

## THE SPECIAL COURT FOR SIERRA LEONE

#### Trial Chamber II

Before:

Justice Teresa Doherty, Presiding

Justice Richard Lussick Justice Julia Sebutinde

Justice El Hadji Malick Sow, Alternate

Registrar:

Ms. Binta Mansaray

Date:

16 December 2011

Case No.:

SCSL-03-01-T

SPECIAL COURT FOR SIERRA LEUNF

16 DEC 2011 NAMEZAINAS FORANAH

THE PROSECUTOR

CHARLES GHANKAY TAYLOR

# **PUBLIC**

DEFENCE REPLY TO PROSECUTION RESPONSE TO DEFENCE MOTION TO RE-OPEN ITS CASE IN ORDER TO SEEK ADMISSION OF DOCUMENTS

Office of the Prosecutor:

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Mr. Terry Munyard Mr. Morris Anyah

Ms. Ula Nathai-Lutchman Mr. Nathan Quick

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Ms. Logan Hambrick

Mr. James Pace

#### I. INTRODUCTION

1. The Defence files this reply to the Prosecution Response to Defence Motion to Re-Open its Case in order to Seek Admission of Two Documents ("Response")<sup>1</sup> in accordance with the Trial Chamber's order for expedited filing.<sup>2</sup> The Defence reaffirms the relevance and probative value of the Cables attached to its Motion<sup>3</sup> and requests that the Trial Chamber allow the Defence to re-open its case and have the documents admitted under Rule 92bis.

#### II. SUBMISSIONS

- 2. The Prosecution in its Response makes incongruous arguments. The Prosecution claims that the Cables are irrelevant to the Defence case but also that they are cumulative of evidence already on record. Additionally, the Prosecution claims that the Cables have a de minimus probative value, but vehemently opposes their admission to such a degree that one wonders what the Prosecution fears should the Cables be admitted.
- 3. The Prosecution suggests that the Defence has not met the standard to re-open its case because it has not acted diligently in obtaining the documents. In fact, the Defence has diligently assessed the probative value of over 50 code cables which bear some relation to the case and which were released through WikiLeaks during the summer of 2011. This process of review and internal consultation has led the Defence to seek admission of a minimal amount of material -- these two Cables. The Defence has sought this admission in a timely manner, ie, before the Trial Chamber has issued a final judgement.

<sup>&</sup>lt;sup>1</sup> Prosecutor v. Taylor, SCSL-03-01-T-1256, Prosecution Response to Defence Motion to Re-Open its Case in order to Seek Admission of Two Documents, 15 December 2011.

<sup>&</sup>lt;sup>2</sup> Prosecutor v. Taylor, SCSL-03-01-T-1255, Order for Expedited Filing, 9 December 2011.

<sup>&</sup>lt;sup>3</sup> Prosecutor v. Taylor, SCSL-03-01-T-1254, Defence Motion to Re-Open its Case in order to Seek Admission of Two Documents, 9 December 2011.

<sup>&</sup>lt;sup>4</sup> Response, para. 5.

- 4. The Prosecution objects to the admission of the Cables on the basis that they have no probative value.<sup>5</sup> If these Cables can be said to have no probative value, then the bulk of the Prosecution's cross-examination of Mr. Taylor regarding events in Liberia should be said to have no probative value.
- 5. In any event, the test for re-opening a party's case is one of balancing the probative value of the evidence and the need to ensure a fair trial. The Prosecution have not shown how the re-opening of the Defence case for this limited purpose would detract from the fairness of the proceedings. This is especially true given that the purpose of the balancing test is primarily to protect the rights of the accused. In its Motion, the Defence set out in detail the ways in which the Cables support the Defence theory and confirm aspects of the Defence case, thus demonstrating sufficient probative value. The relevance of the Cables must be considered within the context of evidence already on record, not simply in isolation, as the Prosecution has attempted to do.6
- The Prosecution suggests that the Cables do not show that Nigeria was under pressure from the United States Government to assist them with Taylor. But the last line of the August 2003 Cable is perhaps most telling. When Obasanjo was asked if he had any message for Washington, he replied, "just that we are doing what we are supposed to be doing (vis a vis Liberia)".7 It is apparent from the message that Obasanjo wanted to be viewed by the USG as cooperative and in line with their policy position on Mr. Taylor.
- 7. The Prosecution cites the Karadzic case for the principle that agreements providing immunity from prosecution are invalid under international law.8 While this may be the case, the Prosecution fails to acknowledge that the same Chamber further noted that the

<sup>&</sup>lt;sup>5</sup> Response, paras 6-15.

<sup>&</sup>lt;sup>6</sup> See, for example, Mr. Taylor's testimony during re-examination regarding the role Obasanjo played as the United States's "messenger", which is corroborated by the content of the June 2003 Cable: SCSL-03-01-T, 15 February 2010, p. 35017-19.

<sup>&</sup>lt;sup>7</sup> Motion, Annex B.

<sup>&</sup>lt;sup>8</sup> Response, paras 10-11.

existence of immunity agreements may serve as a mitigating factor during sentencing.<sup>9</sup> As such, the evidence has significant probative value.

- 8. The Prosecution asserts that the Cables do not provide any *prima facie* evidence of any interference with the impartiality and independence of the Prosecution vis-à-vis the United States Government. Yet the Defence recalls that counsel for the Prosecution routinely cross-examined Mr. Taylor about his being forced to step down as President, by his colleagues in the sub-region, without providing any evidentiary basis for such allegations. The Defence submits that now that the June 2003 Cable had been released, it is clear that Obasanjo and Nigeria did intend to cooperate with the United States in a "concerted push" to force Mr. Taylor from office. Given the Prosecution's persistent line of questioning in this regard, it seems likely that the Prosecution had access to such confidential material from the USG all along but failed to disclose its source as such.
- 9. The Prosecution further objects to the admission of the June 2003 Cable on the basis that it contains opinion evidence. However, assuming *arguendo*, that the Cable does contain opinion evidence, the Defence is not seeking admission of the evidence for the truth of the alleged opinion. Rather, the Defence is seeking admission of the Cable to provide greater sub-regional and political context to the circumstances under which Mr. Taylor left Liberia.

### III. CONCLUSION

10. The Defence reiterates its request to re-open its case for the limited purpose of admitting the June 2003 and August 2003 Cables, as they have probative value and meet the criteria for admission under Rule 92bis.

<sup>12</sup> Response, paras 19-20.

<sup>&</sup>lt;sup>9</sup> Prosecutor v. Karadzic, IT-95-5/18-PT, Decision on the Accused's Holbrooke Agreement Motion, 8 July 2009, paras 4 and 90.

<sup>&</sup>lt;sup>10</sup> For example, SCSL-03-01-T, 10 January 2010, p. 33225-6.

Motion, Annex A, CMS p. 37598 ("With Taylor weak and on the ropes, a concerted international and subregional push, led by the United States and Nigeria, respectively, might be the right move to close the book on Taylor's depraved leadership, opening Liberia to a more hopeful future").

Respectfully Submitted,

Courtenay Griffiths, Q.C.

Lead Counsel for Charles G. Taylor Dated this 16th Day of December 2011

The Hague, The Netherlands