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SCSL-03-01-T
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SPECIAL COURT FOR SIERRA LEONE

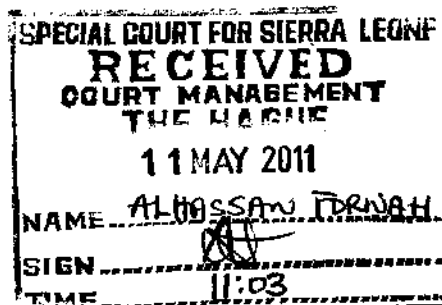
TRIAL CHAMBER II

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

Registrar: Binta Mansaray

Case No.: SCSL03-1-T

Date: 11 May 2011



PROSECUTOR

v.

Charles Ghankay TAYLOR

**DECISION ON PUBLIC WITH CONFIDENTIAL ANNEXES A TO E URGENT PROSECUTION
MOTION FOR THE RE-FILING OF THE 'PUBLIC VERSION DEFENCE FINAL TRIAL BRIEF' AND
'PUBLIC VERSION DEFENCE RESPONSE TO PROSECUTION FINAL TRIAL BRIEF'**

Office of the Prosecutor:

Brenda J. Hollis
Nicholas Koumjian
Ula Nathai-Luchtman
Nathan Quick
James Pace

Counsel for the Accused:

Courtenay Griffiths, Q.C.
Terry Munyard
Morris Anyah
Silas Chekera
James Supuwood

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);

SEISED of the “Public with Confidential Annexes A to E Urgent Prosecution Motion for the Re-filing of the ‘Public Version Defence Final Trial Brief’ and ‘Public Version Defence Response to Prosecution Final Trial Brief’”, filed on 12 April 2011 (“Motion”),¹ wherein the Prosecution alleges that the “Public Defence Version Final Trial Brief”² and the “Public Version Defence Response to Prosecution Final Trial Brief”³ contain information in violation of witness protective measures, redactions that go beyond those required to comply with the oral order of the Trial Chamber on 7 February 2011⁴ and unauthorized revisions to the text of the Confidential Defence Final Trial Brief;⁵

NOTING that the Prosecution requests that in addition to rejecting the Public Defence Final Trial Brief and Public Defence Response, the Trial Chamber should:

- (1) Order the Defence to conduct a comprehensive review of both the Public Defence Brief and the Public Defence Response, in light of the applicable protective measures and bearing in mind that cumulative information, as well as discrete facts, may disclose a witness’s identity;⁶
- (2) Order the Defence to limit its redactions to those necessary to comply with protective measures, closed and private session, and confidential exhibits;⁷
- (3) Order the Defence to file a properly redacted version of the Public Defence Final Trial Brief and the Public Defence Response;⁸
- (4) Direct the Court Management Section to notify all persons on the public dissemination list to refrain from any further dissemination of the Public Defence Final Trial Brief and Public Defence Response;⁹
- (5) Direct the Court Management Section to reclassify the Public Defence Final Trial Brief and the Public Defence Response as confidential;¹⁰

¹ SCSL-03-01-T-1241.

² *Prosecutor v. Taylor*, SCSL-03-01-T-1237, Public Version Defence Final Trial Brief, 7 April 2011 (“Public Defence Brief”)

³ *Prosecutor v. Taylor*, SCSL-03-01-T-1238, Public Version Defence Response to Prosecution Final Trial Brief, 7 April 2011 (“Public Defence Response”).

⁴ *Prosecutor v. Taylor*, Transcript 7 March 2011, p. 49341.

⁵ Motion, para. 1.

⁶ Motion, paras 3, 10.

⁷ Motion, paras 3, 10.

⁸ Motion, para. 1.

⁹ Motion, paras 3, 10.

¹⁰ Motion, para. 1.

NOTING the “Confidential Submission of the Registrar Pursuant to Rule 33(B) Regarding the Public Distribution of Defence Public Final Trial Brief”, filed on 13 April 2011 (“Registrar’s Submission”),¹¹ wherein the Registrar informs the Trial Chamber that although service of the Public Defence Final Trial Brief has been effected, it has not been published on the Court website or through other outreach or press channels, a decision made by the Registrar to safeguard the privacy, security and protection of victims and witnesses pending a decision by the Trial Chamber on the Motion, and in accordance with the Registrar’s obligations under the Statute and the Rules;¹²

RECALLING the Trial Chamber’s “Order for Expedited Filing and Interim Measures”, dated 13 April 2011,¹³ wherein the Trial Chamber ordered expedited filing schedules for the response and reply to the Motion and ordered the Court Management Section to (i) re-classify the Public Defence Final Trial Brief and the Public Defence Response to Prosecution Final Trial Brief as Confidential pending the Trial Chamber’s decision on the Motion and (ii) notify all persons on the dissemination list who received the Public Defence Final Trial Brief and Public Defence Response that they have been re-classified as confidential and that they should refrain from any onward distribution of these documents;

NOTING the “Public with Confidential Annexes A-C Response to Urgent Prosecution Motion for the Re-filing of the ‘Public Version Defence Final Trial Brief’ and ‘Public Version Defence Response to Prosecution Final Trial Brief’”, filed on 18 April 2011 (“Response”),¹⁴ wherein the Defence concedes that information going to the identity of certain protected witnesses was inadvertently disclosed in the Public Defence Final Trial Brief and the Public Defence Response, and takes full responsibility for the oversight. The Defence submits that it has undertaken a comprehensive revision of the Public Defence Final Brief and identified further mistakes that require rectification,¹⁵ but submits that beyond these errors, it does not agree that the concerns raised by the Prosecution with respect to protected witnesses are legitimate;¹⁶

NOTING that the Defence further submits that it was within its right to rephrase some of the sentences in the Confidential Defence Final Trial Brief and Confidential Defence Response to the extent that this was necessary to do so for the safety and security of protected witnesses, but submits

¹¹ SCSL03-01-T-1242.

¹² Registrar’s Submission, paras 7, 11.

¹³ SCSL03-01-T-1243.

¹⁴ SCSL03-01-T-1244.

¹⁵ Response, paras 6-7. The mistakes are catalogued in Annex B, and the Defence has attached the pages as corrected in Annex C.

¹⁶ Response, paras 8-13.

that should the Trial Chamber find that the Defence required prior authorization to make these changes, it seeks the Trial Chamber's *post facto* authorization for these changes;¹⁷

NOTING that the Defence therefore requests the Trial Chamber's permission to (i) effect the corrections highlighted in Annex B (ii) substitute the pages affected by the foregoing proposed changes with the corresponding pages effecting those changes in Annex C and (iii) dismiss the remainder of the Motion;¹⁸

NOTING ALSO the "Confidential Prosecution Reply to Defence Response to Urgent Prosecution Motion for the Re-Filing of the 'Public Version Defence Final Trial Brief' and 'Public Version Defence Response to Prosecution Final Trial Brief'", filed on 20 April 2011 ("Reply");¹⁹

NOTING that the Defence has acknowledged and apologized for its inadvertent disclosure of information identifying protected witnesses in its Public Defence Brief and Public Defence Response, and has demonstrated a willingness to rectify any further errors;

CONSIDERING, however, that despite the changes proposed by the Defence in Annex C, the Prosecution has raised legitimate concerns that the Public Defence Final Trial Brief still contains information which may identify protected witnesses,²⁰ and that therefore the Defence should conduct a comprehensive review of both documents to ensure that there are no further instances in which information identifying protected witnesses is publicly disclosed;

CONSIDERING that the Defence is not permitted to make any changes to the text of the Confidential Defence Final Trial Brief and the Confidential Defence Response other than those redactions which are necessary in order to protect the identity of protected witnesses, and refuses the Defence request for *post facto* authorization to make changes to the text of these documents other than such redactions;

FOR THE ABOVE REASONS HEREBY

ORDERS THE DEFENCE:

¹⁷ Response, paras 16-20.

¹⁸ Response, para. 26.

¹⁹ SCSL-03-01-T-1245.

²⁰ See e.g. para. 7 of the Reply.

(i) to comprehensively review the Public Defence Final Trial Brief and Public Defence Response in light of applicable protective measures, and make any redactions necessary to protect the identity of protected witnesses;

(ii) not to make any other changes to the text of the Confidential Defence Final Trial Brief and Confidential Defence Response;

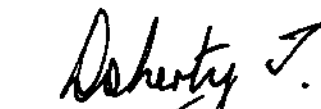
(iii) re-file revised versions of its Public Defence Final Trial Brief and Public Defence Response by 20 May 2011.

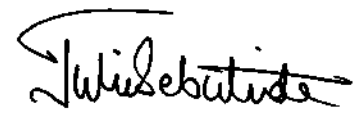
REJECTS the Public Version Defence Final Trial Brief (SCSL-03-01-T-1237) and the Public Version Defence Response to Prosecution Final Trial Brief (SCSL-03-01-T-1238), filed on 7 April 2011; and

ORDERS the Court Management Section to remove these documents from the court records.

Done at The Hague, The Netherlands, this 11th day of May 2011.


Justice Richard Lussick


Justice Teresa Doherty
Presiding Judge


Justice Julia Sebutinde

