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SCSL-03-01-T  
( 37669-37672)

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**THE SPECIAL COURT FOR SIERRA LEONE**

**Trial Chamber II**

**Before:** Justice Richard Lussick, Presiding  
Justice Julia Sebutinde  
Justice Teresa Doherty  
Justice El Hadji Malick Sow, Alternate

**Registrar:** Ms. Binta Mansaray

**Date:** 8 February 2012

**Case No.:** SCSL-03-01-T

**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

SPECIAL COURT FOR SIERRA LEONE	
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**REPLY TO PROSECUTION RESPONSE TO DEFENCE MOTION  
TO RE-OPEN ITS CASE IN ORDER TO SEEK ADMISSION  
OF PANEL OF EXPERTS REPORT ON LIBERIA**

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**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  
Ms. Logan Hambrick

1. The Defence files this brief reply to the *Prosecution Response to the Defence Motion to Re-Open its Case in order to Seek Admission of Panel of Experts Report on Liberia*<sup>1</sup> in accordance with the Chamber's *Order for Expedited Filing*.<sup>2</sup>
2. In its Response, the Prosecution submits that the Chamber should deny the Defence's request to admit excerpts of the Panel of Experts Report on Liberia under Rule 92*bis*, on the basis that: the Defence's request is untimely, the excerpts have no relevance or probative value, and the excerpts impermissibly include evidence related to the acts and conduct of the accused.<sup>3</sup> None of these reasons are accurate or compelling.
3. The Defence has acted diligently in bringing this request before the Chamber. The Prosecution's apparent definition of the "due diligence" requirement is unduly restrictive and does not comport with the "reasonable diligence" standard previously adopted by this Chamber.<sup>4</sup> As this Chamber has stated, an opposing party should not "seek to place unreasonable requirements" on the proffering party.<sup>5</sup> It is not reasonable to suggest, as the Prosecution does, that the Defence must obtain, analyze and proffer any information of potential relevance to its case within days of its availability in order for the Chamber to consider its admissibility. The Defence regularly monitors and discusses publications, newspaper articles, NGO reports, UN documents and other current materials which may have a bearing on its case as they arise, and where relevant, brings a small fraction of the material to the Trial Chamber's attention.<sup>6</sup>
4. Indeed, to insist that the Defence should have acted sooner than it did, in the totality of the circumstances,<sup>7</sup> including the current composition and distribution of the defence

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<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1262, 7 February 2012 ("Response").

<sup>2</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1261, 1 February 2012.

<sup>3</sup> Response, para. 1.

<sup>4</sup> *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, paras 12 and 15-17 (when assessing whether the Prosecution had acted diligently in investigating and obtaining information about an alleged diamond transaction between Mr. Taylor and Naomi Campbell).

<sup>5</sup> *Ibid*, para. 16.

<sup>6</sup> Consequently, the Prosecution's suggestion at para. 5 that it took the Defence eight weeks to read and analyze a 122 page report is inapt.

<sup>7</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1260, Defence Motion to Re-Open its Case in order to Seek Admission of Panel of Experts Report on Liberia, 31 January 2012 ("Motion"), para. 11.

team, the problems in communicating with client, and the interceding festive holidays, is the merest of technical formality. It is unreasonable.

5. On the substantive aspects of the Motion, contrary to the Prosecution's bald claims,<sup>8</sup> the Defence has not sought admission of paragraph 24 of the Panel of Experts Report, which refers directly to the acts and conduct of the Accused in relation to the conflict in the Ivory Coast. As stated clearly in its Motion, the Defence seeks admission of pages 1-5 and Section III, parts C, F and G of the Report.<sup>9</sup> None of these excerpts contain the impugned paragraph 24 (which is in Section III, part A). Therefore, the Prosecution's arguments at paragraphs 1(ii) and 8-9 are eviscerated and must be disregarded.
6. At paragraph 13 of its Response, the Prosecution misconstrues the primary reason for which the Defence seeks admission of the excerpts of the Report, i.e. to provide support detailing the context within which mercenary fighters operate throughout West Africa. This context is relevant to this case, where the same phenomena prevailed. The excerpts in issue however do not say what Mr. Taylor did or did not do as to constitute evidence going to proof of his acts and conduct. If admitted, the excerpts would only provide context, albeit, *post facto*, to assist the Trial Chamber in determining one of the central issues to this case regarding Taylor's alleged complicity in mercenary activities in Sierra Leone. In this manner, the excerpts might persuade the Trial Chamber to the conclusion, as argued in the Defence case, that it would have been possible for fighters to cross the Liberian-Sierra Leonean border without being under the direction or control of Mr. Taylor. The excerpts are however not determinative of this issue. They therefore do not go to proof of the acts and conduct of the Accused in a manner prohibited by Rule 92*bis*.
7. This generalized point of relevance to the Defence case is quite different from the situation in the JPK Appeals Decision,<sup>10</sup> which the Prosecution relies on.<sup>11</sup> The Chamber will recall that in that decision, the Defence had requested the admission of an affidavit

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<sup>8</sup> Response, paras 1(ii), 8 and 9.

<sup>9</sup> Motion, para. 3.

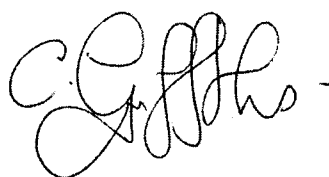
<sup>10</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1168, Decision on the Defence Appeal Regarding the decision on the Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 25 January 2011.

<sup>11</sup> Response, paras 13-14.

by a certain individual who denied that Mr. Taylor had ordered him to kill Johnny Paul Koroma. This direct assertion relating to an act which Mr. Taylor did not perform was deemed by the Appeals Chamber to constitute “acts and conduct of the accused”, and was thus adjudged inadmissible. In the instant case, as highlighted above, the excerpts do not say anything of Mr. Taylor’s conduct. Rather, the content of the Report focuses on the endemic nature of mercenary activity in West Africa, and the motivation of the mercenaries themselves, namely private gain.

8. For all the foregoing, the Prosecution’s response must be dismissed. However, to the extent that the Chamber agrees with the Prosecution position in paragraph 14 of its Response – that evidence to the effect that Prosecution Witness ZigZag Marzah is a mercenary fighter in the Ivory Coast (and that he has seemingly chosen to fight there without being instructed to do so by Mr. Taylor) infringes on the Appeals Chamber’s determination that evidence affecting the credibility of Prosecution assertions as to the Accused’s guilt are not admissible under Rule 92bis – the Defence suggests that the appropriate remedy is for the Chamber to strike the offending paragraphs rather than deny the entire Defence request on that basis.
9. The Defence reiterates its request that, given the importance of the evidence that has come to light in the recently released Security Council Panel of Experts Report, the Trial Chamber should allow the Defence to re-open its case and admit the introduction section (pages 1-5) and Parts C, F and G of Section III into evidence pursuant to Rule 92bis.

Respectfully Submitted,



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**Courtenay Griffiths, Q.C.**  
**Lead Counsel for Charles G. Taylor**  
Dated this 8<sup>th</sup> Day of February 2012  
The Hague, The Netherlands