation, etc. We also need to know who requested that such money be paid or such benefits be provided.

We are not asking for disclosure of confidential information such as the name of the country where a person was relocated to, or the type of medical ailment for which a person needed treatment.

It is our position that you have a duty to disclose this information as it is potentially exculpatory.

You have just indicated to Terry and I that by tonight you could at least tell us whether you are willing to provide the requested information, and so we await your response. If we do not hear anything from you by the end of the day tomorrow (Thursday) we will assume you are not willing to comply with our request. If you are willing to comply, could you please indicate a date by which we could expect the requested information.

Best,

Logan

[Quoted text hidden]

090126 Letter to WWS Re Witness Payments and Benefits.PDF
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Annex E



SPECIAL COURT FOR SIERRA LEONE

DEFENCE FOR CHARLES TAYLOR

The Hague Sub-Office, P. O. Box 19536

2500 CM The Hague, The Netherlands

Telephone: +31 70 515 9744; Facsimile: +31 70 322 2711

E-mail: Courtenay Griffiths, Q.C. (Lead Counsel): cgxqc@btinternet.com;

Salla Moilanen (Case Manager) moilanens@un.org

By email

12 November 2010

Ms Binta Mansaray
Registrar
Special Court for Sierra Leone
Freetown

RE: Disclosure of Post-Testimony Benefits and Relocation Facilitated by the Registry's Witnesses and Victims Section in respect of Prosecution Witnesses

Dear Ms Mansaray,

Since January 2009, the Defence has requested from Saleem Vahidy, Chief of WVS, records of payments and benefits and relocation packages provided to Prosecution witnesses upon conclusion of their testimony.¹ No information has been forthcoming. The Defence has recently followed-up on this request in person and via email, and Mr Vahidy has stated that he will not provide the requested information.² Mr Munyard brought the issue to the attention of the Deputy-Registrar Fidelma Donlon during her recent mission to The Hague Sub-Office, but still the Defence has not received the requested information.

I bring this to your attention at this point, because if the issue is not soon and satisfactorily resolved, I will have no choice but to ask the Trial Chamber to compel disclosure. The Witnesses and Victims Section is set up by the Registry pursuant to Rule 34(A) and the Registry generally has an obligation to assist the parties in the performance of their functions pursuant to Rule 33(A). Part of the Defence's functions is to test the credibility of Prosecution witnesses, whose credibility can be affected by the provision of benefits which go beyond those reasonably required for their maintenance.

¹ Letter from Courtenay Griffiths, QC to Saleem Vahidy, dated 26 January 2009 [Enclosure A].

² Email from Logan Hambrick to Saleem Vahidy, dated 4 October 2010 [Enclosure B]; Email from Courtenay Griffiths, QC to Saleem Vahidy, dated 26 October 2010 [Enclosure C]; Email from Logan Hambrick to Saleem Vahidy [Enclosure D].

Could you please indicate if and when the requested material will be provided to the Defence.

Kind Regards,

A handwritten signature in black ink, appearing to read 'Griffiths', with a stylized flourish at the end.

Courtenay Griffiths, QC
Lead Counsel for Charles G. Taylor

Annex F

31239



SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
PHONE: +39 0831 257000 or +UN Intermission 178 7000 or 178 1 (Ext)
FAX: +232 22 297001 or UN Intermission: 178 7001

Ref/REG/639, 2010/SG

17 November 2010

Courtenay Griffiths, QC
Lead Counsel, Taylor Defence Team

Re: Defence Request for Disclosure of Post-Testimony Benefits and Relocation Facilitated by the Registry's Witnesses and Victims Section (WVS) in respect of Prosecution Witnesses

Dear Mr. Griffiths,

I am in receipt of your letter dated 12 November 2010 requesting records of alleged payments of post – testimony benefits and relocation packages provided to Prosecution witnesses upon conclusion of their testimony together with accompanying enclosures.

With reference to Enclosure A – your letter addressed to the Chief of the Witness and Victims Section dated 26 January 2009 – there are two important points I wish to clarify. Firstly, you refer to Rule 68 of the Rules of Procedure and Evidence entitled "Disclosure of Exculpatory Evidence". However, Rule 68 explicitly regulates the disclosure obligations of the Prosecutor, not the Registrar, concerning exculpatory material. Therefore, please note that the Registrar is under no obligation to disclose information under Rule 68.

Secondly, the Witness and Victims Section does not pay what you refer to as "post-testimony benefits" to Defence or Prosecution witnesses. The payment of allowances to Defence and Prosecution witnesses is guided by the Court's obligation to ensure the welfare of the witnesses in accordance with Rule 34 (A) (ii) and (iii) and the applicable *Practice Direction on Allowances for Witnesses and Expert Witnesses Testifying in The Hague* of 8 June 2007.

Concerning your request for information regarding the relocation of Prosecution witnesses please note that the Registry as a matter of policy does not disclose information in relation to relocation measures and/or security arrangements set in place for Defence and Prosecution witnesses should such measures be deemed necessary following a threat assessment conducted by the Witness and Victims Section. As you know, the Registrar is obliged by Rule and Statute to provide long and short-term plans for the protection and support of witnesses. Therefore, you will appreciate that the information related to the care and protection of both Defence and Prosecution witnesses by the Court, following threat assessments conducted by WVS, must be kept strictly confidential and restricted and, as such, will not be shared with the opposing party in order to avoid compromising the security of these witnesses.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Binta Mansaray', is written over a faint circular stamp.

Binta Mansaray
Registrar
Special Court for Sierra Leone

31240

Annex G

31241



SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
PHONE: +39 0831 257000 or +UN Intermission 178 7000 or 178 (+Ext)
FAX: +232 22 297001 or UN Intermission: 178 7001

Ref/REG/662/2010/SG

30 November 2010

Courtenay Griffiths, QC
Lead Counsel, Taylor Defence Team

Re: Registrar Response to Defence Reply to Letter Denying Defence Request for Disclosure of Post-Testimony Benefits and Relocation Facilitated by the Registry's Witnesses and Victims Section (WVS) in respect of Prosecution Witnesses

Dear Mr. Griffiths,

I am in receipt of your letter dated 22 November 2010 which elaborates on your 12 November 2010 request for information regarding the relocation of Prosecution witnesses and alleged payments of post-testimony benefits.

In my letter dated 17 November 2010 I advised you that payment of allowances to Defense and Prosecution witnesses is guided by the Court's obligation to ensure the welfare of witnesses in accordance with Article 16 of the Special Court Statute, Rule 34 (A) (ii) and (iii) and the applicable *Practice Direction on Allowances for Witnesses and Expert Witnesses Testifying in The Hague* of 8 June 2007.

With reference to your request for information regarding the relocation of Prosecution witnesses, as I indicated in my previous letter the Registry does not disclose information in relation to relocation measures and/or security arrangements set in place for Defense and Prosecution witnesses should measures be deemed necessary following a threat assessment conducted by the Witness and Victims Section. This includes all confidential information related to agreements with Governments, the continent of relocation and the timing of relocation. Under Rule 34 (A) (ii) of the Rules of Procedure and Evidence the Witness and Victims Section is obliged to provide witnesses with "adequate protective measures and security arrangements and develop long- and short-term plans for their protection and support." To fulfill the obligations set forth in the Special Court's Statute and Rules of Procedure and Evidence and to ensure both the short- and long-term wellbeing of witnesses the Registry does not divulge information related to relocations.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Binta Mansaray', is written over a faint, circular official stamp.

Binta Mansaray
Registrar
Special Court for Sierra Leone

Annex H

The U.S. Provides \$4.5 Million to Fund Special Court for Sierra Leone Trial of Charles Taylor

Office of the Spokesman

Washington, DC

November 23, 2010

On November 22 the Department of State released a \$4.5 million grant for FY2011 to the Special Court of Sierra Leone. This grant demonstrates the U.S. commitment to ensuring that those most responsible for the atrocities committed during the war in Sierra Leone are brought to justice. This grant was expedited due to the financial crisis the Court is currently facing. By all calculations, the Court would have run out of money by early December which could have jeopardized the continuation of the Charles Taylor trial before the Court reached a verdict.

The Special Court for Sierra Leone was set up jointly by the Government of Sierra Leone and the United Nations. It is mandated to try those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since November 30, 1996.

The SCSL indicted former Liberian President Charles Taylor and 12 others for war crimes and crimes against humanity in 2003, due to their involvement in and support of some of the worst atrocities in Sierra Leone's civil war. The trials of three former leaders of the Armed Forces Revolutionary Council (AFRC), of two members of the Civil Defense Forces (CDF) and three former leaders of the Revolutionary United Front (RUF) have been completed, including appeals, leaving only the trial of Charles Taylor (two indictees died before the trial stage).

On June 16, 2006, the trial of Charles Taylor was transferred to The Hague because Taylor's continued presence and trial in Freetown represented an impediment to stability in the sub-region, a threat to the peace of Liberia and Sierra Leone, and a threat to international peace and security in the region. The trial of Charles Taylor is close to completion; the defense evidence concluded on November 12 and a trial judgment is due in mid-2011 with an appeal to be resolved by early 2012.

The trial of Charles Taylor is of enormous historical and legal significance as he is the first African head of state to be brought before an international tribunal to face charges for mass atrocities and gross violations of international humanitarian law. The Taylor prosecution delivers a strong message to all perpetrators of atrocities, including those in positions of power that they will be held accountable. It is imperative the international community prevents the Taylor trial from being suspended due to lack of financial resources, which is why the United States rushed its FY2011 contribution to the Court. We hope other donor states will follow our lead and find ways to financially support the Court until it has finished its mandate and justice has been served.

As a major donor to the Special Court, the United States serves on the Special Court's Management Committee in New York. To date, the United States has contributed \$81,189,445 amount to the Special Court.

PRN: 2010/1694



SPECIAL COURT FOR SIERRA LEONE

DOKTER VAN DER STAMSTRAAT 1 • 2265 BC LEIDSCHENDAM • THE NETHERLANDS

PHONE: +31 70 515 9701 or +31 70 515 (+Ext 9725)

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: **1142**

Document Date: **17 December 2010**

Filing Date: **17 December 2010**

Document Type: **Motion**

Number of Pages: **6** Number from: **31244 - 31249**

☒ **Application**

☐ Order

☐ Indictment

☐ Other

☐ Response

☐ Correspondence

Document Title:

Public with Annexes A-H and Confidential Annexes I-J Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS regarding Relocation of Prosecution Witnesses

Name of Officer:

Rachel Irura

Signed: