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SCSL-03-01-T  
(36857-36882)

36857



**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: 12 April 2011

SPECIAL COURT FOR SIERRA LEONE	
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**THE PROSECUTOR**

**Against**

**Charles Ghankay Taylor**

Case No. SCSL-03-01-T

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**PUBLIC WITH CONFIDENTIAL ANNEXES A TO E**

**URGENT PROSECUTION MOTION FOR THE RE-FILING OF THE "PUBLIC VERSION DEFENCE FINAL TRIAL BRIEF" AND "PUBLIC VERSION DEFENCE RESPONSE TO PROSECUTION FINAL TRIAL BRIEF"**

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Office of the Prosecutor:

Ms. Brenda J. Hollis  
Mr. Nicholas Koumjian  
Ms. Ula Nathai-Lutchman  
Mr. Nathan Quick  
Mr. James Pace

Counsel for the Accused:

Mr. Courtenay Griffiths, Q.C.  
Mr. Terry Munyard  
Mr. Morris Anyah  
Mr. Silas Chekera  
Mr. James Supuwood

## I. INTRODUCTION

1. The Prosecution urgently files this motion requesting the Trial Chamber to immediately reject the filing of the “Public Version Defence Final Trial Brief”<sup>1</sup> (“Public Defence Brief”) and “Public Version Defence Response to Prosecution Final Trial Brief”<sup>2</sup> (“Public Defence Response”) and order the Defence to file a properly redacted version of both briefs.<sup>3</sup> The currently filed “public” versions contain information in violation of witness protective measures, redactions that go beyond those required for compliance with court orders, and unauthorized revisions to the text of the Confidential Corrected Brief.<sup>4</sup> The Prosecution exchanged emails with the Defence on 11 April 2011 regarding these errors.<sup>5</sup> Thus the Prosecution did not file this motion on that date. Because of the nature of the errors and the Court order to the parties to file public versions of the final briefs, this motion is filed on an urgent basis and the Prosecution requests an expedited filing schedule. To the extent it is necessary to accept the allegedly public versions of these filings, the Prosecution requests that the Trial Chamber order that the Public Defence Brief and Public Defence Response be re-classified as “confidential.”
2. The protective measures violations and other improper redactions and revisions referred to in this motion became apparent during a random review of the Public Defence Brief and Public Defence Response. After receiving confirmation from the Defence of certain disclosures<sup>6</sup> and notifying the Defence of those errors initially discovered, the Prosecution continued its review. Additional protective measures violations and unauthorized revisions or redactions<sup>7</sup> have been discovered upon further random review. The Prosecution, however, again stresses that it has not done the comprehensive, paragraph by paragraph, page by page analysis incumbent on the Defence to conduct. It

<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1237, Public Version Defence Final Trial Brief, 7 April 2011 (“**Public Defence Brief**”).

<sup>2</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1238, Public Version Defence Response to Prosecution Final Trial Brief, 7 April 2011 (“**Public Defence Response**”).

<sup>3</sup> The Prosecution notes that the Defence does not object to CMS and the Press and Public Affairs Office temporarily not publishing the Public Defence Brief and/or Public Defence Response. See Email from Ms. Logan Hambrick to Ms. Brenda J. Hollis, dated 8 April 2011 (provided at **Confidential Annex A**); Email from Ms. Logan Hambrick to Ms. Brenda J. Hollis, dated 11 April 2011 (provided at **Confidential Annex C**).

<sup>4</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1229, Public with Confidential Annex Defence Corrected and Amended Final Trial Brief, 9 March 2011 (“**Confidential Corrected Brief**”).

<sup>5</sup> See **Confidential Annexes A-D**.

<sup>6</sup> See Email from Ms. Logan Hambrick to Ms. Brenda J. Hollis, dated 11 April 2011 (**Confidential Annex B**).

<sup>7</sup> For those errors initially identified by the Prosecution, see Email from Ms. Brenda J. Hollis to Ms. Logan Hambrick, dated 11 April 2011 (the email and accompanying attachment are provided at **Confidential Annex D**). At **Confidential Annex E**, the Prosecution has provided an updated, yet again *non-comprehensive*, list of violations and errors. Additional protective measures violations were discovered in relation to several witnesses. Additional improper redactions and revisions were also found.

is likely that a comprehensive review will reveal other violations or improper redactions and revisions.

3. Accordingly, in addition to rejecting the Public Defence Brief and Public Defence Response as currently filed and ordering the re-filing of corrected versions of the Public Defence Brief and Public Defence Response, the Prosecution requests that the Trial Chamber (1) order the Defence to conduct a comprehensive review of both the Public Defence Brief and Public Defence Response, in light of applicable protective measures and bearing in mind that cumulative information, as well as discrete facts, may disclose a witness's identity; (2) order the Defence to limit its redactions to those necessary to comply with protective measures, closed and private session evidence, and confidential exhibits; and (3) direct the Court Management Section to notify all persons on the public dissemination list to refrain from any further dissemination of the Public Defence Brief and Public Defence Response.

## II. SUBMISSIONS

4. Effective compliance with, and enforcement of, protective measures is critical to the success of this, and any, international criminal court. "In the absence of these protected witnesses and victims, there will be no trials and consequently, no end to the criminal impunity that the International Community is endeavouring to contain and to combat through the International Criminal Courts."<sup>8</sup> Protective measures are particularly important in places such as Sierra Leone, "a relatively small community," where witnesses are easily identified and endangered.<sup>9</sup> Accordingly, witnesses have the right and need to rely on the parties and the Court to ensure full compliance with protective measures orders, including the non-disclosure of identifying information. Indeed, when the Defence sought clarification regarding the procedure for preparing its public brief and response, Justice Sebutinde noted that the parties were not to "reinvent the wheel" and details which could identify a protected witness should not be disclosed. "Whatever was in private session was in private session for a reason."<sup>10</sup>

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<sup>8</sup> *Prosecutor v. Kondewa*, SCSL-2003-12-PT-038, Ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure and Urgent Request for Interim Measures until Appropriate Protective Measures are in Place, 10 October 2003 ("**CDF Protective Measures Ruling**"), para. 25. See also *Prosecutor v. Bagosora et al*, ICTR-98-41-T, Decision on Motion to Harmonize and Amend Witness Protection Orders, 1 June 2005, para. 11 ("The ultimate purpose of witness protection orders is to prevent partisans from one side or the other from harassing or intimidating witnesses for the other side. That purpose is satisfied if the role of the person in the trial proceedings remains secret.").

<sup>9</sup> CDF Protective Measures Ruling, para. 24.

<sup>10</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 7 March 2011, p. 49339-40.

5. The Defence had a full month to prepare the Public Defence Brief and Public Defence Response. The Defence, however, has once again failed to give effect to protective measures orders, violating such protection for at least eight witnesses identified during what the Prosecution again stresses was a random, not comprehensive, review. Under similar circumstances, Trial Chamber I ordered the review and public re-filing of the CDF Defence final trial briefs.<sup>11</sup> Likewise, the instant failure to comply with protective measures and unauthorized revisions must be corrected before any versions of the Defence briefs are accepted and disseminated publicly. To ensure that all protective measures are given full effect and that changes were only made in compliance with such measures, the Defence should be ordered to conduct a comprehensive, page by page, paragraph by paragraph review of the Public Defence Brief and Public Defence Response. This review should not be limited to the violations identified during the Prosecution's random review.

#### PROTECTIVE MEASURES VIOLATIONS

6. At least six protected Prosecution witnesses were explicitly identified by name as witnesses in the Public Defence Brief.<sup>12</sup> Moreover, details from the closed and private session testimony of at least ten Prosecution witnesses have been disclosed in the Public Defence Brief and Public Defence Response.<sup>13</sup> These details, in isolation and/or cumulatively, violate court-ordered protective measures<sup>14</sup> and may permit the members

<sup>11</sup> *Prosecutor v. Norman, et al.*, SCSL-04-14-T-742, Confidential Order on Re-Classification and Re-Filing of the Defence Final Trial Briefs, 24 November 2006, p. 2.

<sup>12</sup> See **Confidential Annex E**, Section I, # 1-6, Fn. 1.

<sup>13</sup> **Confidential Annex E**, Section I, # 1-10. Such protective measures violations are the latest in a series. At least eleven protected prosecution witnesses have been publicly identified by the Defence. Identifying information relating to at least five of these witnesses has been revealed on more than one occasion. e.g. *Prosecutor v. Taylor*, SCSL-03-01-T-1194, Public with Annex A and Confidential Annex B, Corrigendum to Defence Final Brief as Filed on 3 February 2011, 8 February 2011, Annex A (Annex A was later re-classified as "confidential" in *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, para. 16); *Prosecutor v. Taylor*, SCSL-03-01-T-1148, Public Decision on Urgent Prosecution Motion to Classify as "Confidential" the 'Public Defence Notice of Appeal and Submissions regarding the Decision on the Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma' due to Protective Measures Violations, 10 January 2011; *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 12 March 2008, p. 5892; 23 September 2009, pp. 29542-3; 10 January 2009, p. 30118-9.

<sup>14</sup> e.g. *Prosecutor v. Taylor*, SCSL-03-01-T-99, Decision on Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures and on Confidential Prosecution Motion for Leave to Substitute a Corrected and Supplemented List as Annex A of the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures, 5 May 2006, p.4 ("(e) That the Defence shall not make an independent determination of the identity of a protected witness or encourage or otherwise aid any person to attempt to determine the identity of any such person; (g) ... data or information ... which could reveal the

of the public, particularly those who pose the greatest threat to these witnesses,<sup>15</sup> to identify them.

7. The Prosecution is greatly concerned that once again it is forced to bring to the Court's attention the Defence's violations of protective measures. It is for each party to ensure that it complies with protective measures orders in all its pleadings. The Prosecution notes that, as with past violations,<sup>16</sup> the Defence will likely claim that the disclosure of protected Prosecution witness names was inadvertent. It is true that despite a party's best efforts there may be isolated disclosure of protected information. The Prosecution submits, however, that the pattern of violations by the Defence demonstrates at minimum an attitude of willful negligence to court-ordered protective measures. That the Prosecution has not engaged in any similar pattern revealing the identity of protected Defence witnesses demonstrates that such a pattern of violations does not occur if a party, in good faith, applies due diligence in its efforts to comply with court-ordered protections.

UNAUTHORIZED REVISIONS AND REDACTIONS

8. Allowing or ordering a party to file a public version of its final brief(s) does not give that party leave to make redactions unrelated to witness protective measures or confidential exhibits, nor does it give a party the right to rewrite its brief(s). Yet, the Defence has done both. In addition to making redactions unrelated to protective measures, the Defence has deleted language and changed wording.<sup>17</sup> Indeed, even the page, paragraph and footnote numbers differ between the confidential and public versions of the Defence brief and response.
9. The Prosecution notes that the Defence Public Brief is not a public version of the Defence Final Brief filed 20 days late on 3 February 2011.<sup>18</sup> Instead, it is an unauthorized edited, corrected, and amended version of the *previously* edited, corrected and amended version filed on 9 March 2011.<sup>19</sup> The Defence, however, has made no

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identity of such witnesses, shall not under any circumstances be disclosed to the public or the media and this order shall remain in effect after the termination of the proceedings in this case.”

<sup>15</sup> i.e. the defendant and his sympathisers. See CDF Protective Measures Ruling, para. 24.

<sup>16</sup> e.g. *Prosecutor v. Taylor*, SCSL-03-01-T-1212, Confidential Defence Response to Prosecution Motion for the Trial Chamber to Summarily Deal with Contempt of the Special Court for Sierra Leone and for Urgent Interim Measures, 21 February 2011.

<sup>17</sup> **Confidential Annex E**, Section II.

<sup>18</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1186, Confidential, With Annexes A-C, Defence Final Brief, 3 February 2011.

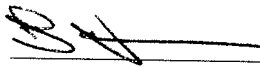
<sup>19</sup> Confidential Corrected Brief.

application to refine or correct errors in the earlier versions of its briefs. Rather, the Defence again ignores the authority of the Trial Chamber, assuming the ability and authority to file an edited version of its final brief four months after the original 14 January 2011 deadline.

**III. CONCLUSION**

- 10. Accordingly, the Prosecution requests that the Trial Chamber reject the Public Defence Brief and Public Defence Response and order the Defence to file a properly redacted public version of each. In order to ensure compliance with these orders, the Prosecution requests that the Chamber also (1) order the Defence to conduct a comprehensive review of both the Public Defence Brief and Public Defence Response in light of applicable protective measures and bearing in mind that cumulative information, as well as discrete facts, may disclose identity; (2) order the Defence to limit its redactions to those necessary to comply with protective measures, closed and private session evidence, and confidential exhibits; and (3) direct the Court Management Section to notify all persons on the public dissemination list to refrain from any further dissemination of the rejected Public Defence Brief and Public Defence Response. To the extent it is necessary to accept the allegedly public versions of these filings, the Prosecution requests that the Trial Chamber order that the Public Defence Brief and Public Defence Response be re-classified as “confidential.”

Filed in The Hague,  
12 April 2011,  
For the Prosecution,

  
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 Brenda J. Hollis  
 The Prosecutor

## LIST OF AUTHORITIES

SCSL Cases*Prosecutor v. Taylor*

*Prosecutor v. Taylor*, SCSL-03-01-T-1237, Public Version Defence Final Trial Brief, 7 April 2011

*Prosecutor v. Taylor*, SCSL-03-01-T-1238, Public Version Defence Response to Prosecution Final Trial Brief, 7 April 2011

*Prosecutor v. Taylor*, SCSL-03-01-T-1194, Public with Annex A and Confidential Annex B, Corrigendum to Defence Final Brief as Filed on 3 February 2011, 8 February 2011

*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-1148, Public Decision on Urgent Prosecution Motion to Classify as “Confidential” the ‘Public Defence Notice of Appeal and Submissions regarding the Decision on the Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma’ due to Protective Measures Violations, 10 January 2011

*Prosecutor v. Taylor*, SCSL-03-01-T-99, Decision on Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures and on Confidential Prosecution Motion for Leave to Substitute a Corrected and Supplemented List as Annex A of the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures, 5 May 2006

*Prosecutor v. Taylor*, SCSL-03-01-T-1186, Confidential, With Annexes A-C, Defence Final Brief, 3 February 2011

*Prosecutor v. Taylor*, SCSL-03-01-T-1229, Public with Confidential Annex Defence Corrected and Amended Final Trial Brief, 9 March 2011

*Prosecutor v. Taylor*, SCSL-03-01-T-1212, Confidential Defence Response to Prosecution Motion for the Trial Chamber to Summarily Deal with Contempt of the Special Court for Sierra Leone and for Urgent Interim Measures, 21 February 2011

*Prosecutor v. Taylor*, SCSL-03-01-PT-215, Decision on Confidential Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and on Public Urgent Prosecution Motion for Leave to Substitute a Supplemented Witness List as Annex A(4) of the Confidential Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure Filed on 8 March 2007 and on Public Urgent Prosecution Request for Interim Measures, 26 March 2007

**Trial Transcripts**

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 7 March 2011

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 12 March 2008

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 23 September 2009

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 10 January 2009

***Prosecutor v. Kondewa***

*Prosecutor v. Kondewa*, SCSL-2003-12-PT-038, Ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure and Urgent Request for Interim Measures until Appropriate Protective Measures are in Place, 10 October 2003

***Prosecutor v. Norman, et al***

*Prosecutor v. Norman, et al.*, SCSL-04-14-T-742, Order on Re-Classification and Re-Filing of the Defence Final Trial Briefs, 24 November 2006

**ICTR Case**

*Prosecutor v. Bagosora et al*, ICTR-98-41-T, Decision on Motion to Harmonize and Amend Witness Protection Orders, 1 June 2005

<http://www.unictr.org/Portals/0/Case/English/Bagosora/Trial%20and%20Appeal/010605.pdf>





SPECIAL COURT FOR SIERRA LEONE  
DOKTER VAN DER STAMSTRAAT 1 • 2265 BC LEIDSCHEMENDAM • THE NETHERLANDS

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

Court Management Section – Court Records

**CONFIDENTIAL DOCUMENT CERTIFICATE**

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

Case Name: **The Prosecutor – v- Charles Ghankay Taylor**  
Case Number: **SCSL-03-01-T**  
Document Index Number: **1241**  
Document Date: **12 April 2011**  
Filing Date: **12 April 2011**  
Document Type: **Confidential Annexes**  
Number of Pages: **18** Number from: **36865-36882**

- Application
- Order
- Indictment
- Response
- Motion**
- Correspondence

Document Title:

**Public with confidential Annexes A to E urgent Prosecution motion for the re-filing of the public version Defence final trial brief and public version Defence response to Prosecution final trial brief**

Name of Officer:

Alhassan Fornah

Signed: