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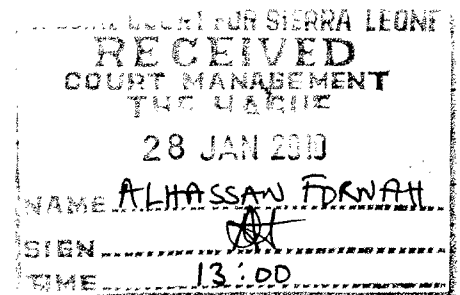
**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR**

TRIAL CHAMBER II

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

Acting Registrar: Ms. Binta Mansaray

Date filed: 28 January 2010



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

**PROSECUTION REPLY TO DEFENCE RESPONSE TO "URGENT APPLICATION FOR LEAVE TO
APPEAL ORAL DECISIONS OF 18 JANUARY 2010 ON USE OF DOCUMENTS IN CROSS-
EXAMINATION"**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Ms. Nina Jørgensen
Ms. Kathryn Howarth

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Mr. Courtenay Griffiths, Q.C.
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Mr. Andrew Cayley
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Mr. Silas Chekera
Mr. James Supuwood

I. INTRODUCTION

1. The Prosecution files this Reply to the “Defence Response to “Urgent Application for Leave to Appeal Oral Decisions of 18 January 2010 on Use of Documents in Cross-Examination” (“**Response**”).¹
2. The Prosecution relies on the arguments presented in its “Urgent Application for Leave to Appeal Oral Decisions of 18 January 2010 on Use of Documents in Cross-Examination”, (“**Application**”) ² and to the extent they are applicable those arguments contained in the “Prosecution Reply to Defence Response to Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-Examination”³ in addition to the following points in reply to the Defence Response.

II. ARGUMENT

Exceptional Circumstances

Issue of fundamental legal importance

3. Contrary to what is asserted by the Defence at paragraph 10 of the Response, the jurisprudence cited by the Prosecution in the various filings in relation to this issue, including *Prlic*, applies to all witnesses, including the Accused. There is no distinction made in the test set out in *Prlic* between the Accused and other witnesses.
4. The comments made by the Defence at paragraph 13 of the Response are disingenuous. As set out in submissions in previous filings,⁴ and orally in court,⁵ the Prosecution has an obligation to present the evidence on which it intends to rely to prove guilt during its case-on-chief, and is also obligated to select the most relevant

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-891, “Public Defence Response to “Urgent Application for Leave to Appeal Oral Decisions of 18 January 2010 on use of Documents in Cross-examination”, 27 January 2010.

² *Prosecutor v. Taylor*, SCSL-03-01-T-882, “Public Urgent Application for Leave to Appeal Oral Decisions of 18 January 2010 on use of Documents in Cross-examination”, 21 January 2010.

³ *Prosecutor v. Taylor*, SCSL-03-01-T-888, “Public Prosecution Reply to Defence Response to Application for leave to appeal Oral Decisions of 14 January 2010 on the Use of Documents in Cross in Cross-examination”, 17 November 2009.

⁴ *Prosecutor v. Taylor*, SCSL-03-01-T-860, “Public Prosecution Motion in Relation to the Applicable Legal Standards Governing the Use and Admission of Documents by the Prosecution During Cross-examination”, 25 January 2010, paras. 25 – 28.

⁵ *Prosecutor v. Taylor*, Trial Transcript 27 January 2010, pp. 34243 – 34244, where Prosecution Counsel points out that “in the Prosecution case we’re under an obligation to put on an efficient case, to put on the evidence that we need to prove responsibility and not to anticipate every possible defence and put on every single piece of evidence that could be available to us”.

and probative evidence so that the trial can proceed expeditiously and be completed in a reasonable amount of time. The Prosecution's obligation is to use impeachment evidence once it has matters on which to impeach, i.e., after Defence witnesses have testified on direct examination. The Prosecution should not be expected to anticipate and meet potential Defence evidence during the Prosecution case in chief. Nor would such an approach constitute the exercise of due diligence in the presentation of its case in chief, if such anticipatory impeachment would have been allowed. As explained in the Application, the three documents relate to assertions made by the Accused during his direct testimony, which the Prosecution has a right to challenge and test during cross examination.⁶

Irreparable Prejudice

5. Notably, in their previous Response, the Defence failed to address the Prosecution arguments in relation to "irreparable prejudice". In this Response, the Defence proffers a single argument in response – that the Prosecution cannot suffer from irreparable prejudice because it has the option to introduce "fresh evidence" by applying to re-open its own case.⁷ This argument is without merit. First and foremost, the argument is based upon speculation as to what future relief might be granted. Secondly, any future application the Prosecution might make to re-open its case would relate to evidence demonstrative of the "guilt" of the Accused. It would not and could not cover the significant bulk of material that the Prosecution has sought to use for the purposes of impeachment. Thus even if a future application by the Prosecution to re-open its case was successful, this would not remedy the fact that the Prosecution have been unable to put impeachment material to the Accused during cross-examination.

⁶ Application, paras. 14, 15, 19, especially 20, and 21.

⁷ Response, para. 15.

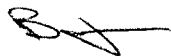
III. CONCLUSION

6. For the reasons given in its Application for Leave to Appeal and in this Reply, the Prosecution seeks leave to appeal the three oral decisions rendered by the Trial Chamber on 18 January 2010.

Filed in The Hague,

28 January 2010,

For the Prosecution,



Brenda J. Hollis
Principal Trial Attorney

INDEX OF AUTHORITIES

SCSL

Prosecutor v. Taylor, SCSL-03-01-T-888, “Public Prosecution Reply to Defence Response to Application for leave to appeal Oral Decisions of 14 January 2010 on the Use of Documents in Cross in Cross-examination”, 17 November 2009.

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Prosecutor v. Taylor, Trial Transcript 27 January 2010, pp. 34243 – 34244.