

1146)

SCSL-03-01-T
(31338-31360)

31338



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: 10 January 2011

Case No.: SCSL-03-01-T

| | |
|--------------------------------|------------------|
| SPECIAL COURT FOR SIERRA LEONE | |
| RECEIVED | |
| COURT MANAGEMENT | |
| THE HAGUE | |
| 10 JAN 2011 | |
| NAME | ALHASSAN FORNATT |
| SIGN | <i>AF</i> |
| TIME | 09:03 |

THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

URGENT AND PUBLIC WITH ANNEXES A-C

**DEFENCE MOTION TO RE-OPEN ITS CASE IN ORDER TO SEEK ADMISSION OF DOCUMENTS
RELATING TO THE RELATIONSHIP BETWEEN THE UNITED STATES GOVERNMENT
AND THE PROSECUTION OF CHARLES TAYLOR**

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. On 17 December 2010, the Guardian News and Media, Ltd.,¹ published two United States embassy cables relating to the ongoing trial against the Accused at bar, which were leaked through WikiLeaks.² The first cable, dated 10 March 2009,³ makes it clear that the United States Government (“USG”) wants to keep Charles Taylor out of Liberia at all costs. Confirming the position of the USG, the United States Ambassador to Liberia, Linda Thomas-Greenfield, states in that cable that “...the best we can do for Liberia is to see to it that Taylor is put away for a long time and we cannot delay for the results of the present trial to consider next steps. All legal options should be studied to ensure that Taylor cannot return to destabilize Liberia”.⁴ The second cable, dated 15 April 2009,⁵ reveals that sensitive information about the trial has been leaked to the United States Embassy in The Hague by unnamed contacts in the Trial Chamber, the Office of the Prosecutor (OTP) and the Registry.⁶
2. On 23 December 2010, a Liberian newspaper, the New Democrat, published an article titled, “Sorry for the Leaks: Pres. Sirleaf Acknowledges US Ambassador’s Apology”.⁷ Therein, it states that Liberian President Ellen Johnson-Sirleaf says the United States Ambassador Linda Thomas-Greenfield has “apologized for the WikiLeaks classified cables emanating from the American embassy regarding key political developments”.
3. The Defence seeks permission to re-open its case for the limited purpose of seeking admission of the following documents into evidence pursuant to Rule 92*bis*:

¹ Hereinafter “the Guardian.” The company owns the website, <http://www.guardian.co.uk>.

² WikiLeaks is a website run by Julian Assange that allows anonymous disclosure of leaked information. See www.wikileaks.org.

³ “March 2009 cable.”

⁴ The March 2009 cable is at: <http://www.guardian.co.uk/world/us-embassy-cables-documents/196077> [**Annex A**]. Ms. Thomas-Greenfield was reacting to public statements made by then Special Court prosecutor, Stephen Rapp, regarding funding shortfalls at the Court. References by Ms. Thomas-Greenfield to the results of “the present trial” were to the outcome of the trial at bar. No reference was made by Ms. Thomas-Greenfield to the Accused’s guilt or innocence regarding any alleged crimes in Sierra Leone.

⁵ “April 2009 cable.” Collectively, “Cables”.

⁶ The April 2009 cable is at: <http://www.guardian.co.uk/world/us-embassy-cables-documents/202468> [**Annex B**]. Sensitive comments, *inter alia*, relate to the pace and efficiency of the trial, as well as funding and personnel issues.

⁷ The full text of the New Democrat article is attached (“the Apology”) [**Annex C**].

- a) portions of the March 2009 cable;⁸
 - b) the entirety of the April 2009 cable; and
 - c) the first paragraph of the New Democrat Apology article.
4. The documents meet the requirements of Rule 92*bis* and are relevant to the Defence theory of selective prosecution, in that the prosecution of Mr. Taylor was politically-motivated and deliberately designed to keep the Accused out of West Africa.
 5. The Defence simultaneously files a *Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry Based on Leaked USG Cables*.⁹ The Defence incorporates all of the arguments made therein, especially with regard to Section II, “Background”.
 6. The Defence seeks urgent adjudication of this matter given the advanced stage of the proceedings and the current filing schedule for the Final Brief submissions.¹⁰ The Defence attempted to file this motion during the judicial recess on 31 December 2010,¹¹ but was refused permission by the Registry¹² and subsequently by the President.¹³

II. APPLICABLE LAW

7. United Nations Security Council Resolution 1315 (2000), which called for the creation of the Special Court, emphasized “the importance of ensuring the impartiality, independence and credibility of the process, in particular with regard to the status of the judges and the prosecutors”.¹⁴ Consequently, Articles 13(1) and 15(1) of the Statute unequivocally state that

⁸ The selected portions of the March 2009 cable are marked in Annex A.

⁹ *Prosecutor v. Taylor*, SCSL-03-01-T, Urgent and Public with Annexes A-N Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry Based on Leaked USG Cables, 10 January 2011 (“**U.S. Government Sources Motion**”).

¹⁰ *Prosecutor v. Taylor*, SCSL-03-01-T-1105, Order Setting a Date for the Closure of the Defence Case and Dates for Filing Final Trial Briefs and the Presentation of Closing Arguments, 22 October 2010.

¹¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1120, Order Scheduling Judicial Recess, 15 November 2010.

¹² See Email from Defence to CMS, dated 31 December 2010 and the Response from the Registry dated the same day [**Annex D of U.S. Government Sources Motion**].

¹³ See Letter from the Defence to the President, dated 3 January 2011 and the Response from the President, dated 5 January 2011 [**Annex E of U.S. Government Sources Motion**].

¹⁴ Available at: <http://www.ictj.org/static/Africa/SierraLeone/sres.1315.2000.eng.pdf>.

the organs of the Court must act independently and impartially, and without instructions from any Government or other source.¹⁵

Re-opening of Defence Case

8. The Rules do not contain any provision for a party to re-open its case. However, the Trial Chamber has previously determined that the party seeking to re-open a case must meet a twofold test: “Firstly, the party must meet the threshold test of establishing that the evidence could not, with reasonable diligence, have been obtained and presented during its case-in-chief. Secondly, and if the first prong of the test is met, the probative value of the evidence must not be substantially outweighed by the need to ensure a fair trial”.¹⁶
9. The discretionary test, whether the probative value of the material is substantially outweighed, as such, is typically determined by whether it is *fair to the accused* to admit the material late in the proceedings.¹⁷

Admission of Documents pursuant to Rule 92bis

10. The core requirements of Rule 92bis – that the information (of fact, not opinion) sought to be tendered in lieu of oral testimony must be relevant; that the information must not go to proof of the acts and conduct of the accused;¹⁸ and that the reliability of such information must be susceptible of confirmation in due course – are well-established. The Defence respectfully refers to the statement of law pertaining to Rule 92bis from the Trial Chamber’s recent Rule 92bis decision of 5 October 2010.¹⁹

¹⁵ See, Statute, Article 13(1) regarding judicial independence and Article 15(1) regarding the independence of the Prosecutor.

¹⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-993, Decision on Public with Confidential Annexes A and B Prosecution Motion to Call Three Additional Witnesses, 29 June 2010 (“**Re-Opening Decision**”), para. 8, citing *Prosecutor v. Brima et al*, SCSL-04-16-T, Decision on Confidential Prosecution Motion to Reopen the Prosecution Case to Present an Additional Prosecution Witness, 28 September 2006, paras. 17-18 and 21.

¹⁷ Re-Opening Decision, para. 9, citing *Prosecution v. Delalic et al*, IT-96-21-A, Judgement, 20 February 2001 (“**Celebici Appeal Judgement**”), para. 283. See also Re-Opening Decision, para. 13, citing *Celebici Appeal Judgement*, para. 288.

¹⁸ The disputed aspects of this prohibition, as outlined in the Defence Rule 92bis Appeal filed on 10 December 2010, do not arise in the instant request for admission of the Cables, given that any information potentially relating to acts and conduct of the accused and/or his subordinates has been redacted from the March 2009 cable and the Apology.

¹⁹ *Prosecutor v. Taylor*, SCSL-03-01-T-1099, Decision on Public with Annex A Defence Motion for Admission of Documents Pursuant to Rule 92bis – Newspaper Article, 5 October 2010, p. 3-4.

III. ARGUMENT

The Defence Should be Allowed to Re-open

11. The Trial Chamber should grant the Defence's request to re-open its case for the limited purpose of seeking admission of the Cables and the Apology, pursuant to Rule 92bis.
12. The Defence meets the threshold that the evidence could not, with reasonable diligence, have been obtained and presented during its case in chief. The Cables are confidential and classified documents of the USG. The publication of the Apology was in consequence of the leak and publication of the cables. No amount of diligence on the part of the Defence could have resulted in these Cables being disclosed or given to the Defence. It is through sheer luck that the Cables were obtained by the Wikileaks website and published in the Guardian on 17 December 2010, five weeks after the Defence had closed its case.
13. The probative value of the evidence in the Cables is significant and is not outweighed by the need to ensure a fair trial. In fact, the Defence submits that the admission of the evidence contained in the Cables and the Apology is critical to ensuring that Mr. Taylor receives a fair trial. The Cables clearly indicate, *inter alia*, two things: 1) the USG's desire to ensure that Mr. Taylor does not return to Liberia;²⁰ and 2) proof that there is and have been contacts between the Trial Chamber, the Prosecution and the Registry, respectively, and agents of the USG outside the official lines of communication.²¹ This, it is submitted, raises grave doubts about the independence and impartiality of the Special Court's prosecution of Charles Taylor. Viewed objectively, the evidence could lead to the reasonable conclusion that the indictment and trial of Mr. Taylor by the Special Court is no more than an extension of United States foreign policy interests in West Africa, with there being no genuine connection to any alleged crimes in Sierra Leone.

²⁰ March 2009 cable, paras. 11, 13 and 14.

²¹ April 2009 cable: communication from a source in the Trial Chamber, para. 7 ("one Chamber contact believes that the Trial Chamber could have accelerated the Court's work by excluding extraneous material and arguments"); communications from sources in the Prosecution and Registry, para. 7 ("contacts in the Prosecution and Registry speculate that Justice Sebutinde may have a timing agenda. They think she, as the only African judge, wants to hold the gavel as presiding judge when the Trial Chamber announces the Taylor judgment. Reportedly, her next stint as presiding judge begins in January").

14. Should the Trial Chamber grant the application to re-open the Defence case, there would be limited delays to the trial proceedings, as the Defence does not request any *viva voce* testimony, but rather the admission of three short documents pursuant to Rule 92bis.

Admission of Documents into Evidence under Rule 92bis

15. Should the Defence be granted leave to re-open its case for the limited purpose of seeking admission of the redacted March 2009 Cable, the entire April 2009 Cable, and the first paragraph of the Apology, the Defence further submits that all of the documents sought to be tendered meet the requirements of Rule 92bis.
16. In terms of relevance, the Cables and the Apology support the Defence position that the prosecution of Mr. Taylor is in fact political and his indictment was deliberately selective.²² It will be recalled that Lead Defence Counsel submitted during the Defence's opening statement that Mr. Taylor was only indicted and arrested because of the USG's interests and pressure.²³ Mr. Taylor subsequently testified that the USG had a vendetta against him and sought to remove him from power through various means, including by demonizing²⁴ and destabilizing his government,²⁵ giving military support to opposition LURD rebels,²⁶ and working to install Ellen Johnson-Sirleaf as President.²⁷ Mr. Taylor also testified that the United States also attempted to oust him in furtherance of U.S. commercial interests in the sub-region.²⁸ Other accounts imply the USG targeted Mr. Taylor because of unsubstantiated evidence linking Liberia to Al Qaeda and the attacks on U.S. Embassies in 1998.²⁹
17. When the Prosecution called Hassan Bility, a Liberian journalist, as a witness, the Defence challenged him on the basis that he was acting in cahoots with the United States Government.

²² *Prosecutor v. Taylor*, SCSL-03-01-T, Defence Opening Statement, 13 July 2009, p. 24321 (especially when considered against the decision not to indict similarly-situated Tejan Kabbah). To demonstrate selective prosecution, the Defence must show: i) an improper or unlawful motive for prosecution and ii) that similarly situated persons were not prosecuted. *Prosecution v. Delalic et al*, IT-96-21-A, Judgement, 20 February 2001, para. 611

²³ Defence Opening Statement, p. 24290-94 and 24318-19 (likening the Indictment of Mr. Taylor to the US foreign policy of "regime change").

²⁴ *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 27 August 2009, 27903-6.

²⁵ *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 5 August 2009, p. 25991-2.

²⁶ See, ex, *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 14 July 2009, p. 24342-3; 24346; and 24405. See also, Confidential Annexes B and I of the Defence Contempt Motion, which are affidavits from potential witnesses suggesting that the LURD was a *de facto* military wing of the SCSL's Office of the Prosecutor.

²⁷ *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 27 August 2009, p. 27872.

²⁸ *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 10 August 2009, p. 26300-1.

²⁹ See Exhibit D-392, an article written by Douglas Farah, a Washington Post investigative reporter.

During cross-examination of Bility, Lead Defence Counsel suggested that Bility was serving as a spy for the USG during the conflict in Liberia. Bility denied being a spy, but did say he had dinners with political counselors and one human rights officer of the United States Embassy in Monrovia, during which they “talked like friends” and would “share opinions”.³⁰ Bility also cooperated with the United States Government’s Federal Bureau of Investigation in its investigations of Charles Taylor and his son, Chucky.³¹ Furthermore, while in the hospital, Bility was visited by a US Embassy official whom Bility refused to name (for no appreciable reason) until compelled by the Presiding Judge to do so.³² Mr. Taylor testified that Bility was an intelligence officer for the United States embassy in Monrovia³³ and Defence Witness DCT-190 subsequently testified that Bility served as a source of information for LURD.³⁴

18. In short it is submitted that the contents of the Cables further suggest that the Special Court has been used to pursue “war by other means”, thus corrupting international law and justice in pursuit of a particular state’s enemy. The Apology generally authenticates the contents of the March 2009 cable. The April 2009 cable exposes the fact that there are persons in the Trial Chamber, the Prosecution and the Registry, giving information to the United States Government, outside the official channels of communication.
19. The reliability of the Cables and the Apology are susceptible of corroboration in due course, in regard to each other and in regard to the evidence already on record, such as that described above.³⁵ The reliability of the contents is further bolstered by the fact that they emanate from United States diplomatic posts. Furthermore, the Apology as argued above, authenticates the March 2009 Cable.
20. The portions of the Cables and the Apology for which the Defence seeks admission do not go to proof of the acts and conduct of the accused. The selected portions of the March 2009

³⁰ *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Hassan Bility**, 13 Jan 09, p. 22418-9.

³¹ *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Hassan Bility**, 13 Jan 09, p. 22414-6.

³² *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Hassan Bility**, 15 Jan 09, p. 22706-14.

³³ See, for ex., *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of Charles Taylor**, 2 Nov 09, p. 30910.

³⁴ *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of DCT-190**, 8 June 10, p. 42336-7.

³⁵ See also Exhibit D-404, the statement of former Prosecutor David M. Crane in February 2006 before the Subcommittee on Africa, Global Human Rights and International Operations of the United States House of Representatives’ Committee on International Relations.

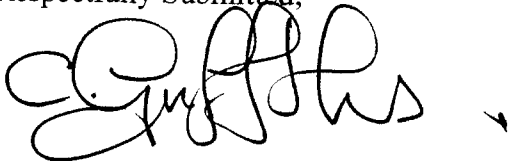
cable and the Apology have been chosen to ensure that even evidence relating to acts and conduct of alleged subordinates of the accused has been excluded from consideration.

21. Furthermore, the information contained in the Cables are facts as reported by the United States diplomatic personnel and do not constitute opinion evidence. The Defence does not now make any claim as to the veracity of the reported information but simply wants it on record that the information was in fact reported. The New Democrat article containing the apology from the U.S. Ambassador to the Liberian President can in no way be considered opinion evidence.
22. Thus, the selected portions of the Cables and the first paragraph of the Apology meet the requirements of Rule 92*bis* and should be admitted.

V. CONCLUSION & RELIEF REQUESTED

23. Given the seemingly compromised impartiality and independence of the Special Court for Sierra Leone in light of its connection to the USG as alleged herein, the Trial Chamber should allow the Defence to re-open its case and admit the selected portions of the March 2009 cable, the entirety of the April 2009 cable, and the first paragraph of the Apology into evidence pursuant to Rule 92*bis*.
24. The Defence further requests that the issue be considered on an expedited basis, given the advanced stage of the proceedings.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 10th Day of January 2011,
The Hague, The Netherlands

LIST OF AUTHORITIES

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T, Urgent and Public with Annexes A-N Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry Based on Leaked USG Cables, 10 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1120, Order Scheduling Judicial Recess, 15 November 2010

Prosecutor v. Taylor, SCSL-03-01-T-1105, Order Setting a Date for the Closure of the Defence Case and Dates for Filing Final Trial Briefs and the Presentation of Closing Arguments, 22 October 2010

Prosecutor v. Taylor, SCSL-03-01-T-1099, Decision on Public with Annex A Defence Motion for Admission of Documents Pursuant to Rule 92bis – Newspaper Article, 5 October 2010

Prosecutor v. Taylor, SCSL-03-01-T-1090, 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, 27 September 2010

Prosecutor v. Taylor, SCSL-03-01-T-993, Decision on Public with Confidential Annexes A and B Prosecution Motion to Call Three Additional Witnesses, 29 June 2010

Prosecutor v. Brima et al.

Prosecutor v. Brima et al, SCSL-04-16-T, Decision on Confidential Prosecution Motion to Reopen the Prosecution Case to Present an Additional Prosecution Witness, 28 September 2006

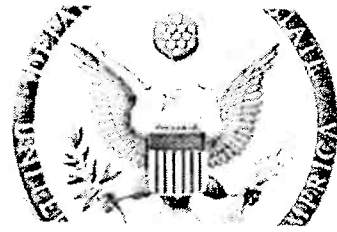
ICTY

Prosecution v. Delalic et al, IT-96-21-A, Judgement, 20 February 2001
<http://www.icty.org/x/cases/mucic/acjug/en/cel-aj010220.pdf>

Annex A

guardian.co.uk

The US embassy cables:
The documents



US embassy cables: Rising concern about the Charles Taylor prosecution case

guardian.co.uk, Friday 17 December 2010 21.30 GMT

[A larger](#) | [smaller](#)

Tuesday, 10 March 2009, 12:51

C O N F I D E N T I A L SECTION 01 OF 02 MONROVIA 000188

SIPDIS

EO 12958 DECL: 03/10/2019

TAGS PREL, PGOV, UNSC, PHUM, KCRM, LI

SUBJECT: PRO-TAYLOR ELEMENTS STILL A FORCE TO BE RECKONED WITH

Classified By: Ambassador Linda Thomas-Greenfield for Reasons 1.4 (b) and (d).

Summary

A US ambassador warns that a cash shortfall could jeopardise the case against the former Sierra Leone president, stirring up old resentments in Sierra Leone and Liberia. Key passages highlighted in yellow.

1. (C) Summary: The recent remarks by Special Court for Sierra Leone prosecutor Stephen Rapp suggesting Charles Taylor may go free because of budgetary reasons caused alarm within the GOL and has emboldened Taylor supporters. Communication inside the Taylor camp remains intact, and those in leadership roles continue to be active and unrepentant. Should Taylor be acquitted in The Hague or given a light sentence, his return to Liberia could tip the balance in a fragile peace. *The international community must consider steps should Taylor not be sent to prison for a long time. We should look at the possibility of trying Taylor in the United States.* End Summary.

RAPP'S COMMENTS RAISE CONCERN WITHIN THE GOL

2. (C) Chief Prosecutor Stephen Rapp's ill considered announcement in the press February 24 that Charles Taylor may walk free because of a supposed budget shortfall for the Special Court for Sierra Leone, where Taylor is presently on trial, made

*

*

31349

headlines in the local press, and raised anxiety here about Taylor's imminent return. The GOL was alarmed enough that President Sirleaf called Ambassador on February 28 to raise her concerns. Sirleaf pointed out that Liberia's stability remains fragile, and such remarks reverberated throughout the country, as people are still traumatized by Taylor and the war.

3. (C) The press accounts out of The Hague have also emboldened the pro-Taylor factions here, including his extended family members, financiers and National Patriotic Party (NPP) loyalists, raising their hopes that Taylor might be acquitted soon. Despite their rhetoric about "moving on," they have thus far refused to appear before the Truth and Reconciliation Commission (TRC) to account for their activities, and those on the UN Sanctions lists continue to request delisting on the basis they have done nothing wrong rather than demonstrating what they have done to provide restitution for their activities.

GOL TREADING CAREFULLY WITH TAYLOR FACTIONS

4. (C) The government itself is caught in the middle. There is quite little the GOL can do legally to arrest, prosecute or freeze assets of those who were close to Taylor, even if the political will were there, which remains an open question. The TRC has recommended a domestic war crimes court be set up, but under statute an Independent National Commission on Human Rights (INHCR) would implement the recommendation, and the Legislature (some of whom had close ties to Taylor) has thus far failed to establish the INCHR. The Legislature has also refused to pass any law that would allow the GOL to freeze assets of those on the UN sanctions list, and the Supreme Court has ruled that any confiscation of property can be done only after a trial.

5. (C) The Accra Comprehensive Peace Agreement (CPA) of August 2003 that ended the 14-year civil war, did not require the NPP to disband and in fact permitted the NPP to participate in the transitional government and in the 2005 elections. The NPP now holds seven seats in the Legislature (which may be one reason the legislation is being blocked). As well, none of Taylor's properties have been seized by the government and they remain in good shape and remarkably free of squatters, as no one dares to take the risk of retribution.

COMMUNICATIONS AMONG TAYLOR SUPPORTERS REMAIN STRONG

6. (C) *The pro-Taylor forces still have the ability to organize themselves.* An NPP rally in December 2008 gathered a sizeable crowd, and Taylor supporters in June 2008 succeeded in preventing FBI investigators from entering Taylor's residence "White Flower" to obtain evidence for the Chucky Taylor trial in Florida. The most recent example was their effort on March 7 to disrupt the International Women's Colloquium. Taylor remains popular within many rural communities, especially in Bong, Lofa and Nimba counties, and is seen as someone who was able to unite Liberia's different ethnic groups. We also suspect there is some sympathy within the Americo-Liberian

31350

population who saw him as their deliverance from their losses following the 1979 coup. While we do not suggest they would want Taylor to return, we are sure that they do not want too many rocks to be turned over.

7. (C) Although we do not have any direct evidence to support the belief that pro-Taylor factions are behind much of the

MONROVIA 00000188 002 OF 002

armed robbery on the premise that crime will keep the government weak and the country unstable, the GOL is certainly convinced of this, and has taken steps to counteract the threat. The most recent act was to put Taylor-era head of police Paul Mulbah into the LNP as an "advisor" that some accuse (and the government denies) was in order to placate the Taylor people in advance of the March 7-8 International Women's Colloquium. That the Taylor crowd can still motivate such a reaction in the government is a testament to their influence.

8. (C) Lines of communications within Taylor's faction, the National Patriotic Front of Liberia (NPFL) remain intact. To be sure, the disarmament of the factions following the CPA has been extremely successful, and we have thus far been unable to confirm the existence of any large weapons caches, despite the persistent rumors. But the reintegration of the ex-combatants is far from complete. Former NPFL commanders Roland Duo (the only senior Taylor supporter to have testified before the TRC), Christopher "General Mosquito" Vambo and Melvin Sogbandi (none of whom are on the sanctions lists) remain in contact with the ex-combatants, and would have the capability to organize an uprising or even criminal activity.

9. (C) Certainly, the same is true for the other factions, the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL). While apparently unarmed and not active in Liberia, we continue to receive reports that LURD is recruiting ex-combatants for militias in Guinea and MODEL is doing the same for Cote d'Ivoire.

THREAT OF TAYLOR'S RETURN ADVANCES THEIR CAUSE

10. (C) XXXXXXXXXXXXXXXX

11. (C) The threat of a return of Taylor strengthens their hand and for now they see no need to give in at all. However, if Taylor is put away for a long time, the government may feel a bit bolder in recovering assets and bringing Taylor backers who committed war crimes to justice.

12. (C) The international community has just a few tools to pressure the Taylor people into accepting the new reality. The UN sanctions appear to have the intended effect of keeping them somewhat marginalized and fearful of further attempts to strip them of their ill-gotten gains. However, we have regularly heard of travel outside Liberia of those on the travel ban list without prior approval.

NEXT STEPS FOR THE INTERNATIONAL COMMUNITY



31351

13. (C) However, the best we can do for Liberia is to see to it that Taylor is put away for a long time and we cannot delay for the results of the present trial to consider next steps. All legal options should be studied to ensure that Taylor cannot return to destabilize Liberia. Building a case in the United States against Taylor for financial crimes such as wire fraud would probably be the best route. There may be other options, such as applying the new law criminalizing the use of child soldiers or terrorism statutes.

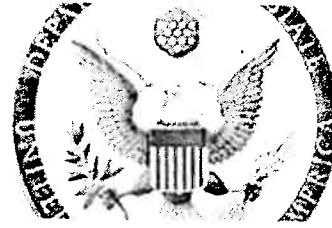
14. (C) The peace in Liberia remains fragile, and its only guarantee is the robust and adaptable UNMIL presence. The GOL does not have the ability to quell violence, monitor its borders or operate independently to fight crime. A free Taylor could tip the balance in the wrong direction. THOMAS-GREENFIELD

guardian.co.uk © Guardian News and Media Limited 2011

Annex B

guardian.co.uk

The US embassy cables:
The documents



US embassy cables: The protracted case against Charles Taylor

guardian.co.uk, Friday 17 December 2010 21.30 GMT

Wednesday, 15 April 2009, 15:00

CONFIDENTIAL THE HAGUE 000247

DEPARTMENT FOR S/WCI - WILLIAMSON/DOHERTY, L - DONOGHUE,

L/UNA - BUCHWALD, L/AN - OHAHS

EO 12958 DECL: 04/15/2019

TAGS PREL, PGOV, KAWC

SUBJECT: SCSL'S TAYLOR TRIAL MEETS KEY MILESTONE, BUT SCSL STILL FACES SERIOUS HURDLES

REF: A. REF: A) 2008 THE HAGUE 00021 B. B) 2008 THE HAGUE 00226

Classified By: Legal Counselor Denise G. Manning per reasons 1.5(b, d).

Summary

US officials wonder why a special court judge might be interested in slowing down the prosecution case against the former Sierra Leonean president. Key passages highlighted in yellow.

-- SUMMARY: SCSL MEETS A KEY MILESTONE, BUT FACES UNCERTAINTY IN TERMS OF TIMING, FINANCES, AND COMPLETION ISSUES --

1. (SBU) On February 27, 2009, the Special Court for Sierra Leone (SCSL or Court) took another step toward completing its work when the Prosecution rested its case against former Liberian President Charles Taylor -- the last SCSL case at the trial stage. The Court could potentially complete its work before the end of 2010. A number of open issues, however, may affect timing, including the start date and length of the Taylor Defense case. Timing may be particularly important given expected funding shortfalls and the possible loss of courtroom space this coming September. Additionally, the current Registrar, Herman von Hebel (Netherlands), has resigned effective June 1, and his successor will inherit a host of difficult issues and a complex transition during the final days of the Court,s operations.

--BACKGROUND: A SMALL COURT WITH SEVERAL FIRSTS --

31354

2. (U) A Trailblazing Court. The hybrid SCSL, created in 2002 through an agreement between the United Nations and the Government of Sierra Leone (GOSL) and funded entirely by voluntary contributions, has jurisdiction over those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in Sierra Leone after November 30, 1996. Although established almost ten years after the creation of the International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR), the SCSL is poised to complete its work before these tribunals. The SCSL has also been the first internationalized criminal tribunal to: 1) issue an indictment for an African head of state (Liberian President Charles Taylor); 2) enter convictions for the crime of recruiting and using child soldiers; and 3) successfully prosecute forced marriage as a crime against humanity and intentional attacks on U.N. peacekeepers as a serious violation of international humanitarian law.

3. (U) Last Trial Standing. In 2003, the SCSL indicted Charles Taylor, the leader of the National Patriotic Front of Liberia from 1989 to 1997 and the President of Liberia from 1997 until the 2003 indictment. The indictment alleges Taylor's deep involvement in the Sierra Leone conflict including his role in arming, training and acting in concert with the RUF and in trafficking the Sierra Leonean & blood diamonds that fueled and financed the fighting. The SCSL charged Taylor with eleven counts, including, inter alia, terrorizing the civilian population, unlawful killings, sexual violence, abductions and forced labor, and conscripting child soldiers.

))TIMING: TAYLOR TRIAL'S LINK TO CLOSING SCSL))

4. (SBU) Status of Trial. As the only ongoing SCSL trial, the Taylor trial is the linchpin to the SCSL completing its work. From April 6-9, 2009, the Court held the & judgment of acquittal hearing, with Defense arguing for acquittal on all of the charges. (Comment: In the & judgment of acquittal hearing, the Court considers whether Prosecution Qacquittal hearing, the Court considers whether Prosecution has presented any evidence that could sustain conviction on the charges, acquitting only if Prosecution has presented & no evidence to sustain the charge. End Comment.) In this hearing, Defense acknowledged that crimes had occurred in Sierra Leone but argued that the Prosecution had failed to 1) present evidence linking Taylor to those crimes and 2) establish that Taylor had been part of a joint criminal enterprise (JCE) because, if a JCE existed, it existed before November 30, 1996, the date at which the temporal jurisdiction of the SCSL begins. The Prosecution responded to these arguments by summarizing Taylor's responsibility for the crimes and pointing to Taylor's liability for JCE crimes committed after November 30, 1996, even if the planning of the JCE took place before that date. (Comment: The Court will most likely not issue its Rule 98 decision in April, especially since the Judges may recess through May. An acquittal does not seem likely. End Comment.)

5. (SBU) Next Up: Defense Case. A contact in the Registry has indicated that Defense will likely request three months to prepare for trial and four months to present its case. If the Court grants this request, the Defense case may start at the end of August. However, the same Registry source predicts that the Trial Chamber may order Defense

31355

to begin its case as early as June, working through July and August with a possible recess in September. One wild-card factor, however, is the Defense,s pending interlocutory appeal arguing that the Prosecution failed to properly plead the JCE theory of liability. The Trial Chamber may not schedule the Defense case before the appeals decision so the Defense knows which mode(s) of liability it must defend against. (Comment: Currently, the Registry,s budget milestone document projects an October 31 trial termination date, a March 2010 judgment, sentencing in April 2010, and the conclusion of appeals in October 2010. If, however, the Defense case starts in August, the timeline could be pushed back by approximately two months. End Comment.)

6. (U) Spill-Over Timing Effects. A delay in the timing for the Taylor trial may create additional challenges. First, the International Criminal Court (ICC), the location of the Taylor trial, has informed the SCSL that it will need its second courtroom as of September 2009. (The ICC scheduled its second trial to start September 24th, and will likely need the courtroom prior to September 24th for pre-trial work). Back-up options explored by the Registry include finding other space or working during gaps in the ICC schedule. Second, according to Registry sources, each additional month of trial time costs approximately one million dollars.

))THE JUDICIAL FACTOR))

7. (C) *Judges Slowing Things Down? Further muddying timing predictions, Court employees have intimated that the Trial Chamber could work more expeditiously.* The Taylor Chamber consists of three judges who take turns presiding: Justice Richard Lussick (Samoa), Justice Teresa Doherty (Northern Ireland) and Justice Julia Sebutinde (Uganda), along with an alternate judge, Justice El Hadji Malick Sow (Senegal). A couple of Court employees have grumbled that when the last Prosecution witness testified on January 30, 2009, the Court still had 11 outstanding motions, some over a year old. Additionally, one Chamber contact believes that the Trial Chamber could have accelerated the Court,s work by excluding extraneous material and arguments. *Moreover, contacts in Prosecution and Registry speculate that Justice Sebutinde may have a timing agenda. They think she, as the only African judge, wants to hold the gavel as presiding judge when the Trial Chamber announces the Taylor judgment. Reportedly, her next stint as presiding judge begins in January.*

8. (SBU) Expedited Appeals? The Appeals Chamber, with one empty seat, consists of President Renate Winter (Austria); Vice President Jon Kamanda (Sierra Leone); Justice George Gelaga King (Sierra Leone); and Justice Emmanuel Ayoola (Nigeria). President Winter reportedly has indicated that the Appeals Chamber intends to expedite any Taylor trial Qthe Appeals Chamber intends to expedite any Taylor trial appeals. Up for election in May, Winter may not, however, preside over the Appeals Chamber for any Taylor trial appeals, reportedly she will step down after the RUF appeal if she is not re-elected President.

))DEFENSE STRATEGY: WHO ME?))

9. (SBU) Drama-Bound Defense Case. A British Queen,s Counsel, Courtenay Griffiths, heads Charles Taylor,s top-notch and quick-tongued defense team, which reportedly

31356

finds itself in the midst of identifying and proofing witnesses. All signs indicate that Taylor himself will take the stand as their first witness possibly staying in the box for 6 to 8 weeks, and based on Defense,s actions to date, the Defense team will likely argue that although the crimes may have occurred, Taylor has no link to the crimes.

))AN IMMINENT BUDGET CRISIS))

10. (C) Funding Shortfall. The Registry fears that the Court will run out of money as early as next month, although an expected Canadian USD 6 million contribution would keep the Court financed until early July 2009. In a marathon campaign, Registrar Von Hebel attended 250 meetings in 15 months to drum up funds from potential donor countries, but with, according Von Hebel, little traction, due to donor fatigue, the difficult economic situation, and contributions going to other tribunals (e.g., the Special Tribunal for Lebanon (STL) or the Extraordinary Chambers in the Courts of Cambodia). Von Hebel wants to make another run at the Arab countries of Saudi Arabia, Qatar, Kuwait, and the United Arab Emirates. He also believes that a letter from U.N. Secretary General Ban Ki-Moon asking countries to contribute might help open wallets. According to Von Hebel, when Ban sent out a similar letter in 2007, a number of countries made first-time donations. In addition, a couple of traditional donor countries have advised him they may need a similar letter in order to donate this year.

11. (U) Cost-cutting Measures: Concerned about the looming financial crisis, the Registry has undertaken cost-saving measures, reducing staffing costs by downsizing, incorporating liquidation clauses in contracts, and encouraging The Hague staff to use leave during the break between prosecution and defense cases. The Registry also plans to hand over the Freetown facilities to the GOSL in July 2010, reserving some space for its own continued use. Finally, Registry may look to consolidate the Appeals Chamber and the Taylor trial operations in The Hague, after the Appeals Chamber finalizes the RUF appeal.

12. (SBU) Help from Washington. The Registry may also seek USG,s assistance on financial issues. First, it may press the USG not to reduce its FY2009 contribution by 2 million, but to stay at last year,s level of 9 million USD. (Comment: The extra sum would not solve the Court,s immediate financial problem, since the USG generally contributes in the fall. End Comment.) Second, the Registry may ask for USG political support in the form of demarches to Arab countries, impressing upon the targeted Arab countries the critical nature of the SCSL,s financial situation.

))COMPLETION HICCUPS AND ISSUES))

13. (SBU) Registrar Musical Chairs. On April 8, 2009, the Court announced Registrar von Hebel,s resignation, effective as of June 1, 2009. Von Hebel will assume the Deputy Registrar position at the newly established Hague-based STL. (According to Embassy contacts, STL offered Von Hebel the position at the insistence of and to placate the Dutch, who believe the Dutch ICTY Registrar had been treated unfairly when the ICTY President unexpectedly declined to renew his contract). Given that the STL Registrar Robin Vincent (U.K.) recently resigned, Von Hebel may eventually step into Vincent,s shoes. Von Hebel is also tying up as many SCSL loose ends as possible, including signing

31357

a sentence-enforcement agreement with the Government of Rwanda. In terms of a successor Registrar, a Registry contact believes that the current Deputy Registrar Binta Mansaray (Sierra Leone) will surface as a strong candidate.

))COMMENT: RESIDUAL ISSUES))

14. (SBU) A Larger Role for The Hague? Although currently headquartered in Freetown, Sierra Leone, the Registry has toyed with the possibility of locating any Residual Mechanism (to be located in The Hague. For instance, Von Hebel believes that the Court may need to move its archives out of Sierra Leone in order to properly maintain and secure them. The City of The Hague has indicated its willingness to provide archiving facilities in connection with the ICTY's closure. Some have also suggested combining some or part of the SCSL's residual functions with those of The Hague-based ICTY and the Arusha-based ICTR. A combined residual mechanism might prevent duplication, but it would also face significant hurdles, given SCSL's structural differences, e.g. funding, oversight mechanism and applicable legal framework. Furthermore, GOSL desires will be key, since a joint GOSL-UN agreement created the Court.

GALLAGHER

Ads by Google

GFT Global Markets UK

Trade CFDs, spread bets and spot forex with DealBook® 360 from GFT
www.GFTuk.com

ICC Arbitration

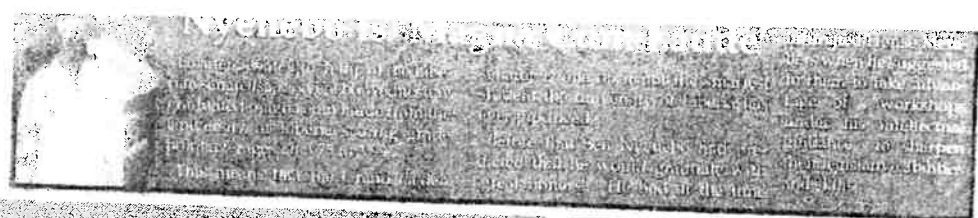
Geneva Master of Advanced Studies in International Dispute Settlement
www.mids.ch

Deciding UK Tax Residency

Read more how Tie Breaker Rules Could Decide UK Tax Residency
www.BlevinsFranks.com

guardian.co.uk © Guardian News and Media Limited 2011

Annex C



Small text block, possibly a sidebar or sub-header, containing several lines of small print.

Towards the achievement of social justice
DEMOCRAT

Hints for The Wise: The Redempting Aspects of Leaked US Cables

Cote d'Ivoire Exodus Swells To Over 6000

As the political stalemate in neighbouring Cote d'Ivoire continues with escalating insecurity, the number of refugees fleeing into Liberia and Guinea is rising, with the UN now



raising the figure to over 6,000, up from last week. Reports: More than 6,400 people have fled Cote d'Ivoire into two neighboring countries of Liberia and Guinea, the UN refugee agency (UNHCR) has said. Cote d'Ivoire has been plunged into political uncertainty after incumbent President Laurent Gbagbo refused to concede electoral defeat to Alassane Ouattara. The agency said in a statement reaching Liberia on Wednesday that some

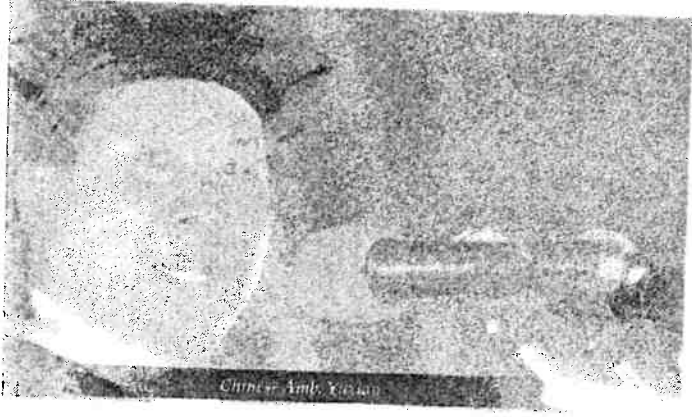
Sorry For The Leaks

Pres. Sirleaf Acknowledges US Ambassador's Apology



President Ellen Johnson Sirleaf and US Ambassador Linda Thorne Greenfield has apologized for the WikiLeaks classified cables originating from the American embassy regarding key political developments. The cables revealed... Here, the cables mainly dealt with issues of sustainable peace, primarily the role and continuing influence of former President Charles Taylor, even as he stands trial for war crimes in The Hague. The cables also reveal the difficulties facing the government in meeting UN Security Council demands, amongst them the freezing of assets belonging to Mr. Taylor and his associates. Portions of the cables read: 'The press accounts of The Hague have also im-

Chinese Envoy Diagnoses Roots Of Underdevelopment



Chinese ambassador here, Mr. Zhou Yuzhao, is calling for proper use of materials by transforming them into finished products for a heavily consumer driven country. Delivering the 49th commencement address for the University of Liberia Wednesday at the Chinese built SKD Sports Stadium, Ambassador Zhou said Liberia has the largest rainforest, large rubber plantations, but (it) has no tire or sneakers manufacturing factories. He blamed the huge gap between the 'richly endowed' natural resources and their utilization to produce goods and services in Liberia as the main cause of underdevelopment in the country.

CBL's US\$5m For Liberian-Owned Businesses

The government has announced that the Central Bank of Liberia (CBL) has earmarked US\$5m to be ploughed into Liberian-owned businesses, although other



details are yet lacking. According to the Executive Mansion, money will be for small and medium size businesses.

Sorry For The Leaks

...and how they can be factored into the trial. Excluded family members, financiers of Samuel Henson Fara (SHF) investors, and their hopes that Taylor might be arrested soon. Despite their doubts about going on, they have thus far refused to say before the Truth and Reconciliation Commission (TRC) to account for their actions, and those on the UN sanctions lists have to request delisting on the basis they are doing nothing wrong rather than demonstrating what they have done to provide restitution for their activities.

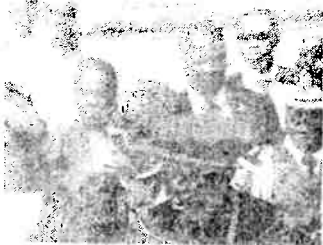
The government itself is caught in the middle. There is quite little the GOJ can do legal-

ly to arrest, prosecute or freeze assets of those who were close to Taylor, even if the political will were there, which means an open question. The TRC has recommended a domestic war crimes court be set up, but under statute, an independent National Human Rights Commission (INCHCR) would implement the recommendation, and the Legislature (some of whom had close ties to Taylor) has thus far failed to establish the INCHCR. The Legislature has also refused to pass any law that would allow the GOJ to freeze assets of those on the UN sanctions list, and the Supreme Court has ruled that any confiscation of property can be done only after a trial.

Underdevelopment

...Nyanja lamented that despite all the natural resources present in Liberia, it lacks a variety of products enough goods for the sustenance of its 4.5 million population.

...Nyanja lamented that despite all the



...between the richly endowed natural resources and the scarcity of locally made prod-

...the scarcity of arable land, but it does not produce enough food for its 4.5 million population. Liberia has large rubber plantations, but it cannot produce a sneaker or a tyre. Liberia exports iron ore deposits, but it does not produce a nail or a class. Liberia has the sea transport facilities but it does not produce a motor vehicle. ...Nyanja stressed at the press conference Wednesday.

...Instead of merely graduating students yearly, Amb. Yuxia urged Liberian educational institutions to focus on quality education in science and technology to "produce more qualified engineers, geologists, agriculturists" ... to help solve the problem of local production in the country.

...With production on course, he said, "the country can better utilize its natural resources, change the lopsided economy, bring peace and stability, improve human rights by generating jobs and national independence."

...One should make a living by utilizing the readily available natural resources around him or her," the Chinese diplomat added.

...His candid statement underscores the need for government to woo businesses quickly into manufacturing instead of simply importing manufactured goods and commodities for sale.

...The acute shortage of manufacturing facilities in the country prompted this paper to report that Gardnersville, an industrial zone in pre-war time, nowadays contain ruins of so so factories, but without production.

...Goods and food commodities flooding the Liberian market are imported mainly from faraway Asian countries and the Indian sub-continent.

---Byima J.V. Boima

Accused Taylor Weapons Supplier

...flict areas: they do not have impunity," the environmental group said.

It said Kouwenhoven was sentenced to eight years imprisonment for illegal arms trading in 2007. The landmark decision was one of the few instances of an individual being held to account in their own country for crimes allegedly committed in another. Clotal Witness first documented the involvement of Kouwenhoven in state-sanctioned illegal logging and arms trafficking in its 2001 report. Taylor Made, and later testified before the court and submitted extensive evidence supporting the prosecution's case.

The release: Kouwenhoven was head of the Oriental Timber Corporation (OTC) dur-

ing the regime of President Charles Taylor, who waged a brutal war against the people of Liberia and Sierra Leone, funded largely through the sale of diamonds and illegal logging. OTC, also known as 'Old Taylor's Children' or 'Only Taylor Chops', was the most notorious logging company in the country and dominated the Liberian timber industry with 1.6 million hectares of concessions.

Kouwenhoven's sentence was overturned in 2008 by the Appeals Court. However, this appeal was quashed in April 2010 by the Supreme Court, which sent the case back to the Appeals Court - where the hearing starts today.

CBL's US\$5m For Liberian-Owned

The award follows agreements from the International Monetary Fund and the World Bank that, in a bid to cushion the impact of price volatility, provide support for economic development and to foster economic growth in the Executive Action Zone, including in...

CBL's award will help to fund an infrastructure initiative to support the initiative has a two-fold objective, which includes encouraging a better quality standard of living and making the east of the country a more attractive investment area.

4 Armed Robbers

...verdict of the crime armed robbery against Moses Dupo, Varney Othello, Varilee Kromah and Anrose Gathen.

After the men were convicted of armed robbery, they rejected their fate by challenging police in fistfights in the full glare of Judge Gilayench, lawyers from both sides, and spectators, degenerating the courtroom into mo-

...nentary chaos. The men rejected the jurors' verdict arguing that a co-defendant was used as witness against them.

They also accused prosecutors of injustice by entering into a 'deal' with the codefendant as witness.

Story & Photo Peter N. Toby

Cote d'Ivoire Exodus

...thousands have fled into eastern Liberia, and over 200 have arrived in Guinea.

...and hosting its contingency plans for the region and had airlifted additional supplies to Liberia and Guinea from its cargo supplies in Copenhagen, the UN said.

...interior quoted UNHCR spokespersons as saying that most of the refugees seeking protective shelter in Liberia and Guinea were women and children.

...agency has deployed additional staff to the Nimba County, which is hosting the refugees, the spokesperson said. ...said the deployment was to ensure border monitoring, proper registration of incoming refugees and distribution of items.

...had endorsed the victory of opposition leader President-elect Ouattara in the 28-year-old presidential elections, but a dispute claim to have won.

...have been alleged clashes between Ouattara's and Gbagbo's military forces.

...has estimated that at least 80 people have died from the clashes, 300 injured, 470 have been arrested and detained and many missing.

...UN Security Council ex-

...tended the mandate of its peacekeeping mission in Cote d'Ivoire, initially due to expire on Dec. 31, to June 30, 2011.

The Council rejected Gbagbo's presidential order for UN and foreign troops to leave the country where the UN has more than 10,000 troops.

Meanwhile, the Economic Community of West African States (ECCOWAS) announced on Tuesday that it would hold an emergency summit on the situation in Cote d'Ivoire on Friday. The regional body said in a statement reported by Xinhua that ECOWAS Heads of State and Government will be discussing the developments in Cote d'Ivoire.

The ECOWAS Commission said it has learnt with surprise and disappointment, the ultimatum issued by the outgoing President of Cote d'Ivoire, Gbagbo, to UNOCI, the UN Peacekeeping Mission, and the French Forces, L'Orme, to leave the country immediately. "ECOWAS wishes to state that the ultimatum, far from helping the situation, would further heighten tensions and worsen the plight of the vulnerable in the country," the body said. "The Commission calls on the outgoing President to desist from his stand-off with the peacekeeping forces but rather to join in the effort in seeking ways of creating an environment of peace and security in the country," it added.

SALALA RUBBER CORPORATION

VACANCY ANNOUNCEMENT

Salala Rubber Corporation has a vacancy for the position of Senior Human Resource Supervisor

Assignment: Full time, and resident at Weala, Margibi County

Salary: Attractive depending on qualification and job experience

Reports: directly to the SRC Human Resource Superintendent

Starting date: As soon as possible

Industry: Rubber

Requirement: University Degree in Management or Public Administration, with at least four years working experience in personnel supervision

Job Description:

Coordinate the overall daily operations SRC HR Department, and report to the Human Resource Superintendent. Ensure that SRC Personnel Policies, and Code of Conduct are respected. Monitor monthly payroll preparations for the purpose of timely salary payment. Work along with the HR Superintendent, and his team in strengthening the Human Resources Department, among others.

Address all applications, with two passport size photographs, and all relevant credentials to the Human Resource Department, Salala Rubber Corporation, P.O. Box 5569 Weala, Margibi County Liberia

Deadline for the submission of applications is Wednesday January 4, 2010.

Signed _____
SRC MANAGEMENT