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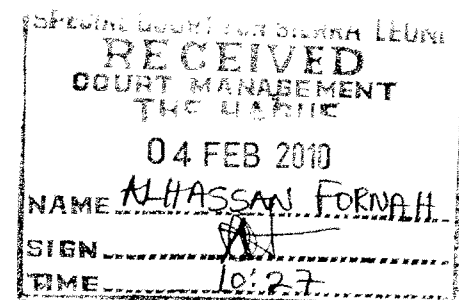
**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR**

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: 04 February 2010



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

**PROSECUTION REPLY TO DEFENCE RESPONSE TO APPLICATION FOR LEAVE TO APPEAL ORAL
DECISIONS OF 25 AND 26 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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I. INTRODUCTION

1. In accordance with the Trial Chamber's Order for Expedited Filing dated 29 January 2010,¹ the Prosecution files this Reply to the "Defence Response to Urgent Application for Leave to Appeal Oral Decisions of 25 and 26 January 2010 on Use of Documents in Cross-Examination" filed on 3 February 2010 ("**Response**").²
2. The Prosecution relies on the arguments presented in its previous filings on this matter³ in addition to the following points in reply to the Defence Response.

II. ARGUMENT

3. In paragraph 6 of the Response, the Defence states that to the extent that the Prosecution relies upon its previous legal arguments, the Defence also relies on the legal arguments in its responses of the 22 and 27 January.⁴ One of these arguments was that "it is not the *application* of the test which the Prosecution impugns, but the test itself".⁵ However, it must be understood that at the time the test was set out in the Trial Chamber's Decision of 30 November 2010 ("**Documents Decision**"),⁶ the Prosecution was not in a position to know that it would eventually suffer prejudice

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-895, "Order for Expedited Filing", 29 January 2010.

² *Prosecutor v. Taylor*, SCSL-03-01-T-899, "Defence Response to 'Urgent Application for Leave to Appeal Oral Decisions of 25 and 26 January 2010 on Use of Documents in Cross-Examination', 3 February 2010 ("**Response**").

³ *Prosecutor v. Taylor*, SCSL-03-1-T-875, "Public with Annex A and Confidential Annex B, Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-Examination", 18 January 2010; *Prosecutor v. Taylor*, SCSL-03-1-T-882, "Urgent Application for Leave to Appeal Oral Decisions of 18 January 2010 on Use of Documents in Cross-Examination", 21 January 2010; *Prosecutor v. Taylor*, SCSL-03-1-T-889, "Urgent Application for Leave to Appeal Oral Decisions of 21 January 2010 on Use of Documents in Cross-Examination", 25 January 2010; *Prosecutor v. Taylor*, SCSL-03-1-T-892, "Urgent Application for Leave to Appeal Oral Decisions of 25 and 26 January 2010 on Use of Documents in Cross-Examination", 28 January 2010; *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", 25 January 2010; *Prosecutor v. Taylor*, SCSL-03-01-T-893, "Public Prosecution Reply to Defence Response to Application for Leave to Appeal Oral Decisions of 18 January 2010 on the Use of Documents in Cross in Cross-examination", 28 January 2010.

⁴ *Prosecutor v. Taylor*, SCSL-03-01-T-883, "Defence Response to the Public with Annex A and Confidential Annex B Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-Examination", 22 January 2010; *Prosecutor v. Taylor*, SCSL-03-01-T-891, "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.

⁵ *Prosecutor v. Taylor*, SCSL-03-01-T-891, "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, para. 9 (emphasis in original).

⁶ *Prosecutor v. Taylor*, SCSL-03-1-T-865, "Decision on Prosecution Motion in Relation to the Applicable Legal Standards governing the Use and Admission of Documents by the Prosecution during Cross-Examination", 30 November 2009 ("**Documents Decision**").

from its application. On its face, the use test did not incorporate a standard that was unprecedented in its strictness. It was reasonably considered by the Prosecution, pursuant to the language of point (i) of the Trial Chamber's direction contained in the Documents Decision,⁷ that the use of a document for impeachment purposes only would not be subject to the fulfillment of any test. It was only through the application of the use test and the repeated application of an unduly high standard that exceptional circumstances arose, warranting leave to appeal. Consequently, it was at that time that the Prosecution began to file its applications for leave to appeal.

4. Furthermore, the Prosecution has continued to suffer irreparable prejudice as a result of the application of an unduly high standard for the use of documents throughout the cross-examination of the Accused, particularly with respect to documents intended only for the purpose of impeachment, and where other means to test the credibility of the Accused may be less effective or unavailable.

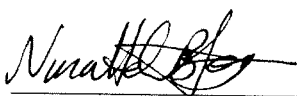
III. CONCLUSION

5. For the reasons given in its previous filings and in this Reply, the Prosecution seeks leave to appeal the oral decisions set out in its motion of 28 January 2010.

Filed in The Hague,

4 February 2010,

For the Prosecution,



PP.

Brenda J. Hollis
Principal Trial Attorney

⁷ "The Prosecution may use documents containing fresh evidence in order to impeach the credibility of the Accused. The admission of such documents into evidence will be determined on a case-by-case basis."

INDEX OF AUTHORITIES**SCSL****Prosecutor v. Taylor**

Prosecutor v. Taylor, SCSL-03-01-T-895, “Order for Expedited Filing”, 29 January 2010.

Prosecutor v. Taylor, SCSL-03-01-T-899, “Defence Response to ‘Urgent Application for Leave to Appeal Oral Decisions of 25 and 26 January 2010 on Use of Documents in Cross-Examination, 3 February 2010.

Prosecutor v. Taylor, SCSL-03-1-T-875, “Public with Annex A and Confidential Annex B, Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-Examination”, 18 January 2010.

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