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SCSL-03-01-T
(34596-34605)

34596

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: 14 February 2011

THE PROSECUTOR **Against** **Charles Ghankay Taylor**

Case No. SCSL-03-01-T

PUBLIC
PROSECUTION REPLY TO CONFIDENTIAL DEFENCE RESPONSE TO 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 "Defence Response to Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone" ("**Response**")[1] in accordance with the Trial Chamber's expedited filing schedule.[2]

2. Neither the Defence denial of involvement in the contact alleged in the Prosecution's Motion,[3] nor its assertion that it is in no position to know if the witnesses were contacted is of any relevance to whether an investigation should be initiated. Contempt can occur by "*any person* who knowingly and willingly interferes" with the Court's administration of justice,[4] so whether the two named individuals and possibly others involved in the contemptuous conduct were members of the Defence team or not makes no difference to a finding that an investigation should be initiated. As set forth in the Motion, the Prosecution has met the evidentiary threshold for the "reason to believe" standard by providing credible allegations which establish contemptuous conduct occurred in violation of Rules 77(A) and/or 77(B) which would allow the Chamber to order an investigation under Rule 77(C)(iii) to look into these serious matters further.[5]

II. SUBMISSIONS

3. In its Response at paragraph 2, the Defence's assertion regarding scare tactics is unfounded. First and most importantly, this statement seems to indicate that the Defence is indeed "investigating issues" by contacting Prosecution witnesses in an effort to influence them to recant their testimony, as asserted in the Motion and in spite of the Defence denials otherwise. Secondly, the Prosecution was approached by witnesses who expressed fear for their safety after being contacted by individuals representing themselves as working on behalf of the Defence. In relation to Senessie, these representations were further supported by the witnesses' own observations that Senessie had accompanied Charles Taylor Defence team members in Kailahun on previous occasions as they tried to locate Defence witnesses. The witness reports regarding the contact were made independently and separately in a

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[1] *Prosecutor v. Taylor*, SCSL-03-01-T-1201, Confidential Defence Response to Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone (**"Response"**), 11 February 2011.
[2] *Prosecutor v. Taylor*, SCSL-03-01-T-1198, Order for Expedited Filing on Contempt Motions, 9 February 2011.
[3] Response, para. 4; *Prosecutor v. Taylor*, SCSL-03-01-T-1185, Urgent Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone (**"Motion"**), 3 February 2011.
[4] Rule 77(A), emphasis added.
[5] Motion, paras. 7, 8, 15-18.

short time span. They were also alarmingly similar, showing a pattern of improper behavior contravening protective measures issued by this Court as well as Rules 77(A) and/or (B). The Prosecution was upholding its duty to its witnesses and the Court by filing this Motion.[6]

Allegations of Contempt are Specific

4. The Defence argument made at paragraph 3 of the Response is without merit. While no specific names of Taylor Defence team members other than Prince Taylor were revealed to the witnesses, the references to the team are very specific. Each witness was very clear that Senessie told them he was contacting them on behalf of the Charles Taylor Defence team and that he said he had met with members of the Charles Taylor Defence team in Freetown and was sent by them to persuade Prosecution witnesses to change their evidence. Two of the witnesses said Senessie stated that he was in regular contact with and/or receiving regular telephone calls from the Charles Taylor Defence team regarding his progress in contacting the witnesses, that there would be a financial reward if the witnesses recanted their testimony, and that he would inform the Charles Taylor Defence team if the witnesses agreed to change their testimony.[7] While specific names of former or present team members other than Prince Taylor were not provided, the details which were provided are more than a "vague reference." Further, such details provide reason to believe that Senessie and other persons not yet identified have engaged in contemptuous conduct in violation of Rules 77(A) and/or 77(B).

5. Moreover, TF1-585 referred specifically to direct contact on Senessie's telephone with Prince Taylor, a member of the Taylor Defence team until 31 December 2010.[8] Although his formal tenure with the team had ended, Prince Taylor apparently continued to represent

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[6] *Prosecutor v. Brima et al.*, SCSL-04-16-AR77-315, Decision on Defence Appeal Motion Pursuant to Rule 77(J) on both the Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii) (**"AFRC Appeals Decision"**), 23 June 2005, para. 2; *Prosecutor v. Taylor*, SCSL-03-01-T-600, Confidential Decision on Prosecution Motions for Investigations into Contempt of the Special Court for Sierra Leone (SCSL-03-01-451; SCSL-03-01-452; SCSL-03-01-457; SCSL-03-01-513), 19 September 2008, para. 16.

[7] Motion, Confidential Annexes B, C and D.

[8] Response, para. 4 and Annex A. In the Response, para. 10, the Defence seems to misunderstand the plain meaning of hearsay, characterizing this witness' first-hand account of direct contact via the telephone with Prince Taylor as *hearsay*. The witness clearly stated that Senessie identified the speaker on the other end as Prince Taylor, and Prince Taylor over the phone identified himself to the witness when they spoke directly to each other. This is not hearsay but the witness' first-hand account of events. Whether or not a witness met with Prince Taylor in person is irrelevant when the other facts bear out direct contact was indeed made with one of the witnesses.

himself as an active member, whether that representation was accurate or not.[9] Whatever his true status, Prince Taylor had a continuing obligation to observe the standards and orders of the Court, including orders regarding protective measures and confidentiality rules.[10] There is reason to believe that Prince Taylor failed to honor that obligation when he contacted TF1-585 without going through the proper channels and when he disclosed the witness' identity to Senessie, who the Defence contends has never worked as a part of the Defence team. If what the Defence says is true, Senessie was in fact a member of the public and TF1-585's identity as a witness should never have been disclosed to him.

6. The Defence suggests that Senessie's presence at Zulu in 2007 indicated he was familiar with the Prosecution and its witnesses absent any connection to the Taylor Defence team.[11] However, Senessie's presence at Zulu does not necessitate knowledge that TF1-585 actually testified as a Prosecution witness in the Charles Taylor trial. But *arguendo*, whether or not Senessie surmised this from his presence at Zulu, Prince Taylor's direct instruction to him to contact witness TF1-585 revealed both the protected name of the witness and the fact that the witness testified in The Hague, constituting a violation in itself.

7. It is, as the Defence speculated, *possible* that TF1-585 and TF1-516 already knew that the other was a Prosecution witness.[12] However, the mere act of a third party, Senessie, telling TF1-585 that TF1-516 had been a witness constitutes a violation.

8. In the Response, the Defence denies ever tasking Senessie to work as a part of the Defence team or on its behalf to contact Prosecution witnesses,[13] yet two of the witnesses affirmed that they had seen Senessie in Kailahun on previous occasions with Defence team members looking for Defence witnesses. This clearly indicates Senessie was working in some capacity as a part of the team, whether it was official or unofficial. Regardless, whether Senessie and/or Prince Taylor had contacted Prosecution witnesses on their own accord,[14] the facts set forth in the Motion establish reason to believe that contact was made, and an investigation is warranted.

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[9] Motion, Confidential Annex D, p. 3.
[10] See Motion, Public Annex F where Prince Taylor confirmed his understanding of these obligations.
[11] Response, paras. 5, 6.
[12] Response, para. 6.
[13] Response, para. 4.
[14] Response, para. 4.

Allegations of Offering a Bribe are Specific

9. The Defence erroneously argues that the allegations relating to monetary reward are "highly speculative" and refers to the November 2010 Contempt Decision that one factor going to credibility is whether or not money was actually paid to the witness.[15] The Prosecution first notes that Rules 77(A)(iv) and 77(B) indicate contemptuous conduct includes the offer of a bribe to a witness who has given evidence and does not require actual payment of that bribe or completion of the act. Other factors which also lend weight to the allegations made by Mohamed Kabba and TF1-585 include that they independently reported similar patterns of conduct by Senessie and similar offers of monetary reward, the events occurred within days of each other and within the same area, and both witnesses reported this unsolicited contact to the Prosecution immediately after it happened. These accounts concern specific offers of a bribe, they are not speculation, and their similarities corroborate each other and meet the reason to believe standard.

Allegations of Conduct Amount to Intimidation

10. The Defence suggestion that Senessie's conduct does not constitute intimidation[16] ignores the reality on the ground in Sierra Leone. Prosecution witnesses live in the midst of hundreds if not thousands of former members of the RUF, AFRC—former members who often view these witnesses as traitors to these groups. One of these former members, Senessie, who now holds a position of some influence in his District, repeatedly persisted in contacting these witnesses. In addition, these incidents occurred far from Freetown and the safety of the Court. Such circumstances must be considered when assessing potential intimidation.

11. The Defence suggestion also ignores the applicable legal standard defining intimidation. As the Brdjanin Trial Chamber stated:

> In order for the conduct in question to amount to contempt of court, said conduct must be of sufficient gravity to be likely to intimidate a witness. These acts or omissions must be evaluated in the context of the circumstances of each particular case. [...] Whether the witness was actually intimidated is immaterial; the Prosecution need only prove that the conduct in question was

[15] Response, paras. 7, 8.
[16] Response, para. 9.

intended to interfere with the Tribunal's due administration of justice.[17]

12. Applying the facts contained in the witness statements to this legal test, the Prosecution has met the reason to believe standard that intimidation occurred. First, the conduct in question was of sufficient gravity to be likely to intimidate a witness. All three witnesses were contacted in their own homes and were asked to recant their sworn testimony by persons representing themselves as acting on the instructions of Charles Taylor's Defence team. One of the witnesses contacted in this fashion was a protected witness and one other still has residual protective measures in place governing how contact with him must be made. Accordingly, these actions are not "subjective interpretations of otherwise normal events" as asserted by the Defence. Even Prosecution witnesses who testify openly have a reasonable expectation that the Defence or its agents will not intrude on their privacy or sense of security, the same reasonable expectation that Defence witnesses have. Further, there is reason to believe that these actions were intended to interfere with the Tribunal's due administration of justice by influencing Prosecution witnesses to recant previous sworn testimony in exchange for monetary reward.

13. Second, even though it is immaterial whether the witness was actually intimidated, the facts in this case establish reason to believe that they were. The Prosecution witnesses were briefed on the procedure for contact and expected it to be followed. When it was not, Kabba stated it "made me to be afraid."[18] Gbonda stated, "I am in fear of my life when Eric working with Defence has known my residence. I can be attacked and harmed by loyalist[s] to Charles Taylor."[19] And TF1-585 stated, "I now fear for my life as Eric has located my hideout in Kailahun. Eric has not openly expressed any threat to me; but now poses a threat on my life. I am aware of what Charles Taylor is capable of doing. Charles Taylor has a lot [of] former fighters that he can pay to harm me and my family considering [we are] living in Kailahun close to Liberia."[20]

Urgent Interim Measures Are Reasonable

14. The Defence assertion that the Prosecution urgent interim measures amounts to an *ex parte*

[17] *Prosecutor v Brdjanin*, IT-99-36-R77, Decision on Motion for Acquittal pursuant to Rule 98*bis* concerning allegations against Mikla Maglov, 19 March 2004, para. 23.
[18] Motion, Confidential Annex B, p. 3.
[19] Motion, Confidential Annex C, p. 2.
[20] Motion, Confidential Annex D, p. 2.

application makes no sense. If the Defence claim is true that neither Prince Taylor nor Senessie were acting on its behalf to contact Prosecution witnesses, neither individual falls under the ambit of a party to the applications. Moreover, Prince Taylor and Senessie's response to the merits of the allegations is more properly allocated to any investigation deemed appropriate so that independent counsel can properly assess their credibility without preparation before the fact. The Defence need only account for its own actions if and when that is determined to be necessary by independent counsel should an investigation be ordered. There can be no legitimate reason for the Defence to contact Senessie or Prince Taylor—or anyone else whom the Defence may know to be involved in these contacts with Prosecution witnesses. The Defence is not empowered to investigate the conduct in question, and contact could only interfere with or influence the facts to be gathered in any investigation that may be ordered.

15. Given the serious nature of the allegations made against Senessie and Prince Taylor, the Prosecution reiterates its request that the Trial Chamber order interim measures as set out in paragraph 29 of its Motion.

Other Considerations

16. The Defence submission that the Prosecution is using this Motion "to cloud any future incident which may arise *ex improviso* wherein Prosecution witnesses wish to recant" is completely unsupported by any facts in the Response. Rather, the Defence allegation attempts to deflect attention from the real issue, namely the alleged contemptuous conduct engaged in by Senessie and Prince Taylor and other persons not yet identified in relation to four Prosecution witnesses.

17. The evidence is clear in spite of the Defence innuendo contained in paragraph 12: the Prosecution witnesses approached by Senessie never intended to change their testimony.[21] Rather than a contrived explanation or "convenient after-thought", attempts to obtain proof were understandable given the unauthorized nature of the contact, the offers of monetary reward, the assertion that the Prosecution had made improper inducements, and the likelihood their accounts of such contact would be scrutinized. Likewise, the request for more time was understandable given the fact the witnesses were taken by surprise with the

[21] See Motion, Confidential Annexes B, p. 3 and D, pp. 2-3.

contact and the content of that contact.

18. The Defence contention at paragraph 13 of the Response is without merit. The allegations provided in the signed statement set out in Confidential Annex D are sufficient to support an investigation into contempt.

III. CONCLUSION

19. The Court has an obligation to ensure that Prosecution witnesses who testified in The Hague are not subject to unauthorized contact, harassment or intimidation or attempted bribery once they return to their homes and live in the same communities with individuals who may be sympathetic and/or loyal to the Accused or the perpetrator groups with which he participated. As stated by the Appeals Chamber:

> It should be obvious that witnesses must never be put under any pressure in their choice to give evidence for one party or another or as to what evidence they should give, and must be rigorously protected thereafter from any reprisals. Where the court, because there is a real danger of such reprisals, has taken the exceptional step of ordering that the name and any identifying details of a witness should not be disclosed to the public, a credible allegation of breach of that order by a person subject to it must be investigated without delay.[22]

20. The information provided in the Motion provides reason to believe that Senessie, Prince Taylor and others not yet identified may have been involved in contemptuous conduct in violation of Rules 77(A) and 77(B), including:

(a) disclosure of information in violation of protective measures issued by this Court, including the identity and other information concerning protected witnesses; and

(b) intimidation, bribery, or other interference, including contact in violation of a court order, with witnesses who have given evidence in proceedings before this Chamber.

[22] AFRC Appeals Decision, para. 2.

21. The Defence assertions to discredit these allegations all fail, as set forth above. The Prosecution therefore requests that the Trial Chamber direct the Registrar to appoint experienced independent counsel to urgently investigate the possible contempt of this Court.

Filed in The Hague,
14 February 2011
For the Prosecution,

Brenda J. Hollis
The Prosecutor

INDEX OF AUTHORITIES

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