

025)

SCSL-12-02-PT
(307-340)

307



SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Teresa Doherty, Single Judge
Registrar: Ms. Binta Mansaray
Date filed: 04 December 2012

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT MANAGEMENT	
THE HAGUE	
21 DEC 2012	
NAME	ZAINAB T. FOFANAH
SIGN	<i>Zainab</i>
TIME	16:00

RECLASSIFIED AS PUBLIC

INDEPENDENT COUNSEL **Against** **Prince Taylor**

Case No. SCSL-12-02-PT

CONFIDENTIAL

INDEPENDENT COUNSEL'S SECOND MOTION FOR SUBPOENAS AD TESTIFICANDUM

Independent Counsel
William L. Gardner

Counsel for Prince Taylor:
Rodney Dixon

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT MANAGEMENT	
THE HAGUE	
04 DEC 2012	
NAME	ZAINAB T. FOFANAH
SIGN	<i>Zainab</i>
TIME	09:00

Independent Counsel's Second Motion for Subpoenas Ad Testificandum

I. INTRODUCTION

1. The Independent Counsel hereby requests that the Trial Chamber, under Rule 54 of the Rules of Procedure and Evidence (“SCSL Rules”), issue subpoenas ad testificandum (“Subpoenas”) to Courtenay Griffiths and Logan Hambrick requiring their appearance before this Court and to order the Registrar to take all necessary measures to have the Subpoenas served and executed in accordance with Rule 8(C) of the SCSL Rules. As explained below, the Subpoenas are warranted because Courtenay Griffiths and Logan Hambrick’s testimony will provide highly relevant evidence regarding Defendant Prince Taylor’s (“Defendant”) unlawful efforts to contact former Charles Taylor prosecution witnesses and influence Eric Senessie to assert an untruthful defense as to those witnesses. As further explained below, Courtenay Griffiths and Logan Hambrick’s testimony is sought in the interests of justice and cannot be obtained without judicial intervention. In the alternative, the Independent Counsel requests that the Trial Chamber, under Rule 71 of the SCSL Rules, issue an order for the depositions of both Courtenay Griffiths and Logan Hambrick.

II. PROCEDURAL HISTORY

2. The relevant procedural history is as follows. On 04 October 2012, this Court issued its Order in Lieu of Indictment charging the Defendant with nine counts of contempt of court.¹ Counts 1 through 8 of the Order in Lieu of Indictment allege that the Defendant had improper contact with five distinct witnesses through instructions to Eric Senessie. Count 9 of the Order in Lieu of Indictment alleges that the Defendant attempted to influence Eric Senessie by instructing and otherwise persuading him to give false information to the Independent Counsel.²

¹ *Independent Counsel v. Taylor*, SCSL Trial Chamber, Case No. SCSL-12-02-PT, Order in Lieu of Indictment (04 October 2012).

² *Id.* at p. 3.

III. BACKGROUND

3. From 2004 until December 2010, the Defendant worked as a defence investigator in two major cases before the Special Court for Sierra Leone (“SCSL”). He spent the latter portion of his SCSL career as an investigator for the Charles Taylor defence team (“Defence Team”).³
4. From July 2007 until April 2012, Courtenay Griffiths served as lead counsel for the Defence Team. From October 2006 until February 2012, Logan Hambrick served as a legal assistant for the Defence Team. Upon information and belief, both Courtenay Griffiths and Logan Hambrick had numerous interactions and discussions with the Defendant during their tenures at the SCSL.
5. On 17 December 2010, Courtenay Griffiths and Logan Hambrick, among other members of the Defence Team, filed a motion to recall four prosecution witnesses and hear evidence from Saleem Vahidy, the Chief of the SCSL’s Witness and Victims Unit.⁴ The motion alleged, *inter alia*, that the prosecution used “relocation (absent any genuine security risk) as an inducement for witness cooperation and/or testimony[.]”⁵ A declaration by the Defendant that was appended to the motion stated that the Defendant had “sources” who could testify that the prosecution had promised relocation to certain witnesses as an inducement to testify, and not because of genuine security threats.⁶ The SCSL Trial Chamber summarily denied the Defence Team’s motion on 24 January 2011.⁷

³ See *Independent Counsel v. Taylor*, SCSL Trial Chamber, Case No. SCSL-12-02-PT, Defence Motion on Behalf of Mr. Prince Taylor for Bail Pursuant to Rule 65, para. 8(d) (25 Oct. 2012).

⁴ *Prosecutor v. Taylor*, SCSL Trial Chamber, Case No. SCSL-2003-01-T, Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses (17 Dec. 2010). The names of both Courtenay Griffiths and Logan Hambrick appear on the cover page of that motion.

⁵ *Id.* at para. 2

⁶ *Id.*, Annex J. The Independent Counsel is aware of the high volume by which this mantra was repeated throughout the Charles Taylor trial.

⁷ *Prosecutor v. Taylor*, SCSL Trial Chamber, Case No. SCSL-2003-01-T, Decision on Public with Annexes A-H and Confidential Annexes I-J Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses (24 Jan. 2011).

6. In the days immediately following the denial of the Defence Team's motion, five prosecution witnesses from the Charles Taylor trial reported that they had been approached by Eric Senessie. According to those witnesses, Eric Senessie stated that the Defence Team wanted each of the witnesses to return to The Hague to recant their trial testimony, and that they would be rewarded if they did.⁸
7. Initially, Eric Senessie claimed that all five of the prosecution witnesses collectively woke up one day (several years after they each had testified), went to his house, and asked him to call the Defendant on their behalves. This perjurious defense was maintained by both the Defendant and Eric Senessie throughout the latter's trial. To the surprise of no one, the Court rejected it. The yarn of the lie began to unravel at the sentencing hearing on 04 July 2012 when Eric Senessie confessed his guilt and revealed that it was the Defendant who instructed him to contact the prosecution witnesses.⁹
8. According to Eric Senessie, the Defendant first approached him in January 2011 about contacting each of the five prosecution witnesses.¹⁰ In the weeks that followed, Eric Senessie approached each of the witnesses identified by the Defendant.¹¹ Within days of each encounter, the witnesses independently reported Eric Senessie's conduct to the SCSL.¹²

IV. APPLICABLE LAW

1. Standard for Obtaining a Subpoena Ad Testificandum

9. Rule 54 of the SCSL Rules provides that "[a]t the request of either party or of its own motion, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas,

⁸ See generally *Prosecutor v. Senessie*, SCSL Trial Chamber, Case No. SCSL-2011-01-T, Judgement in Contempt Proceedings (16 Aug. 2012).

⁹ See *Prosecutor v. Senessie*, SCSL Trial Chamber, Case No. SCSL-2011-01-T, Sentencing Hearing Transcript, pp. 3-7 (04 July 2012).

¹⁰ *Prosecutor v. Senessie*, SCSL Trial Chamber, Case No. SCSL-2011-01-REV, Defence Motion for Review, Confidential Annex A (Affidavit), at para. 4 (10 Aug. 2012).

¹¹ *Id.* at paras. 8-14.

¹² See generally *Prosecutor v. Senessie*, SCSL Trial Chamber, Case No. SCSL-2011-01-T, Judgement in Contempt Proceedings (16 Aug. 2012).

warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.”

10. According to the jurisprudence of the Special Court, the party applying under Rule 54 of the SCSL Rules for a subpoena compelling the appearance of a person as a witness must “show that the requested measure is necessary (the ‘necessity’ requirement) and that it is for the purposes of an investigation or for the preparation or conduct of the trial (the ‘purpose’ requirement).”¹³
11. In order to satisfy the necessity requirement, the subpoena applicant must show “that the subpoena is likely to elicit evidence material to an issue in the case which cannot be obtained without judicial intervention.”¹⁴ The subpoena applicant must also demonstrate that the information sought from the witness is not obtainable through other means.¹⁵
12. In order to meet the “purpose” requirement, the subpoena applicant must show “a reasonable basis for the belief that the information to be provided by the prospective witness is likely to be of material assistance to the applicant’s case, or that there is at least a good chance that it would be of material assistance to the applicant’s case, in relation to clearly identified issues relevant to the forthcoming trial.”¹⁶ As explained by the SCSL Appeals Chamber in *Prosecutor v. Norman*:

Whether the information will be of assistance to the applicant’s case will depend largely upon the position held by the prospective

¹³ *Prosecutor v. Norman*, SCSL Trial Chamber, Case No. SCSL-04-14-T-617, Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena Ad Testificandum to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone, para. 28 (13 June 2006); accord *Prosecutor v. Sesay*, SCSL Trial Chamber, Case No. SCSL-04-15-T, Written Reasoned Decision on Motion for Issuance of a Subpoena to H.E. Dr. Ahmad Tejan Kabbah, Former President of the Republic of Sierra Leone, para. 16 (30 June 2008).

¹⁴ *Prosecutor v. Norman*, SCSL Appeals Chamber, SCSL-04-14-T-617, Decision on Interlocutory Appeals Against Trial Chamber Decision refusing to Subpoena The President of Sierra Leone, para. 9 (11 Sept. 2006) (citation omitted).

¹⁵ See *Prosecutor v. Norman*, SCSL Trial Chamber, Case No. SCSL-04-14-T-617, Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena Ad Testificandum to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone, para. 30 (13 June 2006).

¹⁶ *Prosecutor v. Sesay*, SCSL Trial Chamber, Case No. SCSL-04-15-T, Written Reasoned Decision on Motion for Issuance of a Subpoena to H.E. Dr. Ahmad Tejan Kabbah, Former President of the Republic of Sierra Leone, para. 19 (30 June 2008).

witness in relation to the events in question, any relationship he may have or have had with the accused which is relevant to the charges, the opportunity which he may reasonably be thought to have had to observe those events or to learn of those events and any statements made by him to the applicant or to others in relation to those events.¹⁷

13. According to the ICTY Appeals Chamber, when considering whether to issue a subpoena, the court must also take into account “the interest of justice in having all relevant evidence put before the Trial Chamber for a proper assessment of the culpability of the individual on trial.”¹⁸
14. Rule 8(C) of the SCSL Rules provides: “The Special Court may invite third party States not party to the Agreement to provide assistance on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.” One such “other appropriate basis” is the United Nations Security Council Resolution 1688 adopted by the UN Security Council on 16 June 2006.¹⁹ Resolution 1688 provides, in relevant part:

The Security Council . . . Acting under Chapter VII of the Charter of the United Nations . . . Requests all States to cooperate to this end, in particular to ensure the appearance of former President Taylor in the Netherlands for the purposes of his trial by the Special Court, and encourages all States as well to ensure that any evidence or witnesses are, upon the request of the Special Court, promptly made available to the Special Court for this purpose[.]²⁰

The SCSL Trial Chamber relied on Resolution 1688 as a Rule 8(C) “other appropriate basis” in its order granting the Prosecutor’s motion for a subpoena ad testificandum in *Prosecutor v. Taylor*.²¹

¹⁷ *Prosecutor v. Norman*, SCSL Appeals Chamber, SCSL-04-14-T-617, Decision on Interlocutory Appeals Against Trial Chamber Decision refusing to Subpoena The President of Sierra Leone, para. 21 (11 Sept. 2006) (citation omitted).

¹⁸ *Prosecutor v. Brdanin*, ICTY Appeals Chamber, Case No. IT99-36-AR73.9, Decision on Interlocutory Appeal, para. 46 (11 Dec. 2002).

¹⁹ United Nations Security Council Resolution 1688 (16 June 2006).

²⁰ *Id.* at 1-2 (emphasis in original).

²¹ *Prosecutor v. Taylor*, SCSL Trial Chamber, Case No. SCS L-03 -1-T, Decision on Prosecution Motion for the Issuance of a Subpoena to Naomi Campbell, p. 4 (30 June 2010).

2. **Standard for Obtaining a Court-Ordered Deposition**

15. Rule 71(A) of the SCSL Rules provides: “At the request of either party, a Trial Chamber may, in exceptional circumstances and in the interests of justice, order that a deposition be taken for use at trial and appoint for that purpose a Legal Officer.”
16. The Independent Counsel is unaware of any Special Court for Sierra Leone jurisprudence interpreting Rule 71(A) of the SCSL Rules. Other international criminal tribunals, however, have issued deposition orders under parallel rules, such as Rule 71 of the Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia (“ICTY Rules”), which provides, in relevant part: “Where it is in the interests of justice to do so, a Trial Chamber may order . . . that a deposition be taken for use at trial, whether or not the person whose deposition is sought is able physically to appear before the Tribunal to give evidence.” Unlike Rule 71 of the SCSL Rules, Rule 71 of the ICTY no longer has an “exceptional circumstances” requirement.
17. In *Prosecutor v. Naletilic*, the ICTY Trial Chamber explained:
- [I]n the exercise of its discretion pursuant to Rule 71 [of the ICTY Rules], the Trial Chamber has been guided by the fact that the witnesses proposed for deposition will not present eyewitness evidence directly implicating the accused in the crimes charged, or alternatively, their evidence will be of a repetitive nature in the sense that many witnesses will give evidence of similar facts[.]²²

V. **DISCUSSION**

1. **Subpoena Ad Testificandum Orders Are Both Warranted and Appropriate Under the SCSL Rules**

18. As explained in Section III, *supra*, we now know that it was not the prosecution witnesses’ idea to contact the Defendant. Therefore, it must have been the Defendant’s

²² *Prosecutor v. Naletilic*, ICTY Trial Chamber, Case No. IT-98-34-PT, Decision on Prosecutor’s Motion to Take Depositions for Use at Trial (Rule 71) (10 Nov. 2000); *accord Prosecutor v. Niyitegeka*, ICTR Trial Chamber, Case No. ICTR-96-14-T, Decision on the Prosecutor’s Amended Extremely Urgent Motion for the Deposition of a Detained Witness Pursuant to Rule 71, at p. 3 (4 Oct. 2002) (citations and internal quotation marks omitted).

idea to contact the witnesses. His defence—which remains a mystery—will be what it is, but the Court and the Independent Counsel are entitled to know what, if any, contact there was between the Defendant and the Defence Team in the short period between the filing of the 17 December 2010 motion and the contact with the prosecution witnesses in early 2011. After all, Eric Senessie did tell the prosecution witnesses that the Defendant was his Defence Team contact. Did the Defendant wake up one morning in January 2011 and decide, without instruction or provocation, to ring up Eric Senessie, a man he had not seen but once—and at that, many years before? That possibility, in the mind of the Independent Counsel, is preposterous for any number of reasons.

19. One such reason revealed itself when the SCSL Office of the Prosecutor learned of the improper witness contacts and filed motions to hold the Defendant and Eric Senessie in contempt of court. Did either the Defendant or Eric Senessie retain counsel at that time to defend themselves? No. Did anyone mount a defense for them—a particularly vigorous one at that—*without* entering an appearance as their counsel? Yes—the Defence Team. Why did the Defence Team get involved? And, after deciding to get involved, why did the Defence Team not state that it had no relationship with Eric Senessie, that the Defendant was no longer employed by the Defence Team, and that it had no knowledge of the witness contacts? Was the Defence Team dissatisfied with the Court's denial of their 17 December 2010 motion? Did they want to make another attempt to find witnesses who would support their mantra? Had they once again turned to the Defendant to locate those witnesses? Only the Defence Team—specifically Courtenay Griffiths and Logan Hambrick²³—can answer these questions. If members of the Defence Team had no involvement with these contacts, let Courtenay Griffiths and Logan Hambrick so claim under oath. If they did have such contacts, then they need to explain the nature and the extent of that involvement.

²³ Courtenay Griffiths, as former lead counsel to the Defense Team, is presumed to have been aware of all matters related to the Defence Team, including but not limited to the activities of its investigators. Logan Hambrick, upon information and belief, had considerable contact with the Defendant when he worked as a Defense Team investigator.

20. Other facts suggest a link between the Defendant and the Defence Team with respect to the witness contacts. Eric Senessie has informed the Independent Counsel of numerous conversations with the Defendant, every one of which is consistent with the Defendant not wanting anyone to learn that he in particular or the Defence Team more generally was behind the witness contacts.²⁴ The Defendant told Eric Senessie to lie to the Independent Counsel in his interview, to deny all allegations, and specifically not to implicate the Defendant.²⁵ The Defendant summoned Eric Senessie to his house repeatedly to reassure him that everything would be okay.²⁶ The Defendant told Eric Senessie that he need not worry, that “they” were only after him—the Defendant—because he had worked as an investigator for the Defence Team.²⁷ The Defendant told Eric Senessie that his case would never come to trial, that it would be “adjourned sine die.”²⁸ Surely, this phrase was not in the lexicon of a denizen of Kailahun. How did the Defendant come to know this phrase? In all probability, it was given to him by a member of the Defence Team.
21. Another fact suggests ongoing ties between the Defendant and the Defence Team with respect to the witness contacts: when the Defendant was arrested, he was immediately assigned counsel from the chambers of a former member of the Defence Team—Karim Khan. It is not improper if he had counsel previously arranged, but this coincidence leads to the conclusion that there were prior communications between the Defendant and the Defence Team. The Court and the Independent Counsel are entitled to know what those communications have been and whether they have been proper or improper.
22. The Independent Counsel’s suspicions of close contact between the Defendant and the Defence Team are further strengthened by an examination of the timing of certain events. As noted in paragraph 5, *supra*, the Defence Team filed its motion to recall witnesses on 17 December 2010. That motion was not denied, however, until 24 January 2011—

²⁴ See Independent Counsel’s disclosure to Defence Counsel dated 04 November 2012, appended to this Motion as Exhibit A.

²⁵ See *Prosecutor v. Senessie*, SCSL Trial Chamber, Case No. SCSL-2011-01-REV, Defence Motion for Review, Confidential Annex A (Affidavit), at para. 18 (10 Aug. 2012).

²⁶ Exhibit A, p. 2.

²⁷ *Id.*

²⁸ *Id.*

exactly six days after the Defendant first called Eric Senessie and just one day before the Defendant's second call to Eric Senessie.²⁹ Did the Defence Team call the Defendant the day after the motion was denied and pressure him to contact Senessie again? Logic, common sense, and the Independent Counsel's experience strongly suggest that the answer is yes.

23. The relationship between the Defendant and the Defence Team has been at the heart of this matter since it first arose. What contacts have there been between the Defendant and the Defence Team since 31 December 2010? Did the Defendant come up with the idea of trying again to raise the same witness issues that were raised in the 17 December 2010 motion? Did the Defence Team ask the Defendant to search for more witnesses? Did they discuss recantation of testimony? Witness "compensation"? Witness bribery? Were there any communications between the Defendant and the Defence Team after the first contempt motion was filed in February 2011? If so, what was said? Were there any communications between the Defendant and the Defence Team after Eric Senessie was charged but the Defendant was not? If so, what was said? Were there any discussions between the Defendant and the Defence Team about the Defendant testifying for Eric Senessie at the *Senessie* trial? If so, what was said? Were there any communications between the Defendant and the Defence Team after the Defendant was arrested? If so, what was said?
24. Courtenay Griffiths and Logan Hambrick are in a unique position to address the questions presented in paragraphs 22 and 23, *supra*, and to testify about the Defendant's contact with former Charles Taylor prosecution witnesses. Given the Defendant's role as a Defense Team investigator, they likely worked with the Defendant on a regular basis. That work, moreover, appears to have concerned the investigation of former Charles Taylor prosecution witnesses—perhaps the same witnesses involved in the instant case. As noted in paragraph 5, *supra*, Courtenay Griffiths and Logan Hambrick relied on the Defendant's statement that he had unnamed "sources" who could testify that former Charles Taylor prosecution witnesses were promised as an inducement to testify.

²⁹ See Exhibit A, p. 1.

Independent Counsel therefore submits, upon information and belief, that Courtenay Griffiths and Logan Hambrick are capable of testifying about the following relevant issues: (1) the Defendant's employment as a Defense Team investigator; (2) the charges against the Defendant as contained in the Order in Lieu of Indictment; (3) their communications with the Defendant regarding former Charles Taylor prosecution witnesses; (4) the Defendant's interaction with former Charles Taylor prosecution witnesses; (5) their knowledge of the unnamed "sources" in the Defendant's statement appended to the Defence Team's 17 December 2010 motion; and (6) whether any money, for expenses or otherwise, was passed from the Defence Team to the Defendant after 31 December 2010.

25. Suspicions about the Defendant's relationship with the Defence Team were aroused once again when the Independent Counsel sought, ever so politely, to interview members of the Defence Team. Independent Counsel first contacted Logan Hambrick, who turned the inquiry over to Courtney Griffiths. As documented in Exhibit B to this Motion, Courtenay Griffiths stonewalled the Independent Counsel's attempts to question him or Logan Hambrick about the Defendant's employment as a Defense Team investigator, the charges against the Defendant as contained in the Order in Lieu of Indictment, and their post-December 2010 contact or conversations with the Defendant, among other matters.³⁰ It is now clear that neither Courtenay Griffiths nor Logan Hambrick's testimony can be obtained without judicial intervention.
26. Courtenay Griffiths's overbroad assertion of attorney-client privilege should not prevent this Court from issuing the requested subpoenas. As explained by the Independent Counsel in his most recent exchange with Courtenay Griffiths and Logan Hambrick from 21 October 2012: "Prince Taylor is charged with serious offenses that go to very integrity of the judicial process. Moreover, the offenses charged took place AFTER his employment as a defense investigator ceased. I should hope that as an Officer of the Court you would be all too willing to cooperate with Independent Counsel's efforts to

³⁰ The latest missive from Courtney Griffiths speaks volumes about the Defence Team's involvement here and cries out for an examination of both counsel under oath. *See* Exhibit B, pp. 6-7.

gather information.”³¹ Neither Courtenay Griffiths nor Logan Hambrick responded to the Independent Counsel’s 21 October 2012 email.

27. The “purpose” requirement is easily satisfied in this case. The information sought from Courtenay Griffiths and Logan Hambrick, as outlined in paragraph 24, *supra*, is “material” to the Independent Counsel’s case. Upon information and belief, Courtenay Griffiths and Logan Hambrick’s testimony will expose, or at the very least has “a good chance” of exposing, the Defendant’s wrongdoing.³² As explained by the SCSL Appeals Chamber, when assessing whether testimony “will be of assistance to the applicant’s case,” a court should consider

the position held by the prospective witness in relation to the events in question, any relationship he may have or have had with the accused which is relevant to the charges, the opportunity which he may reasonably be thought to have had to observe those events or to learn of those events and any statements made by him to the applicant or to others in relation to those events.³³

Given Courtenay Griffiths and Logan Hambrick’s unique relationships with the Defendant, all of these factors counsel heavily in favor of granting the subpoena request.

2. **A Deposition Order Is Appropriate in the Event that a Subpoena Is Not Issued**

28. The Independent Counsel recognizes that the Court may find that a deposition to be the more suitable vehicle for obtaining Courtenay Griffiths and Logan Hambrick’s testimony. If that is the case, Independent Counsel proposes that their depositions be taken either in London, England or The Hague, Netherlands.³⁴ Given the 14 January

³¹ See Exhibit B, p. 6.

³² See *Prosecutor v. Sesay*, SCSL Trial Chamber, Case No. SCSL-04-15-T, Written Reasoned Decision on Motion for Issuance of a Subpoena to H.E. Dr. Ahmad Tejan Kabbah, Former President of the Republic of Sierra Leone, para. 19 (30 June 2008).

³³ *Prosecutor v. Norman*, SCSL Appeals Chamber, SCSL-04-14-T-617, Decision on Interlocutory Appeals Against Trial Chamber Decision refusing to Subpoena The President of Sierra Leone, para. 21 (11 Sept. 2006) (citation omitted).

³⁴ Upon information and belief, Courtenay Griffiths is employed by 25 Bedford Row Chambers, which is located in London, England at 25 Bedford Row, London WC1R 4HD. Upon information and belief, Logan Hambrick is employed by the International Criminal Court, which is based in The Hague, Netherlands, as an assistant

2013 trial date, the Independent Counsel proposes that the deposition take place on a date agreed upon by the parties no later than 21 December 2012. The matters on which Courtenay Griffiths and Logan Hambrick are to be examined are contained in paragraphs 22-24, *supra*.

29. The depositions of Courtenay Griffiths and Logan Hambrick are in the interests of justice because, upon information and belief, they may be capable of testifying about the Defendant's contact with the Charles Taylor prosecution witnesses. The Independent Counsel does not anticipate that any of their testimony will be "repetitive" and believes that they may well and probably do have "eyewitness evidence directly implicating [the Defendant] in the crimes charged."³⁵ These reasons, among others, counsel in favor of live trial testimony rather than deposition testimony.
30. The Independent Counsel is not aware of any "exceptional circumstances" that warrant deposition testimony in lieu of live testimony.³⁶ The Independent Counsel notes that it is offering the deposition as an accommodation to the parties and the prospective witnesses.

counsel for the Joshua Arap Sang defence team. Logan Hambrick also appears to be employed as the director of AdvocAid, Sierra Leone, which is located at 39 Liverpool Street, Freetown, Sierra Leone.

³⁵ See *Prosecutor v. Niyitegeka*, ICTR Trial Chamber, Case No. ICTR-96-14-T, Decision on the Prosecutor's Amended Extremely Urgent Motion for the Deposition of a Detained Witness Pursuant to Rule 71, at p. 3 (4 Oct. 2002) (citations and internal quotation marks omitted).

³⁶ See SCSL Rule 71(A) ("At the request of either party, a Trial Chamber may, in exceptional circumstances and in the interests of justice, order that a deposition be taken for use at trial and appoint for that purpose a Legal Officer.")

V. CONCLUSION

31. For the reasons stated above, the Independent Counsel respectfully requests that the Trial Chamber issue Subpoenas to Courtenay Griffiths and Logan Hambrick requiring their appearance before this Court and order the Registrar to take all necessary measures to have the Subpoenas served and executed in accordance with the SCSL Rules. In the alternative, the Independent Counsel requests that the Trial Chamber order the depositions of Courtenay Griffiths and Logan Hambrick pursuant to the SCSL Rules. The relationship between the Defendant and the Defence Team has been at the heart of this matter since it first arose. It is long past the time for the sun to shine on it.

Respectfully submitted,

WL Gardner

William L Gardner
Independent Counsel

INDEX OF AUTHORITIESSpecial Court for Sierra Leone Cases*Independent Counsel v. Taylor, Case No. SCSL-12-02-PT*

Independent Counsel v. Taylor, SCSL Trial Chamber, Case No. SCSL-12-02-PT, Defence Motion on Behalf of Mr. Prince Taylor for Bail Pursuant to Rule 65 (25 Oct. 2012)

Independent Counsel v. Taylor, SCSL Trial Chamber, Case No. SCSL-12-02-PT, Order in Lieu of Indictment (04 October 2012)

Prosecutor v. Senessie, Case No. SCSL-2011-01-T

Prosecutor v. Senessie, Case No. SCSL-2011-01-T, SCSL Trial Chamber, Judgement in Contempt Proceedings (16 Aug. 2012)

Prosecutor v. Senessie, SCSL Trial Chamber, Case No. SCSL-2011-01-REV, Defence Motion for Review (10 Aug. 2012)

Prosecutor v. Senessie, SCSL Trial Chamber, Case No. SCSL-2011-01-T, Sentencing Hearing Transcript (04 July 2012)

Prosecutor v. Senessie, SCSL Trial Chamber, Case No. SCSL-2011-01-I, Hearing Transcript (15 July 2011)

Prosecutor v. Senessie, SCSL Trial Chamber, Case No. SCSL-2011-01-I, Decision of the Principal Defender (20 Sept. 2011)

Prosecutor v. Taylor, Case No. SCS L-03 -1-T

Prosecutor v. Taylor, SCSL Trial Chamber, Case No. SCSL-2003-01-T, Decision on Public with Annexes A-H and Confidential Annexes I-J Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses (24 Jan. 2011)

Prosecutor v. Taylor, SCSL Trial Chamber, Case No. SCSL-2003-01-T, Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses (17 Dec. 2010)

Prosecutor v. Taylor, SCSL Trial Chamber, Case No. SCS L-03 -1-T, Decision on Prosecution Motion for the Issuance of a Subpoena to Naomi Campbell (30 June 2010)

INDEX OF AUTHORITIES

Special Court for Sierra Leone Cases

Prosecutor v. Norman, Case No. SCSL-04-14-T-617

Prosecutor v. Norman, SCSL Appeals Chamber, SCSL-04-14-T-617, Decision on Interlocutory Appeals Against Trial Chamber Decision refusing to Subpoena The President of Sierra Leone (11 Sept. 2006)

Prosecutor v. Norman, SCSL Trial Chamber, Case No. SCSL-04-14-T-617, Decision on Motions by Moinina Fofana and Sam Hinga Norman for the Issuance of a Subpoena Ad Testificandum to H.E. Alhaji Dr. Ahmad Tejan Kabbah, President of the Republic of Sierra Leone (13 June 2006)

Prosecutor v. Sesay, Case No. SCSL-04-15-T

Prosecutor v. Sesay, SCSL Trial Chamber, Case No. SCSL-04-15-T, Written Reasoned Decision on Motion for Issuance of a Subpoena to H.E. Dr. Ahmad Tejan Kabbah, Former President of the Republic of Sierra Leone (30 June 2008)

International Criminal Tribunal for the Former Yugoslavia

Prosecutor v. Brdanin, Case No. IT99-36-AR73.9

Prosecutor v. Brdanin, ICTY Appeals Chamber, Case No. IT99-36-AR73.9, Decision on Interlocutory Appeal (11 Dec. 2002), *available online at* www.icty.org/x/cases/brdanin/acdec/en/randall021211.htm

Prosecutor v. Naletilic, Case No. IT-98-34-PT

Prosecutor v. Naletilic, ICTY Trial Chamber, Case No. IT-98-34-PT, Decision on Prosecutor's Motion to Take Depositions for Use at Trial (Rule 71) (10 Nov. 2000), *available online at* <http://www.icty.org/x/cases/naletilic/tdec/en/001110.htm>

International Criminal Tribunal for Rwanda

Prosecutor v. Niyitegeka, Case No. ICTR-96-14-T

Prosecutor v. Niyitegeka, ICTR Trial Chamber, Case No. ICTR-96-14-T, Decision on the Prosecutor's Amended Extremely Urgent Motion for the Deposition of a Detained Witness Pursuant to Rule 71 (4 Oct. 2002), *available online at* <http://www.unictr.org/Portals/0/Case%5CEnglish%5CNiyitegeka%5Cdecisions%5C041002.pdf>

INDEX OF AUTHORITIES

Special Court for Sierra Leone Rules

Special Court of Sierra Leone Rules of Procedure and Evidence (2012)

International Criminal Tribunal for the Former Yugoslavia Rules

International Criminal Tribunal for the Former Yugoslavia Rules of Procedure and Evidence (2012)

Miscellaneous

United Nations Security Council Resolution 1688 (16 June 2006), *available online at*
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/392/20/PDF/N0639220.pdf?OpenElement>



SPECIAL COURT FOR SIERRA LEONE
BINCKHORSTLAAN 400 • 2516 BL DEN HAAG • THE NETHERLANDS
PHONE: +31 70 515 9701 or +31 70 515 (+Ext 9725)

Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the *Confidential* Case File.

Case Name: **The Prosecutor – v- Prince Taylor**
Case Number: **SCSL-12-02-PT**
Document **Index Number: 025**
Document Date: **04 December, 2012**
Filing Date: **21 December, 2012**
Document Type: **Confidential Annexes A and B**
Number of Pages: **17**, Number from: **324-340**

- Application
- Order
- Indictment
- Motion**
- Submission
- Correspondence

Document Title:

Independent Counsel's second motion for subpoenas ad testificandum

Name of Officer:

Zainab T. Fofanah

Signed: 