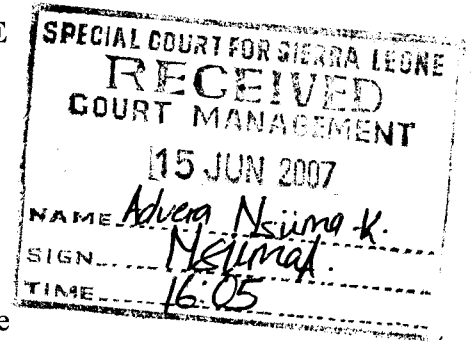


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SCSL-03-01-T  
(10216-10224)

10216

**SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR  
Freetown – Sierra Leone**



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

Acting Registrar: Mr. Herman von Hebel

Date filed: 15 June 2007

**THE PROSECUTOR**

**Against**

**Charles Taylor**

Case No. SCSL-03-01-T

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**PUBLIC**

**PROSECUTION'S RESPONSE TO "DEFENCE MOTION SEEKING SPECIAL MEASURES WITH REGARD TO RESOLUTIONS 1521 AND 1532 OF THE UNITED NATIONS SECURITY COUNCIL"**

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Office of the Prosecutor:  
Ms. Brenda J. Hollis  
Ms. Ann Sutherland

Counsel for the Accused:  
Mr. Karim A.A. Khan

Copy to:  
Office of the Principal Defender

I. INTRODUCTION

1. Mr. Karim Khan, as lead defence counsel for the Accused, filed the “Defence Motion Seeking Special Measures with Regard to Resolutions 1521 and 1532 of the United Nations Security Council [...]” on 4 June 2007 (“**Defence Motion**”).<sup>1</sup> The Prosecution files this response pursuant to Rule 7 of the Rules of Procedure and Evidence (“**Rules**”). The Prosecution submits that the motion should be denied for the reasons set out below.

II. BACKGROUND

2. The Defence Motion concerns the travel ban and assets freeze decreed by the United Nations (“UN”) Security Council concerning Liberia, and the purported difficulties encountered by the Defence as a result.<sup>2</sup>
3. By its terms, the travel ban imposed by UN Security Council Resolution 1521 is directed towards individuals “who constitute a threat to the peace process in Liberia, or who are engaged in activities aimed at undermining peace and stability in Liberia and the subregion”.<sup>3</sup> The asset freeze imposed by UN Security Council Resolution 1532 is intended “to prevent former Liberian President Charles Taylor, his immediate family members...senior officials of the former Taylor regime, or other close allies or associates ... from using misappropriated funds and property to interfere in the restoration of peace and stability in Liberia and the sub-region...”.<sup>4</sup>
4. The Security Council, in Resolution 1688, decided to exempt from the travel ban the travel of any witness whose presence at the Accused’s trial is required.<sup>5</sup> Nevertheless, the Defence seek, pursuant to Rules 8 (C) and 54 of the Rules, that the Trial Chamber:
  - (a) Request a revocation or at least a suspension of the ban and freeze from the Security Council for the duration of the Accused’s trial, because it is

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<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-PT-277, “Defence Motion Seeking Special Measures with Regard to Resolutions 1521 and 1532 of the United Nations Security Council” (Rule 8 and 54 of the Rules of Procedure and Evidence) (“**Motion**”), Trial Chamber, 4 June 2007. Prosecution received electronic copy of same on 5 June 2006 and was served with a hard copy on 6 June 2007. The only documents appended to the Motion were the three affidavits listed under “Other Documents” in the List of Authorities on page 9 of the Motion. The Motion is also unsigned.

<sup>2</sup> Motion, para. 1. UN Security Council Resolution 1521 (travel ban) (S/RES/1521/2003) and UN Security Council Resolution 1532 (assets freeze) (S/RES/1532/2004).

<sup>3</sup> UN Security Council Resolution 1521, para. 4(a).

<sup>4</sup> UN Security Council Resolution 1532, para. 1.

<sup>5</sup> Motion, para. 1. UN Security Council Resolution 1688 (S/RES/1688/2006).

alleged that these measures are making it impossible for the Accused to obtain the fair trial envisioned by Article 17 of the Statute.<sup>6</sup> In particular, the Defence request the Chamber to exercise its power to request the member states of the UN Security Council (together forming the Sanctions Committee under Resolutions 1521 and 1532) to suspend the effect of Resolutions 1521 and 1532;<sup>7</sup> and

- (b) Assist the Defence to obtain, from the member states currently forming the Security Council, in advance of witnesses testifying, the evidence and information upon which the inclusion of a given individual on the travel ban and assets freeze lists are based.<sup>8</sup>
5. The Prosecution notes the allegations contained in paragraph 29 of the Defence Motion, paragraph 5 of the affidavit of Mr. Avi Singh, and paragraph 4 of the affidavit of John T. Richardson (both affidavits being annexes to the Defence Motion). These unsubstantiated, vague allegations are irrelevant to this motion. The Prosecution shall not address the merits of the allegations in this response and challenges the propriety of their inclusion in the Motion.

### III. SUBMISSIONS

#### A. Travel Ban and Asset Freeze

6. According to the Defence Motion, the travel ban and asset freeze are having a “chilling effect” on prospective Defence witnesses in this case.<sup>9</sup> According to the Defence Motion:

- “**In reality**, the mere fact of their testimony on behalf of Mr Taylor will make them qualify to be added by the Committee to the list it is constantly updating”<sup>10</sup>
- “for those already on the list, their presence on behalf of Mr Taylor is **likely** to incite the Committee to maintain their name on the list, whereas those not figuring on the list are **likely** to be added following their testimonies”<sup>11</sup>
- There is a “**fear**” that the travel ban “will be used as a reprisal took in the event that he testifies on behalf of Mr Taylor”<sup>12</sup>

<sup>6</sup> Motion, para. 2.

<sup>7</sup> Motion, para. 26.

<sup>8</sup> Motion, paras 3 and 31-41.

<sup>9</sup> Motion, para. 23.

<sup>10</sup> Motion, para. 19 (emphasis added).

<sup>11</sup> Motion, para. 20 (emphasis added).

<sup>12</sup> Motion, para. 30 (emphasis added).

7. However, the Motion provides no evidence to suggest that there is any objective basis for concluding that this is the case.
8. Paragraph 4(a) of UN Security Council 1521 provides that the travel ban applies to:

“all such individuals, as designated by the Committee, who constitute a threat to the peace process in Liberia, or who are engaged in activities aimed at undermining peace and stability in Liberia and the subregion, including those senior members of former President Charles Taylor's Government and their spouses and members of Liberia's former armed forces who retain links to former President Charles Taylor, those individuals determined by the Committee to be in violation of paragraph 2 above, and any other individuals, or individuals associated with entities, providing financial or military support to armed rebel groups in Liberia or in countries in the region”.

Paragraph 1 of Security Council 1532 provides that the travel ban applies to:

“funds, other financial assets and economic resources owned or controlled directly or indirectly by Charles Taylor, Jewell Howard Taylor, and Charles Taylor, Jr. and/or those other individuals designated by the Committee, including funds, other financial assets and economic resources held by entities owned or controlled, directly or indirectly, by any of them or by any persons acting on their behalf or at their direction, as designated by the Committee”

and that paragraph further makes clear that the Committee, in designating funds for inclusion on the list, must act with the purpose of “prevent[ing] former Liberian President Charles Taylor, his immediate family members...senior officials of the former Taylor regime, or other close allies or associates ... from using misappropriated funds and property to interfere in the restoration of peace and stability in Liberia and the sub-region”.

9. As regards the travel ban, paragraph 4(a) of UN Security Council Resolution 1521 does not state that the mere fact of testifying for the Defence in the *Taylor* case of itself constitutes the retaining of “links to former President Charles Taylor” within the meaning of that paragraph. The UN has indicated its commitment to ensuring that trials before international criminal tribunals are fair (for instance, through the inclusion of Article 17 in the Statute of the

Special Court). It is not reasonable to assume that the UN Security Council or a Committee thereof would regard a person who testifies to the truth in a criminal trial as thereby having, for that reason alone, “links” to the accused, regardless of whether the person testifies as a Prosecution or as a Defence witness.

10. As regards the asset freeze, nothing in UN Security Council Resolution 1532 suggests that the mere fact that a person testifies for the Defence in the *Taylor* case would mean that that person’s assets are “misappropriated funds and property” being used “to interfere in the restoration of peace and stability in Liberia and the sub-region”, for the purposes of that resolution.
11. Mere subjective fears of witnesses, without any established objective basis, have been held to be insufficient to justify the granting of protective measures for witnesses.<sup>13</sup> In the same way, mere subjective fears of witnesses, without any established objective basis cannot be sufficient to justify the order that the Defence Motion now seeks.
12. The affidavits in support of the motion refer only to vague and unsubstantiated fears of the deponents, without providing any objective basis for the fears. For instance, paragraph 3 of the affidavit of Jenkins Dunbar indicates that this deponent's fear is based in part on his belief that the trial of Charles Taylor will not be fair and that Charles Taylor’s guilt has already been pre-determined. There is clearly no objective basis for this fear. It is submitted that there is no objective basis for fears by Defence witnesses that they will, merely because they testify for the Defence in this case, be included in the travel ban or asset freeze, or will fail to be removed from the travel ban or asset freeze. In particular, there is no objective basis for the suggestion that the Sanctions Committee will seek to “retaliate against” Defence witnesses by placing them on the travel ban or assets freeze merely because they testify.
13. The only concrete basis for the fears cited in the motion appears to be the belief that a person who testifies for the Taylor defence will be considered to be a person who retains “links” to Taylor, within the meaning of paragraph

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<sup>13</sup> See for example, *Prosecutor v. Rugambarara*, ICTR-00-59-I, “Decision on the Prosecutor’s Motion for Protective Measures for Witnesses”, Trial Chamber, 28 October 2005, especially paras 7 and 9; *Prosecutor v. Norman et al.*, SCSL-04-14-274, “Ruling on Motion for Modification of Protective Measures for Witnesses”, Trial Chamber, 18 November 2004, para. 38.

4(a) of UN Security Council Resolution 1521.<sup>14</sup> However, for the reasons given above, that fear is not objectively justified.

14. The lack of any objective basis for these fears is of itself sufficient reason for rejecting the Defence Motion. The Defence has in any event not demonstrated that it has made any effort to obtain a change in the status of persons listed (i.e. a lift of the ban or waiver), either through communication directly with the Sanctions Committee or via the de-listing procedure set out in the Annex to UN Security Council Resolution 1730, adopted by the Security Council on 19 December 2006.<sup>15</sup>
15. The Defence has therefore not shown why the requested relief is necessary. The travel ban does not deny the Accused the right to call witnesses on his behalf. As noted in paragraph 3 above, travel to testify in this trial is exempted from the travel ban. For the reasons given above, any subjective fears that potential Defence witnesses may have that they will be placed on the travel ban or asset freeze list if they testify lack any objective foundation. Moreover, under Rule 54 of the Rules, a party may request a summons or subpoena from the Trial Chamber to compel the attendance of a witness. Therefore, the Prosecution submits that the existence of the travel ban and asset freeze is not an impediment to the fair trial of the Accused.
16. If, at the point in the trial when the Defence elects to lead evidence, a witness on the travel ban decides not to travel to The Hague to testify despite this exemption, that witness's testimony can be provided via video-link or by deposition, both methods being allowed by the Rules. Even if the Trial Chamber did consider that there was any valid reason for the concerns of Defence witnesses, these concerns could be met by seeking from the Committee referred to in the two Security Council Resolutions a confirmation (1) that the Committee will not regard a person as retaining links with Charles Taylor, within the meaning of paragraph 4(a) of Security Council Resolution 1521, by reason alone of the fact that the person testifies for the Defence in the *Taylor* trial; and (2) that the mere fact that a person has testified for the Defence in the *Taylor* trial will not of itself be taken into account by the Committee as a factor in determining whether a person should

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<sup>14</sup> See affidavit of Avi Singh, para. 7.

<sup>15</sup> UN Security Council Resolution 1730 (S/RES/1730/2006).

be placed on or removed from the travel ban or asset freeze list. There is no basis for providing any broader relief to the Defence, assuming that the Trial Chamber considers that there is any need to grant any relief at all.

17. The Defence Motion and supporting affidavits make certain comments about the fairness of the procedures of the Committee and about reasons why particular individuals should not be on the travel ban list.<sup>16</sup> These are matters that cannot be litigated before the Special Court.

B. Disclosure of Information

18. The Defence assert in paragraph 33 of the Application that “the information supporting the addition of individuals to the lists ... is relevant to [the Accused’s] case as the information that led to the initial establishment of the travel ban in 2003 is information relied upon by the Prosecutor to support the charges against [the Accused].”<sup>17</sup> The Defence do not specify what particular information was relied upon by the Prosecution to support the charges. In any event, this is irrelevant to the case at this point, as the Defence have been provided with a copy of the material supporting the original indictment. If the Defence know what information was used to establish the travel ban, there is no basis for the second part of the request.<sup>18</sup>
19. The request that the Trial Chamber assist the Defence in obtaining the information upon which the individual travel bans are based is without merit. Access to this information would not convince witnesses to travel to The Hague to testify; its only usefulness would be to put the persons on the travel ban on notice of the information the member States have against them for whatever uses these individuals would make of this information. It is not the mandate of the Special Court of Sierra Leone to provide such assistance to these individuals.

IV. CONCLUSION

20. The Motion should be dismissed for the reasons set out above.

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<sup>16</sup> See Dunbar affidavit, para. 4 and Richardson affidavit, para. 2.

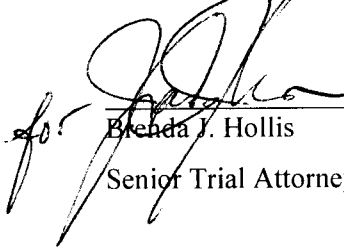
<sup>17</sup> Motion, para. 33.

<sup>18</sup> See para. 4(b).

Filed in Freetown,

15 June 2007

For the Prosecution,

  
Brenda J. Hollis  
Senior Trial Attorney



## List of Authorities

### SCSL

#### ***Prosecutor v. Taylor – SCSL-03-01***

*Prosecutor v. Taylor*, SCSL-03-01-PT-277, Defence Motion Seeking Special Measures with Regard to Resolutions 1521 and 1532 of the United Nations Security Council (Rule 8 and 54 of the Rules of Procedure and Evidence), filed on 4 June 2007.

#### ***Prosecutor v. Norman, et al. – SCSL-04-14***

*Prosecutor v. Norman et al.*, SCSL-04-14-274, “Ruling on Motion for Modification of Protective Measures for Witnesses”, Trial Chamber, 18 November 2004.

### ICTR

*Prosecutor v. Rugambarara*, ICTR-00-59-I, “Decision on the Prosecutor’s Motion for Protective Measures for Witnesses”, Trial Chamber, 28 October 2005.

<http://69.94.11.53/ENGLISH/cases/Rugambarara/decisions/281005.htm>

### **United Nations Security Council Resolutions**

Resolution 1521 adopted by the Security Council on 22 December 2003 (S/RES/1521/2003).

Resolution 1532 adopted by the Security Council on 12 March 2004 (S/RES/1732/2004).

Resolution 1688 adopted by the Security Council on 19 December 2006 (S/RES/1688/2006).

Resolution 1730 adopted by the Security Council on 19 December 2006 (S/RES/1730/2006).