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SCSL-12-01-T  
(437-451)

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

**TRIAL CHAMBER II**

Before: Justice Teresa Doherty, Single Judge  
Registrar: Ms. Binta Mansaray  
Date filed: 24 August 2012

In the Matter of Contempt Proceedings Arising from the case of The Prosecutor v.  
Charles Ghankay Taylor

Case No. SCSL-12-01-T

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**PUBLIC WITH CONFIDENTIAL ANNEXES A AND B**  
**PROSECUTION RESPONSE TO DEFENCE CHALLENGE TO JURISDICTION**

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Office of the Prosecutor:  
Ms. Brenda J. Hollis  
Ms. Ula Nathai-Lutchman  
Mr. James Pace

Counsel for the Accused:  
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Ms. Logan Hambrick

Office of the Principal Defender:  
Ms. Claire Carlton-Hanciles

SPECIAL COURT FOR SIERRA LEONE	
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TIME	15:54

## I. INTRODUCTION

1. The Prosecution files this response to the “Urgent and Public with Annex Defence Challenge to Jurisdiction” (“Motion”).<sup>1</sup>
2. The Motion is untimely, without merit and should be dismissed. Judge Doherty as Single Judge has jurisdiction over the disposition of former lead Defence Counsel Courtenay Griffiths’ alleged contemptuous conduct, having been assigned this matter by Trial Chamber II. Such assignment is appropriate as the Rules of Procedure and Evidence (“Rules”) must be read in a way that gives full effect to the provisions of Rules 77(C) and 77 (C)(i), applicable in this case, which allow a Single Judge with reason to believe a person may be in contempt of the Special Court to deal with the matter summarily. Further, action by a single judge is not precluded pursuant to Rule 46.

## II. PROCEDURAL HISTORY

3. On 17 February 2011, Trial Chamber II decided by majority that it should postpone a decision on the merits of the Prosecution motion into alleged contemptuous conduct of former lead Defence Counsel Griffiths.<sup>2</sup>
4. On 19 June 2012, Judge Doherty as Single Judge determined that there was “reason to believe” that former lead Defence Counsel Griffiths<sup>3</sup> may be in contempt and directed the 6 July 2012 Status Conference to determine how to proceed in the matter.<sup>4</sup>
5. At no time prior to this Status Conference did Defendant Counsel raise the issue of the Single Judge’s jurisdiction. When he did so at the Status Conference, the Single Judge stated, “I was assigned all the contempts in this Court by the Trial Chamber...in a meeting internally some months ago”.<sup>5</sup> Defendant Counsel did not challenge that declaration of jurisdiction by the Single Judge at that time. Neither did he, at that time, challenge the oral decision the Single Judge rendered that same day:

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<sup>1</sup> *In the Matter of Contempt Proceedings Arising from the Case of The Prosecutor v. Charles Ghankay Taylor*, SCSL-12-01-T-003, Urgent and Public with Annex Defence Challenge to Jurisdiction, 21 August 2012 (“Motion”).

<sup>2</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1235, Decision on Confidential with Confidential Annexes A-E Prosecution Motion for the Trial Chamber to Summarily Deal with Contempt of the Special Court for Sierra Leone and for Urgent Interim Measures, 24 March 2011, p. 9.

<sup>3</sup> Hereafter referred to as Defendant Counsel.

<sup>4</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1294, Decision on Confidential with Confidential Annexes A-E Prosecution Motion for the Trial Chamber to Summarily Deal With Contempt of the Special Court for Sierra Leone and for Urgent Interim Measures, 19 June 2012.

<sup>5</sup> T. 6 July 2012, p. 49784.

...this is a discrete issue before me, I direct that the matter be dealt with summarily. 77(C) provides that either a Judge or a Trial Chamber can deal with contempts, and all of the contempts, including this one, arising from proceedings in Trial Chamber II have been assigned to me.<sup>6</sup>

6. The Single Judge's decision to deal with the matter summarily was in accord with Defendant Counsel's opinion that the matter was "something which could be dealt with decisively and swiftly by this Court" so that it could be expeditiously disposed of.<sup>7</sup> Indeed, Defendant Counsel's suggestion that the Court could deal with the matter swiftly<sup>8</sup> came *after* he had raised the issue of the Single Judge's authority<sup>9</sup> and *after* Judge Doherty replied by stating she was assigned all the contempt cases in this Court.<sup>10</sup>
7. It was only on 21 July 2012, after the Prosecution filed its submissions in compliance with the Single Judge's order of 6 July 2012, that Defendant Counsel sent an email to the Single Judge's Associate Legal Officer ("ALO") requesting a formal document confirming the Single Judge's delegation of authority to preside over the contempt case against him.<sup>11</sup>

### III. PRELIMINARY MATTERS

#### *Procedural irregularities*

8. As a preliminary issue, the Prosecution suggests the Motion was misfiled. Just as a party who challenges the jurisdiction of a Trial Chamber would, in the Prosecution's view, raise that challenge initially with the Trial Chamber, the Prosecution suggests that this Motion should have been filed before the Single Judge. Alternatively, if this challenge is to be considered an appeal from the Single Judge's oral decision, it should have been filed before the Appeals Chamber. Furthermore, to the Prosecution's knowledge, Trial Chamber II, as formerly constituted, is no longer extant.<sup>12</sup>
9. The Prosecution also notes that the Motion does not comply with the "Practice Direction on Dealing with Documents in The Hague - Sub-Office" since the list

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<sup>6</sup> T. 6 July 2012, p. 49788.

<sup>7</sup> Indeed the Single Judge stated "Both parties agree, either by implication, if not verbally, that having given the identified issues the appointment of an independent counsel is, in Mr Griffiths's words on my notes, inappropriate and expensive." T. 6 July 2012, pp. 49786, 49788.

<sup>8</sup> T. 6 July 2012, p. 49786.

<sup>9</sup> T. 6 July 2012, p. 49781.

<sup>10</sup> T. 6 July 2012, p. 49784.

<sup>11</sup> See Confidential Annex A.

<sup>12</sup> See Confidential Annex B.

of authorities relied on was not included.<sup>13</sup> Further, the Motion disclosed private information in its Public Annex.<sup>14</sup>

*Untimely Filing*

10. The Motion is untimely. Despite having by his own statement raised the issue of jurisdiction at the 6 July Status Conference,<sup>15</sup> this Motion challenging jurisdiction was filed at 16:00 on 21 August 2012, just one day before the extended deadline for Defendant Counsel to file his submissions,<sup>16</sup> over six weeks after the Status Conference and almost one month after his submissions in this matter were originally to be filed.<sup>17</sup> The Motion is therefore untimely filed.
11. During the 6 July Status Conference, the Single Judge made it plain to both parties that she had been assigned this matter. Having clearly stated she had authority over the matter,<sup>18</sup> Defendant Counsel raised no challenge to the Single Judge's authority,<sup>19</sup> and when he later decided to request written documentation, he did so through an email which the Single Judge correctly stated was not the proper legal procedure provided for in the Rules.<sup>20</sup> Further, this email was sent two weeks after the Status Conference; one week after the Prosecution filed its submissions in this matter; and only five days before Defendant Counsel's submissions were originally due to be filed.<sup>21</sup>

*No good cause for a stay established in this untimely filing*

12. Granting a stay of proceedings is not automatic, even if Defendant Counsel's challenge were to be treated as a preliminary motion pursuant to Rule 72, but

<sup>13</sup> See Article 5 (iii) and Article 7 of the Practice Direction on Dealing with Documents in The Hague-Sub-Office.

<sup>14</sup> See *In the Matter of Contempt Proceedings Arising from the Case of The Prosecutor v. Charles Ghankay Taylor*, SCSL-12-01-T-006, Public Order to Redact, 24 August 2012.

<sup>15</sup> Motion, para. 8.

<sup>16</sup> Direction to Defendant Counsel, p. 2. The Single Judge directed Mr. Griffiths to conform to the consent order of 6 July 2012 by 22 August 2012.

<sup>17</sup> T. 6 July 2012, p. 49790.

<sup>18</sup> T. 6 July 2012, p. 49784.

<sup>19</sup> Motion, Annex ("Letter").

<sup>20</sup> *In the Matter of Contempt Proceedings Arising from the Case of The Prosecutor v. Charles Ghankay Taylor*, SCSL-12-01-T-002, Direction to Defendant Counsel, 17 August 2012 (Direction to Defendant Council), p. 2. Note that a corrigendum to this Direction substitutes the words "9 July 2012" with "19 July 2012", *In the Matter of Contempt Proceedings Arising from the Case of The Prosecutor v. Charles Ghankay Taylor*, SCSL-12-01-T-005, Public Corrigendum to Direction to Defendant Counsel, 23 August 2012.

<sup>21</sup> See Direction to Defendant Council, p. 2 establishing the Prosecutor filed her submissions in accordance with the order, and T. 6 July 2012, p. 49790 setting the 26 July 2012 as the deadline for Mr. Griffiths' submissions.

must be so ordered pursuant to Rule 72(H). The fact Defendant Counsel filed the Motion in an untimely manner, the timing of which was entirely within his control, does not justify an interim stay in the proceedings.

*Defendant Counsel's lack of cooperation*

13. Defendant Counsel's claim that he made every effort to cooperate with his contempt proceedings is inaccurate.<sup>22</sup> Cooperation with the proceedings would entail following the appropriate legal channels which, as the Single Judge stated, he failed to do.<sup>23</sup> Defendant Counsel also failed to meet the 26 July 2012 deadline for the filing of his further submissions—a deadline which he had suggested,<sup>24</sup> without having filed a motion requesting, or having been granted, an extension of time in which to file. Ultimately, the Single Judge was required to issue a direction for Defendant Counsel to file his response by 22 August 2012.<sup>25</sup>

*Defendant Counsel's email and letter communications were ex parte*

14. Defendant Counsel wrongly disputes Judge Doherty's characterisation of his 19 July 2012 letter sent via email on 21 July 2012 as *ex parte*.<sup>26</sup> This is the only manner in which this communication can be accurately described. It is clear that Defendant Counsel communicated this email and letter only to the ALO. First, the only addressee to his letter was the Single Judge's ALO. Although the letter itself specifically states, "I have taken the liberty of copying all the interested parties hereto",<sup>27</sup> it also includes this language: "Can I trust your good offices to forward this letter to those parties as indicated below." The email to the ALO to which Defendant Counsel attached the letter, asked "that [the letter] be copied to the individuals listed at the bottom of the letter".<sup>28</sup> The Prosecution did not receive the letter or email from Defendant Counsel.

15. Defendant Counsel's argument that he "specifically requested that the Letter be copied to" various individuals, including the Prosecutor<sup>29</sup> is irrelevant. Defendant Counsel failed to take upon himself the responsibility to distribute the

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<sup>22</sup> Motion, para. 6.  
<sup>23</sup> Direction to Defendant Counsel, p.2.  
<sup>24</sup> T. 6 July 2012, p. 49790.  
<sup>25</sup> Direction to Defendant Counsel, p.2.  
<sup>26</sup> Motion, para. 10, fn. 16.  
<sup>27</sup> Letter.  
<sup>28</sup> See Confidential Annex A.  
<sup>29</sup> Motion, para. 10.

letter or the email to the “interested parties” to his contempt proceedings. Thus, his transmission of the letter attached in an email to the ALO was indeed *ex parte*, and, as Judge Doherty stated, not the appropriate legal channel for this request.<sup>30</sup>

#### IV. SUBMISSIONS

*The Single Judge has jurisdiction over the disposition of Defendant Counsel’s alleged contemptuous conduct*

16. Defendant Counsel’s challenge to the Single Judge’s jurisdiction is unwarranted and unsupported. Defendant Counsel’s challenge to the Judge’s capacity to hear this matter is on the premise that there is an “... absence of any information to the contrary”.<sup>31</sup> This assertion ignores the Single Judge’s clear statement and decision that she had authority to deal with this matter as it had been assigned to her by the Trial Chamber.<sup>32</sup> He introduces nothing to show Judge Doherty was making a false statement. The Motion is therefore an unfounded challenge to the Judge’s clearly stated authority.
17. Defendant Counsel’s assertion that the Single Judge had “offer[ed] to provide a formal document of designation”<sup>33</sup> is not supported by the Single Judge’s statement, which reads as follows: “I’m not sure if it is that you require a designated or formal document of assignment, in which case I will approach the President with that in mind”. Defendant Counsel’s assumption that this statement translates into an offer to provide a formal document of designation does not constitute a basis on which to challenge the Single Judge’s jurisdiction.
18. Further, contrary to Defendant Counsel’s argument, Rule 28 does not apply. The matter does not concern designation by the President, as the Single Judge expressly stated she was assigned all the contempt cases in this Court *by the Trial Chamber*.<sup>34</sup>
19. Defendant Counsel’s argument that Judge Doherty’s delegation would be *ultra vires* the Rules<sup>35</sup> ignores the clear language of Rule 77(C) which specifically refers to situations when “a Judge or Trial Chamber” has reason to believe that a

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<sup>30</sup> Direction to Defendant Counsel, p.2.

<sup>31</sup> Motion, paras. 5, 32.

<sup>32</sup> T. 6 July 2012, pp. 49784, 49788.

<sup>33</sup> Motion, para. 10. Similarly, in the Letter Defendant Counsel erroneously refers to the Single Judge’s offer to furnish him with a copy of “the said authorization”.

<sup>34</sup> T. 6 July 2012, p. 49784.

<sup>35</sup> See Motion, paras. 5, 30.

person may be in contempt of the Special Court, and of Rule 77(C)(i) which allows a Single Judge to summarily deal with such matters. The argument also omits relevant language from Rule 77(E),<sup>36</sup> which reads “[t]he rules of procedure and evidence in parts IV to VIII shall apply, *as appropriate*, to proceedings under this Rule”.<sup>37</sup> The argument not only ignores the qualifying language “as appropriate”, it also ignores that, in construing that qualifying language, the rules of statutory construction would dictate that the other applicable rules be read in a way that gives full effect to the provisions of Rule 77(C) and (C)(i).

20. Contrary to Defendant Counsel’s arguments, Rule 77 does not state that the single judge may not act unless authority to do so is delegated,<sup>38</sup> and in any event the Single Judge made it clear she was assigned this authority. Nor does Rule 77(C)(i) impose any restrictions on the manner in which a Single Judge may dispose of summary proceedings. The only limitation is contained in Rule 77(G) which provides that the maximum penalty that may be imposed on a person found to be in contempt of the Special Court pursuant to Sub-Rule (C)(i) shall be a term of imprisonment not exceeding six months, or a fine not exceeding 2 million Leones, or both.
21. Defendant Counsel’s interpretation of the language of Rule 77(D) is specious, and an apparent misreading of that language. Contrary to the argument advanced at paragraphs 21 and 29 of the Motion, the plain language does not state “**only** proceedings under Rule 77(C)(iii)...may be assigned to be heard by a single judge.”<sup>39</sup> Such interpretation is inconsistent with the plain language of Rule 77(C) and (C)(i) and with the plain language of Rule 77(D). The relevant language of that Rule reads “[p]roceedings under Sub-Rule 77(C)(iii) above may be assigned to a single judge”.<sup>40</sup> Indeed, rather than restricting the authority

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<sup>36</sup> Motion, para. 23.

<sup>37</sup> Emphasis added.

<sup>38</sup> Motion, para. 28. On the issue of the Single Judge and the statute’s language, *see e.g. Prosecutor v. Blaškić*, IT-95-14, Decision on the Objection of the Republic of Croatia to the Issuance of *Subpoenae Duces Tecum*, 18 July 1997, para. 73 (“Article 29 only uses the term “Trial Chamber” and does not explicitly mention single Judges acting alone, or for that matter, the Appeals Chamber. This omission, however, does not allow States to ignore orders emanating from single Judges or the Appeals Chamber...Because a single Judge serves in a representative capacity, there is no basis for a determination or finding that the obligation to comply differs with regard to an order of the Trial Chamber as compared with that of a single Judge”).

<sup>39</sup> Emphasis added.

<sup>40</sup> Emphasis added.

of a single judge, this language makes clear that a single judge may adjudicate contempt proceedings under both Rules 77(C)(i) and (iii). If a Single Judge can conduct proceedings pursuant to Rule 77(C)(iii), which may lead to far more serious punishment than applicable under Rule 77(C)(i),<sup>41</sup> the only logical interpretation is that the Single Judge may conduct proceedings pursuant to Rule 77(C)(i).

22. The actions available to a single judge under Rule 46 must also be read to give effect to a single judge's authority under Rule 77. In any event, Defendant Counsel's argument regarding actions which may be taken under Rule 46(C) as beyond the authority of a single judge is premature, as no finding has been entered that his actions amounted to misconduct under Rule 46, and no determination has been made of what sanctions, if any, would be applied pursuant to the Rule.<sup>42</sup>

#### V. CONCLUSION

23. The Motion is untimely, without merit and should be dismissed. Judge Doherty as Single Judge has jurisdiction over the disposition of Defendant Counsel's alleged contemptuous conduct as, by her clear statement and decision at the Status Conference, she was assigned this matter. Her exercise of jurisdiction in this matter is consistent with the language of Rule 77. Further, Defendant Counsel has made no showing justifying a stay. Accordingly, the Motion should be dismissed, no stay of the proceedings should be ordered, and the current contempt and misconduct proceedings against Defendant Counsel before Judge Doherty should not be terminated

Filed in The Hague,

24 August 2012

For the Prosecution,



\_\_\_\_\_  
Brenda J. Hollis  
The Prosecutor

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<sup>41</sup> See Rule 77(G)

<sup>42</sup> Motion, para. 22; See also T. 6 July 2012, pp. 49788-49789.



## INDEX OF AUTHORITIES

### SCSL

SCSL Rules of Procedure and Evidence

Practice Direction on Dealing with Documents in The Hague- Sub-Office.

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*Prosecutor v. Taylor*, SCSL-03-01-T-1235, Decision on Confidential with Confidential Annexes A-E Prosecution Motion for the Trial Chamber to Summarily Deal with Contempt of the Special Court for Sierra Leone and for Urgent Interim Measures, 24 March 2011

*Prosecutor v. Taylor*, SCSL-03-01-T-1294, Decision on Confident Motion with Confidential Annexes A-E Prosecution Motion of the Trial Chamber to Summarily Deal with Contempt of the Special Court for Sierra Leone and for Urgent Interim Measures, 19 June 2012

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*In the Matter of Contempt Proceedings Arising from the Case of The Prosecutor v. Charles Ghankay Taylor*, SCSL-12-01-T-005, Public Corrigendum to Direction to Defendant Counsel, 23 August 2012.

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#### Transcript

6 July 2012

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*Prosecutor v. Blaškić*, IT-95-14, Decision on the Objection of the Republic of Croatia to the Issuance of *Subpoenae Duces Tecum*, 18 July 1997

<http://www.icty.org/x/cases/blaskic/tdec/en/70718SP2.htm>



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Court Management Section – Court Records

**CONFIDENTIAL DOCUMENT CERTIFICATE**

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

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Name of Officer:

Samuel J Fornah

Signed 