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SCSL-03-01-ES
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RESIDUAL SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER

Before: Justice Teresa Doherty, Presiding
Justice Richard Lussick
Justice Emmanuel Roberts

Registrar: Binta Mansaray

Date Filed: 26 January 2015

Case No.: SCSL-03-01-ES

In the matter of

CHARLES GHANKAY TAYLOR

CONFIDENTIAL

MOTION TO COMPEL THE REGISTRAR TO FILE A PUBLIC REDACTED
VERSION OF ITS RULE 33 SUBMISSIONS

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Office of the Prosecutor

Brenda J. Hollis

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RECLASSIFIED AS PUBLIC

**MOTION TO COMPEL THE REGISTRAR TO FILE A PUBLIC REDACTED
VERSION OF ITS RULE 33 SUBMISSIONS**

1. Charles Ghankay Taylor hereby requests an order compelling the Registrar to file a public redacted version of her Rule 33 Submission of 12 November 2014.¹ Both the Defence and the Prosecution have offered most of their submissions on this issue in public.² The Trial Chamber, with the exception of a single annex,³ has not deemed it necessary to re-classify any of these public filings or annexes as confidential. The Registrar, except to the extent that she justifies non-disclosure with reference to sections 4.2(e) and 6.9 of the “Records and information sensitivity, classification, changes in classification, handling and access policy,”⁴ should be required to do the same.

2. Rule 78 of the RSCSL Rules provides that “[a]ll proceedings before the President, Designated Judge or a Trial Chamber, other than deliberations of the Chamber shall be held in public, unless otherwise provided.” SCSL Chambers have underscored the importance of this principle, the burden resting on the party seeking to file its submissions confidentially, and have reclassified filings whose

¹ *In the matter of Charles Ghankay Taylor*, Case No. SCSL-03-01-ES, Submission of the Registrar Pursuant to Rule 33 Arising From Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda, 12 November 2014 (“Rule 33(B) Submissions”).

² See Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda, 24 June 2014 (Public with Public and Confidential Annexes); Prosecutor’s (Submissions In) Response to Prisoner Taylor’s Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda, 15 July 2014 (Public with public and confidential annexes); Request for Leave to Reply, and Reply, to Prosecution Response to Motion for Termination of Enforcement of Sentence in the United Kingdom and fro Transfer to Rwanda, 15 July 2014 (Public).

³ Direction to Registrar Pursuant to Rule 33 Arising from Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda, and Direction to Re-Classify Annex JJ to the Motion as Confidential, 20 August 2014, p. 4.

⁴ Residual Court of Sierra Leone: Records and information sensitivity, classification changes in classification handling and access Policy, 1 January 2014, (“Classification Policy”).

confidential status was not justified.⁵ ICTY and ICTR Trial Chambers have done the same, affirming that “all submissions filed before the Tribunal shall be public unless there are exceptional reasons for keeping them confidential.”⁶ This principle applies not only to the determination of criminal charges, but also ancillary and post-conviction matters.⁷

3. Article 14(1) of the International Covenant on Civil and Political Rights requires that proceedings be public not only in the determination of criminal matters *strictu sensu*, but also in proceedings determining the “rights and obligations in a suit at law.”⁸ The European Court of Rights, interpreting guaranteeing a “public

⁵ See *The Prosecutor v. Brima et al.*, Case No. SCSL-04-16-T, Decision on the Confidential Joint Defence Application for Withdrawal by Counsel for Brima and Kamara and on the Request for Further Representation by Counsel for Kanu, 20 May 2005, para. 22 (“All submissions filed by the Parties and the Principal Defender were marked as confidential, i.e. that they should not be disclosed to the public. We note and put emphasis on Rule 78 providing that ‘[a]ll proceedings before a Trial Chamber, other than deliberation of the Chamber, shall be held in public, unless otherwise provided.’ We note that Defence Counsel do not provide reasons for such confidentiality. We agree with Hon. Justice Boutet stating that ‘[...] all documents filed before the Special Court should be public, as a matter of general principle, unless a cogent reason is offered to the contrary’”). See also *The Prosecutor v. Sesay et al.*, Case No. SCSL-2004-15-PT, Confidential Decision on Motion to Prevent Prosecution From Serving Certain Materials to Other Accused Until Admissibility Determined, (reclassified as public by order of 02.11.2007, SCSL-04-15-T-865), 15 June 2004, para. 31; *The Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-PT, Decision on the Motion by Morris Kallon for Bail, 23 February 2004, para. 19.

⁶ *Prosecutor v. Haradinaj et al.*, Case No. IT-04-84-A, Decision on Lahi Brahimaj’s Application for Provisional Release, 25 May 2009, para. 5; *Prosecutor v. Karadzic*, Case No IT-95-5/18-T, Order on Reclassification on Exhibit D737, 12 November 2010; *Prosecutor v. Stakic*, Case No IT-97-24-A, Decision on the Defence Motion for Extension of Time, 26 April 2004, para. 7 (“The Proceedings before the Tribunal, both written and oral, are open to the public. The openness of proceedings is important to ensure public integrity and to secure public respect for the judicial process. The only exception to this principle of transparency is when the information is sensitive and its disclosure will lead to the consequences which, as explained above, risk damaging the proceedings themselves. By labelling routine filings without justifiable reason, a party contravenes this important policy of the Tribunal. The Counsel is reprimanded for having improperly designated his motion as confidential”); *Prosecutor v. Karemera et al.*, Case No ICTR-98-44-T, Order to Lift Confidentiality of Prosecution Response to Nzirorera’s Motion for Reconsideration, 23 April 2008; *Prosecutor vs. Renzaho*, Case No ICTR-97-31-A, Decision on Tharcisse Renzaho’s Appellant’s Brief, 16 March 2010.

⁷ See *Prosecutor v. Prlic et al.*, Case No IT-04-74-A, Notice of Filing of Public Redacted Version of the 16th May 2014 Deputy Registrar’s Submission Regarding Slobodan Prajak’s Submission of 24th April 2014’, 28 May 2014; *Alfred Musema Uwimana v The Prosecutor*, Case No ICTR-96-13-R, Decision on Motion Requesting Preliminary Conference with Former Legal Team for the Preparation of A Request for the Assignment of Counsel for the Purpose of A Review, 18 June 2009.

⁸ The International Covenant on Civil and Political Rights, Article 14(1). “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent,

hearing” in the determination of “civil rights and obligations or of any criminal charge”,⁹ has explained that the public nature of proceedings “offers protection against arbitrary decisions and builds confidence by allowing the public to see justice administered.”¹⁰

4. The RSCSL Practice Direction, reflecting these foundational principles, places the burden of the proof on the submitter of a document to justify departing from this principle: “Where a Party, State, organization or person seeks to file all or part of a document on a confidential basis, the party shall [...] indicate on the relevant form the reasons for the confidentiality.”¹¹ Unfortunately, the Registrar does not (unlike her counterparts at the ICTR and ICTY) disclose the cover sheets of documents to allow the other parties to see any justification offered for deviating from the principle of public proceedings. Accordingly, the Defence has no notice as to the Registrar’s justification for filing the entirety of her submissions confidential.

independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children”.

⁹ European Convention of Human Rights, Article 6(1). “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”.

¹⁰ *Preto & Ors v. Italy* (Series A, No 71(1984) 6 EHRR 182), para 21. (“The public character of proceedings before the judicial bodies referred to in Article 6 § 1 (art. 6-1) protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts, superior and inferior, can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Article 6 § 1 (art. 6-1), namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society, within the meaning of the Convention”). See also *Werner vs Austria*, Application Number 138/1996/757/956, 24 November 1997, para. 45; *Nikolova and Vandova v Bulgaria*, Application Number 20688/04, 17 December 2013, rendered final on 17 March 2014, paras 67-77.

¹¹ Residual Special Court for Sierra Leone, Practice Direction on Filing of Documents Before the Residual Special Court for Sierra Leone, Article 4(B).

5. Article 4.1 of the Registrar' own Classification Policy also appears to reflect the right to a public and transparent hearing, declaring that "[t]he work of the RSCSL shall be open and transparent, except insofar as the nature of the records and information concerned is deemed sensitive." Article 4.2 sets out the exceptions. The majority of the Registrar's Rule 33 Submissions do not fit into any of the categories set out there. Virtually no portion of paragraphs 22 through 84 of the Registrar's Rule 33 Submission falls, even arguably, without any of the categories identified in Article 4.2. The Defence also contests whether paragraphs 14 through 21 properly falls within any of those categories, subject to hearing a fuller explanation from the Registrar in accordance with the burden on the submitting party to present such a justification.¹²
6. The Registrar's Rule 33 Submissions should also be made public to the extent that they offer opinions that are important to the public at large, and relevant to other accused persons at the international level.¹³
7. Charles Taylor humbly requests, on the basis of these submissions and any other considerations that the Trial Chamber may deem fit to consider relevant, that the Registrar be ordered to file a public redacted version of her Rule 33 Submissions of 12 November 2014. The Trial Chamber is further requested to order the Registrar to justify with specificity the justification for any redacted portion of those submissions that is not made public.

¹² The Registrar cannot sensibly be deemed a "party" under Rule 4.2 (g) of the Classification Policy.

¹³ See *Prosecutor v Radovan Karadzic*, Case No IT-95-5/18-T, Decision on the Registrar's Request for Public Redacted Version, 3rd December 2014, p2. ("Noting that the Registrar submits in the Request that it would be in the interests of justice to lift the confidentiality of the Decision as it 'contains findings on many principles that are not only important for the public at large, but also for other accused before the Tribunal and the Mechanism for International Criminal Tribunals.'")

8. The Defence further requests that the present filing be re-classified as “public” by the Trial Chamber if considered appropriate.

Word count: 1,893.

Respectfully submitted.

The Hague,



Christopher Gosnell
Counsel for Mr. Charles Ghankay Taylor

John Jones QC
Counsel for Mr. Charles Ghankay Taylor

List of Authorities

(i) **Authorities Cited In the Present Filing in Accordance With Article 7(A) of the RSCSL Practice Direction on Filing of Documents of 24 April 2014 (“Practice Direction”), and Which Are Readily Available on the Internet in Accordance with Article 7(D)(i) of the Practice Direction**

International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16th December 1966 and entry into force 23rd March 1976 (<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>)

European Convention of Human Rights
(http://www.echr.coe.int/Documents/Convention_ENG.pdf)

Residual Special Court for Sierra Leone, Practice Direction on Filing of Documents Before the Residual Special Court for Sierra Leone, Article 4(B). (http://www.rscsl.org/Documents/PRACTICE_DIRECTION_Filing_Documents_RSCSL.pdf)

Pretto & Ors v. Italy (Series A, No 71(1984) 6 EHRR 182), Application Number 7984/77, 8th December 1983
([http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["pretto"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-57561"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{))

Werner vs Austria, Application Number 138/1996/757/956, 24th November 1997
([http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["pretto"\],"languageiso code":\["ENG"\],"kpthesaurus":\["445","385","41"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-58114"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{))

Nikolova and Vandova v Bulgaria, Application Number 20688/04, 17th December 2013, rendered final on 17th March 2014
([http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["pretto"\],"languageiso code":\["ENG"\],"kpthesaurus":\["445","385","41"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-139773"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{))

Prosecutor v Radovan Karadzic, Case No IT-95-5/18-T, Decision on the Registrar’s Request for Public Redacted Version, 3rd December 2014, (<http://icr.icty.org/LegalRef/CMSDocStore/Public/English/Decision/NotIndexable/IT-95-5%2318/FND735R0000441889.pdf>)

Prosecutor v Haradinaj et al., Case No. IT-04-84-A, Decision on Lahi Brahimaj’s Application for Provisional Release, 25 May 2009
(http://icr.icty.org/exe/ZyNET.exe?ZyActionD=ZyDocument&Client=LegalRefE&Index=DecisionE&Query=provisional+release&File=E%3A%5CLegal_Ref%5CBatchStore%5CDecision%5CEnglish%5CExportedText%5C00000012%5C200016R813.txt&QField=

[DocumentId%5E2000310163&UseQField=DocumentId&FuzzyDegree=1&ImageQuality=r85g16%2Fr85g16%2Fx150y150g16%2Fi500&Display=hpfrw&DefSeekPage=f&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results+page&MaximumPages=1&ZyEntry=1&SeekPage=f&User=ANONYMOUS&Password=ANONYMOUS\)](http://icr.icty.org/LegalRef/CMSDocStore/Public/English/Order/NotIndexable/IT-95-5%2318/MS7573R0000312519.pdf)

Prosecutor v Radovan Karadzic, Case No IT-95-5/18-T, Order on Reclassification on Exhibit D737, 12 November 2010 (<http://icr.icty.org/LegalRef/CMSDocStore/Public/English/Order/NotIndexable/IT-95-5%2318/MS7573R0000312519.pdf>)

Prosecutor v Milomir Stakic, Case No IT-97-24-A, Decision on the Defence Motion for Extension of Time, 26th April 2004
http://icr.icty.org/exe/ZyNET.exe?ZyActionD=ZyDocument&Client=LegalRefE&Index=DecisionE&Query=extension&File=E%3A%5CLegal_Ref%5CBatchStore%5CDecision%5CEnglish%5CExportedText%5C0000000U%5C20001663OM.txt&QField=DocumentId%5E2000244206&UseQField=DocumentId&FuzzyDegree=1&ImageQuality=r85g16%2Fr85g16%2Fx150y150g16%2Fi500&Display=hpfrw&DefSeekPage=f&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results+page&MaximumPages=1&ZyEntry=1&SeekPage=f&User=ANONYMOUS&Password=ANONYMOUS

Prosecutor vs Jadranko Prlic et, Case No IT-04-74-AR65.33, Decision on the Prosecutor's Appeal of the Decision on Further Extension of Bruno Stojic's Provisional Release, 16th May 2012, Dissenting Opinion of Judge Guey (http://icr.icty.org/exe/ZyNET.exe?ZyActionD=ZyDocument&Client=LegalRefE&Index=DecisionE&Query=&File=E%3A%5CLegal_Ref%5CBatchStore%5CDecision%5CEnglish%5CExportedText%5C0000001B%5C200017YP2K.txt&QField=DocumentId%5E2000435092&UseQField=DocumentId&FuzzyDegree=1&ImageQuality=r85g16%2Fr85g16%2Fx150y150g16%2Fi500&Display=hpfrw&DefSeekPage=f&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results+page&MaximumPages=1&ZyEntry=1&SeekPage=f&User=ANONYMOUS&Password=ANONYMOUS)

Prosecutor vs Prlic et, Case No IT-04-74-A, Notice of Filing of Public Redacted Version of the 16th May 2014 Deputy Registrar's Submission Regarding Slobodan Prajak's Submission of 24th April 2014, 28th May 2014 (<http://icr.icty.org/LegalRef/CMSDocStore/Public/English/Submission/NotIndexable/IT-04-74-A/MRA23704R0000438770.pdf>)

Prosecutor v Karemera et al, Case No ICTR-98-44-T, Order to Lift Confidentiality of Prosecution Response to Nzirorera's Motion for Reconsideration', 23rd April 2008 (<http://ictrcaselaw.org/docs/20080423-dco-9844-01-en.pdf>)

Prosecutor vs Renzaho, Case No ICTR-97-31-A, Decision on Tharcisse Renzaho's Appellant's Brief, 16th March 2010 (<http://ictrcaselaw.org/docs/20100316-dco-9731-01-en.pdf>)

Alfred Musema Uwimana vs the Prosecutor, Case No ICTR-96-13-R, Decision on Motion Requesting Preliminary Conference with Former Legal Team for the Preparation of A Request for the Assignment of Counsel for the Purpose of A Review', 18th June 2009 (<http://ictrcaselaw.org/docs/20090618-dco-9613-01-en.pdf>)

Prosecution v. Brima, Kamara, Kanu, Case No. SCSL-04-16-T, Decision on the Confidential Joint Defence Application for Withdrawal by Counsel for Brima and Kamara and on the Request for Further Representation by Counsel for Kanu, 20 May 2005 (<http://www.scsldocs.org/documents/view/2695-6786>)

The Prosecutor v. Issan H. Sesay et al, Case No. SCSL-04-15-PT, Decision on the Motion by Morris Kallon for Bail, 23 February 2004 (<http://www.scsldocs.org/documents/view/1239-1239>)

Prosecutor v Issan H Sesay et al, Case No. SCSL2004-15-PT, Confidential Decision on Motion to Prevent Prosecution From Serving Certain Materials to Other Accused Until Admissibility Determined, 15th June 2004, (reclassified as public by order of 02.11.2007, SCSL-04-15-T-865) (<http://www.scsldocs.org/documents/view/1994-1994>)

(ii) Authorities Cited But Not Annexed To the Present Filing In Accordance with Article 7 (C) of the Practice Direction

In the matter of Charles Ghankay Taylor, Case No. SCSL-03-01-ES, Submission of the Registrar Pursuant to Rule 33 Arising From Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda, 12 November 2014.

In the matter of Charles Ghankay Taylor, Case No. SCSL-03-01-ES, Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda, 24 June 2014 (Public with Public and Confidential Annexes).

In the matter of Charles Ghankay Taylor, Case No. SCSL-03-01-ES, Prosecutor's (Submissions In) Response to Prisoner Taylor's Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda, 15 July 2014 (Public with public and confidential annexes).

In the matter of Charles Ghankay Taylor, Case No. SCSL-03-01-ES, Request for Leave to Reply, and Reply, to Prosecution Response to Motion for Termination of Enforcement of Sentence in the United Kingdom and fro Transfer to Rwanda, 15 July 2014 (Public).

In the matter of Charles Ghankay Taylor, Case No. SCSL-03-01-ES, Direction to Registrar Pursuant to Rule 33 Arising from Motion for Termination of Enforcement of Sentence in the United Kingdom and for Transfer to Rwanda, and Direction to Re-Classify Annex JJ to the Motion as Confidential, 20 August 2014.