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SCSL-03-01-A  
(091-108)

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**THE SPECIAL COURT FOR SIERRA LEONE**

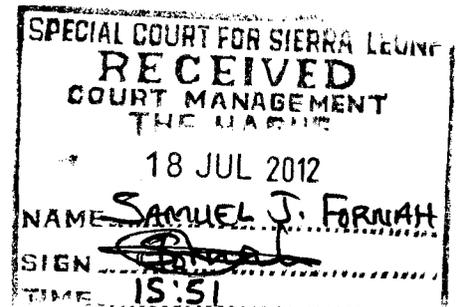
**THE APPEALS CHAMBER**

**Before:** Justice Shireen Avis Fisher, Presiding Judge  
Justice Emmanuel Ayoola  
Justice Renate Winter  
Justice George Gelaga King  
Justice Jon M. Kamanda  
Justice Philip Nyamu Waki, Alternate Judge

**Registrar:** Ms. Binta Mansaray

**Date:** 19 July 2012

**Case No.:** SCSL-2003-01-A



**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

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**PUBLIC WITH PUBLIC ANNEX A AND CONFIDENTIAL ANNEX B**

**CHARLES GHANKAY TAYLOR'S MOTION FOR PARTIAL VOLUNTARY  
WITHDRAWAL OR DISQUALIFICATION OF APPEALS CHAMBER JUDGES**

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**Office of the Prosecutor:**

Ms. Brenda J. Hollis  
Mr. Nicholas Koumjian  
Mr. Mohamed A. Bangura  
Ms. Nina Tavakoli  
Ms. Leigh Lawrie  
Mr. Christopher Santora  
Ms. Kathryn Howarth  
Ms. Ruth Mary Hackler  
Ms. Ula Nathai-Lutchman  
Mr. James Pace  
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**Counsel for Charles G. Taylor:**

Mr. Morris Anyah  
Mr. Eugene O'Sullivan  
Mr. Christopher Gosnell  
Ms. Kate Gibson  
Ms. Magda Karagiannakis

## A. Introduction and Request for Relief

1. During the reading of the summary judgment against Charles Taylor on 26 April 2012, Justice Sow, an Alternate Judge of the Trial Chamber, who had been present throughout five years of trial<sup>1</sup> made an extraordinary and unprecedented declaration. His statement specifically indicates that the Trial Chamber failed to deliberate, and suggests more general, but equally serious, concerns about the propriety of proceedings and/ or deliberations. If true, his allegations would require that the Judgement, in whole or in part, be set aside. Justice Sow has since been found to be unfit to sit as a Judge and sanctioned by the judges of this Court acting in plenary, with the participation of all members of the bench hearing this appeal.

2. It is respectfully requested that, pursuant to Rules 15(A) and 15(B) of the Rules,<sup>2</sup> in respect of the grounds 36 and 37 of Mr. Taylor's Notice of Appeal dated 19 July 2012<sup>3</sup> that arise from the statement made by Justice Sow ("Grounds of Appeal"), that all of the members of the Appeals Chamber voluntarily withdraw from deciding these grounds. It is requested that a separate appeal panel, composed of judges who did not participate in the decision and sanctions against Justice Sow, should determine those Grounds of Appeal. In the event that the Appeals Chamber Judges do not withdraw voluntarily on the basis of the present motion, they are respectfully invited to refer the present request to a separate and impartial panel of judges for a determination as a motion for disqualification.

3. The basis of this motion is that a reasonable observer, properly informed, would apprehend bias on the part of the Judges of the Appeal Chamber, because they have already made an adverse finding in the plenary and therefore pre-judged a critical aspect of the credibility of a source of evidence which is fundamental to the Grounds of Appeal. Thus they are precluded from deciding on these grounds.

## B. Applicable Law and Jurisprudence

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<sup>1</sup> Justice Sow was designated as an Alternate Judge in the Trial Chamber by Justice Sebutinde pursuant to Article 12 (4) of the Statute. See *Prosecutor v. Taylor*, SCSL-03-1-PT-240, Order Designating Alternate Judge, 18 May 2007.

<sup>2</sup> Rules of Procedure and Evidence of the Special Court for Sierra Leone, as amended on 31 May 2012, "Rules" or "Rule").

<sup>3</sup> *Prosecutor v. Taylor*, SCSL-03-01-A, Notice of Appeal of Charles Ghankay Taylor, 19 July 2012.

4. Mr. Taylor's right to be tried by an independent and impartial tribunal is integral to his right to a fair trial guaranteed under Article 17 of the Statute.<sup>4</sup> Pursuant to Rule 15(A) a judge may not sit on an appeal in a case in which "his impartiality might reasonably be doubted on any substantial ground." This Appeals Chamber has held that the applicable test under Rule 15(B) is "whether an independent bystander so to speak, or the reasonable man... will have a legitimate reason to fear that [the Judge] lacks impartiality. In other words, whether one can apprehend bias."<sup>5</sup>

5. This Appeal Chamber's test for bias is derived from<sup>6</sup> and consistent with<sup>7</sup> jurisprudence of the International Criminal Tribunal for the former Yugoslavia ("ICTY"), in particular that of the *Furundžija* case. In that case the Appeals Chamber of the ICTY held that:

"A. A Judge is not impartial if it is shown that actual bias exists.

B. There is an unacceptable appearance of bias if:

- i) a Judge is a party to the case, or has a financial or proprietary interest in the outcome of a case, or if the Judge's decision will lead to the promotion of a cause in which he or she is involved, together with one of the parties. Under these circumstances, a Judge's disqualification from the case is automatic; or
- ii) *the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias.*<sup>8</sup> (Emphasis added.)

6. The Appeals Chamber of this court has held that, in the case of category B(ii) the applicable standard is "the objective test of whether there is a reasonable apprehension of bias."<sup>9</sup> Numerous

<sup>4</sup> *Prosecutor v. Sesay et al.*, SCSL-2004-15- T, Decision on Sesay, Kallon and Gbao Appeal Against Decision on Sesay and Gbao Motion for Voluntary Withdrawal or Disqualification of Hon. Justice Bankole Thompson From the RUF Case, 24 January 2008 ("Justice Thompson Disqualification Appeal Decision"), para. 8. Independence and impartiality are fundamental cornerstones enshrined in the constitutive documents of the court. Article 12(1) of the Statute provides that the chambers shall be composed of independent judges and Article 13(1) of the Statute mandates that judges are impartial and independent.

<sup>5</sup> *Prosecutor v. Sesay*, SCSL-2004-15-AR15, Decision on Defence Motion Seeking the Disqualification of Justice Robertson from the Appeals Chamber, 13 March 2004 ("Justice Robertson Disqualification Decision"), para. 15; *Prosecutor v. Norman*, SCSL-2004-14-PT, Decision on the Motion to Recuse Judge Winter from the Deliberation in the Preliminary Motion on the Recruitment of Child Soldiers, 28 May 2004 ("Justice Winter Disqualification Decision"), para. 22; Justice Thompson Disqualification Appeal Decision, para. 10; *Prosecutor v. Sesay et al.*, SCSL-2004-15-T, Decision on Sesay and Gbao Motion for Voluntary Withdrawal or Disqualification of Hon. Justice Bankole Thompson From the RUF Case, 6 December 2007 ("Justice Thompson Disqualification Trial Decision"), para. 54.

<sup>6</sup> Justice Robertson Disqualification Decision, para. 4.

<sup>7</sup> Justice Winter Disqualification Decision, para. 23; Justice Thompson Disqualification Trial Decision, para. 54.

<sup>8</sup> *Prosecutor v. Furundžija*, IT-95-17/1-A, Judgment, 21 July 2000 ("Furundžija Appeal Judgment"), para. 189. This finding was based on an extensive review of the jurisprudence of the European Court of Human Rights, the United Kingdom, Australia, Canada, South Africa, the USA, Germany, France, Italy, the Netherlands and Sweden at paras. 181-188.

decisions assessing objective bias have followed the test first enunciated in the *Furundžija* Appeal Judgment, that is, whether “the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias”.<sup>10</sup> With respect to the definition of a ‘reasonable observer’, this Appeals Chamber has held that the “reasonable person must be an informed person, with knowledge of all the relevant circumstances, including the traditions of integrity and impartiality that form a part of the background and apprised also of the fact that impartiality is one of the duties that Judges swear to uphold.”<sup>11</sup>

7. Judges enjoy a presumption of impartiality.<sup>12</sup> In the absence of evidence to the contrary, it must be assumed that professional judges “can disabuse their minds of any irrelevant personal beliefs or predispositions.”<sup>13</sup> Accordingly, the party seeking to disqualify a judge bears the burden of adducing reliable and sufficient evidence that the judge is not impartial.<sup>14</sup> Case law from the ICTY and the ICTR has stated that there is a high threshold to reach in order to rebut

<sup>9</sup> Justice Winter Disqualification Decision, para. 23.

<sup>10</sup> Article 20(3) of the Statute provides that the judges of the Appeals Chamber of the Special Court shall be guided by the decision of the Appeals Chamber of the International Tribunals for the former Yugoslavia and for Rwanda. See eg. **International Criminal Tribunal for Rwanda (“ICTR”) Appeal Chamber: Prosecutor v. Jean-Paul Akayesu**, Case No. ICTR-96-4-A, Judgement, 1 June 2001 (“Akayesu Appeal Judgement”), para. 203; *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-A, Judgement, 26 May 2003 (“Rutaganda Appeal Judgement”), para. 39; *Prosecutor v. Nahimana et al.*, ICTR-99-52-A, Judgement, 28 November 2007 (“Nahimana Appeal Judgement”), para. 49. **ICTY Appeal Chamber: Prosecutor v. Delalić et al.**, IT-96-21-A, Judgement, 20 February 2001 (“Celebici Appeal Judgement”), para. 683 citing *Furundžija* Appeal Judgement, para. 189; *Prosecutor v. Galić*, IT-98-29-A, Judgement, 30 November 2006 (“Galić Appeal Judgement”), para. 39. See also **International Criminal Court (“ICC”) Presidency: Prosecutor v. Al Bashir**, ICC-02/05-01/09-76-ANN2, Notification of the Decision on the Request for Excusal of a Judge, Annex II, 19 March 2010, p. 5.

<sup>11</sup> Justice Thompson Disqualification Appeal Decision, para. 11; Justice Thompson Disqualification Trial Decision, para. 53. Also see *Furundžija* Appeal Judgement para. 190; *Galić* Appeal Judgement, para. 40; *Rutaganda* Appeal Judgement, para. 40; *Nahimana* Appeal Judgement, para. 50. The specific question to be determined in this context has been expressed by the ICTY and ICTR Appeals Chamber as “whether the reaction of the hypothetical fair-minded observer, with sufficient knowledge of the circumstances to make a reasonable judgement, would be that [the] Judge ...did not bring an impartial and unprejudiced mind to the issues arising in the case”; *Celebici* Appeal Judgement, para. 683; *Galić* Appeal Judgement, para. 44; *Rutaganda* Appeal Judgement, para. 41. This Appeals Chamber has held that a “hypothetically fair-minded observer” is someone from the outside, who, as an *observer* (and not a party) recognises and understands the circumstances well enough to tell whether or not the public sense of justice would be challenged by the presence of a particular judge on the bench in the case; Justice Winter Disqualification Decision, para. 27.

<sup>12</sup> Justice Winter Disqualification Decision, para. 25; *Furundžija* Appeal Judgement paras. 196-197; *Galić* Appeal Judgement, para. 41; *Celebici* Appeal Judgement, para. 707; *Rutaganda* Appeal Judgement, para. 42; *Akayesu* Appeal Judgement, paras. 91 & 269; *Nahimana* Appeal Judgement”, para. 48.

<sup>13</sup> *Furundžija* Appeal Judgement paras. 196-197; *Galić* Appeal Judgement, para. 41; *Rutaganda* Appeal Judgement, para. 42; *Akayesu* Appeal Judgement, paras. 91 & 269; *Nahimana* Appeal Judgement, para. 48.

<sup>14</sup> *Nahimana* Appeal Judgement, para. 48; *Galić* Appeal Judgement, para. 41; *Furundžija* Appeal Judgement, para. 197.

the presumption of impartiality and this must be firmly established.<sup>15</sup> This Appeals Chamber has held that the evidentiary threshold for establishing the appearance of bias does not rise to the level of requiring proof of actual bias.<sup>16</sup> Importantly, it has held that a judge will be disqualified and the threshold met where there are “some indicia of bias.”<sup>17</sup>

**C. Facts establishing indicia of apprehended bias**

8. Mr. Taylor submits that the following facts establish indicia that are reliable and sufficient to discharge his evidentiary burden to rebut the presumption of impartiality of the Appeals Chamber Judges and to establish circumstances which would lead a reasonable observer, properly informed, to reasonably apprehend bias.

**(i) Statement of Justice Sow**

9. On 26 April 2012, the Trial Chamber in this case sat to deliver its summary judgment. At the conclusion of the sitting, Justice Sow made a public statement in open court in the presence of the parties. He said:

“The only moment where a Judge can express his opinion, is during the deliberations or in the courtroom, and pursuant to the Rules, *where there is no ^deliberations*, the only place left for me in the courtroom. I won’t get - - because I think we have been sitting for too long but for me I have my dissenting opinion and I disagree with the findings and conclusions of the other Judges, because for me under any mode of liability, under any accepted standard of proof the guilt of the accused from the evidence provided in this trial is not proved beyond reasonable doubt by the Prosecution. *And my only worry is that the whole system is not consistent with all the principles we know and love, and the system is not consistent with all the values of international criminal justice, and I’m afraid the whole system is under grave danger of just losing all credibility, and I’m afraid this whole thing is headed for failure.* Thank you for your attention.” (“Justice Sow’s Statement” or “Statement”). (Emphasis added.) See Annex A.

<sup>15</sup> Furundžija Appeal Judgement para. 197; Galić Appeal Judgement, para. 41; Celebici Appeal Judgement, para. 707; Akayesu Appeal Judgement, para. 91; Nahimana Appeal Judgement, para. 48 (the presumption “cannot easily be rebutted”).

<sup>16</sup> Justice Thompson Disqualification Appeal Decision, para. 9.

<sup>17</sup> Justice Thompson Disqualification Appeal Decision, para. 13. It stated that “‘a reasonable apprehension of bias’ is a sufficient basis for disqualification. *It necessarily flows that where a ...Chamber finds ‘some indicia of bias,’ the logical and reasonable conclusion must be that the Judge is disqualified.*”(Emphasis added.)

10. Justice Sow's Statement contains direct evidence of grave breaches of procedure in relation to the proceedings and the judgment against Mr. Taylor. As such it is the fundamental evidentiary basis for the Grounds of Appeal. Accordingly, any consideration of the Grounds of Appeal will necessarily involve an assessment of the Statement and the credibility of its source, Justice Sow.

**(ii) Removal of Justice Sow's Statement from the Official Transcript**

11. Justice Sow's Statement was transcribed by the court reporters and appeared on the live note transcript contemporaneously. A record of that transcription is contained in Annex A. The live note transcript notes that the sitting on that day ended after Judge Sow's Statement at 1.17 p.m. In contrast, the official transcript of that sitting day does not record Justice Sow's statement.<sup>18</sup> It records the Presiding Judge's last statement that court was adjourned<sup>19</sup> and in the next line states that the hearing was adjourned at 1.17 p.m.<sup>20</sup> Thus both the live note and official transcripts record proceedings ending at precisely the same time, however the transcription of Justice Sow's Statement has been removed from the official record prior to its official publication. It is reasonable to infer that the professional court reporters of the SCSL did not independently decide to remove Justice Sow's Statement from the official transcript prior to its publication and they would only do so if instructed by a court official(s) or organ with authority to issue such an instruction. At a minimum, it may be concluded from the foregoing that Justice Sow's Statement was deliberately removed from the official record of proceedings against Mr. Taylor prior to its publication, by an organ or official(s) of the court empowered to instruct or order such a removal.

**(iii) Judicial Misconduct Decision of the Plenary regarding Justice Sow**

12. On 16 May 2012, the Trial Chamber conducted a sentencing hearing in the case against Mr. Taylor. Prior to the commencement of the sentencing hearing, the Presiding Judge placed on the trial record the serious judicial misconduct allegations against Justice Sow which were referred by the Council of Judges to a Plenary meeting of the Judges of the Special Court ("Plenary").<sup>21</sup> The basis of these allegations was that in making his Statement, Justice Sow was "in

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<sup>18</sup> Trial Transcript 26 April 2012, T. 49623 – T. 49679.

<sup>19</sup> Trial Transcript 26 April 2012, T. 49679 line 4.

<sup>20</sup> Trial Transcript 26 April 2012, T. 49679 line 5.

<sup>21</sup> Trial Transcript 16 May 2012, T. 49681- T. 49682.

contravention of the agreement, the Statute, and the Rules which govern this Court” and that this “amounted to misconduct”.<sup>22</sup>

13. The Plenary met to consider the misconduct complaint against Justice Sow on the 7th and 10th of May, 2012. The Judges of the Plenary considered the response of Justice Sow to the allegations and discussed their views and recommendations on the matter,<sup>23</sup> and on 10 May 2012 resolved that:

- “1. *The plenary declares that Justice Malick Sow’s behaviour in court on the 26th of April, 2012, amounts to misconduct rendering him unfit to sit as an Alternate Judge of the Special Court.*
2. *The plenary recommends to the appointing authority pursuant to Rule 15 bis (B) to decide upon the further status of Justice Malick Sow.*
3. *Pursuant to Rule 24(iii), the plenary directs Justice Malick Sow to refrain from further sitting in the proceedings pending a decision from the appointing authority.”*<sup>24</sup> (“Judicial Misconduct Decision” or “Decision”). (Emphasis added.)

14. The Judicial Misconduct Decision against Justice Sow was considered and made by current Judges of the Appeals Chamber sitting as members of the Plenary. The Decision does not contain the names of the Judges that were sitting in the Plenary that made this decision however the record states that “the judges of the Special Court for Sierra Leone”<sup>25</sup> sat on the 7th and 10th of May, 2012. At time that the Decision was considered by the Plenary there were ten (10) Judges sitting at the court: four (4) Judges sat in Trial Chamber II in the case of Mr. Taylor<sup>26</sup> and six (6) Judges sat in the Appeals Chamber.<sup>27</sup> Justice Sow was the subject of the sitting and therefore did not sit in judgment of the misconduct of the allegations made against him. The record states that the remaining three Judges of Trial Chamber II abstained from voting.<sup>28</sup> Thus the remaining Judges that made the Judicial Misconduct Decision were the six (6) current sitting judges of the Appeal Chamber who are presently seized of Mr. Taylor’s appeal. There is no indication on the record that any other Judge abstained from the vote or voted against the Judicial Misconduct

<sup>22</sup> Trial Transcript 16 May 2012, T. 49681.

<sup>23</sup> Trial Transcript 16 May 2012, T. 49682- T. 49683.

<sup>24</sup> Trial Transcript 16 May 2012, T. 49682- T. 49683.

<sup>25</sup> Trial Transcript 16 May 2012, T. 49682 lines 15-16.

<sup>26</sup> Justice Lussick (Presiding), Justice Doherty, Justice Sebutinde and Justice Sow (Alternate).

<sup>27</sup> Justice Fisher (President), Justice Ayoola, Justice Winter, Justice King, Justice Kamanda and Justice Waki (Alternate). These same judges currently sit in the Appeals Chamber and are seized of Mr. Taylor’s appeal.

<sup>28</sup> Trial Transcript 16 May 2012, T. 49682 lines 10-11.

Decision. Thus a reasonable observer who is properly informed of these circumstances would conclude that all six (6) Judges of the Appeals Chamber participated in the findings and sanctions against Justice Sow contained in the Decision.

15. Even though the Decision was formally reached by the Plenary and not the Appeals Chamber, in this case the Judges making the decision are one and the same, that is, both of these bodies had the same *de facto* decision-making composition. Therefore, a reasonable observer, who is properly informed, would consider that any purported distinction that is sought to be made on the basis that the Appeal Chamber Judges have not formally made the decision sitting as the Appeals Chamber is artificial and belies the reality of the situation.

16. Judges that have already made an adverse finding on a critical aspect of the credibility of a source of evidence during the trial process should not again consider the credibility of that source of evidence in the same proceeding during the appellate process, as this gives rise to a reasonable apprehension of bias from the perspective of a properly informed reasonable observer.

17. The Judicial Misconduct Decision is directly relevant to and forms a part of the trial record in the proceedings against Mr. Taylor. Justice Sow sat as Alternate Judge in the trial; he made his Statement in the trial proceedings after the reading of the summary judgment; the Judicial Misconduct Decision against him was placed on the trial record; and the sanctions attaching to that decision effectively terminated his participation in the trial and his name was subsequently erased from the trial record.<sup>29</sup> As such, the Judicial Misconduct Decision would be viewed by a properly informed reasonable observer as a decision in the trial proceedings against Mr. Taylor.

18. The Judicial Misconduct Decision constitutes an adverse finding on the professional credibility of Justice Sow. A finding of misconduct is arguably the most serious denunciation that a judge can face in their judicial career. At minimum, it amounts to finding in these circumstances that the judge has extremely poor ability to make professional judgments and was

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<sup>29</sup> It has been the practice of the Trial Chamber of the Special Court to include Justice Sow's name, as Alternate Judge on each of the transcripts and decisions in this trial. Justice Sow's name appeared on the official transcripts up until the delivery of summary judgement on 26 April 2012. After his Statement and subsequent Judicial Misconduct Decision made by the judges directing him to refrain from sitting, his name has been omitted from the subsequent Trial Transcripts and the written judgment in this case.

unprofessional in his conduct. In this case, the very basis of the Decision was Justice Sow's professional legal assessment of the serious procedural failings in trial and judgement against Mr. Taylor as expressed in his Statement. The Appeals Chamber Judges having already adversely pre-judged an aspect of the professional credibility of Justice Sow in the Decision during the course of trial proceedings would not be viewed by a properly informed reasonable observer as being able to again assess his credibility as a source of evidence on appeal, with an open mind.

19. This Appeals Chamber has found that a previous judicial opinion in a separate case that merely has some general factual connection to a subsequent case before the same judge, does not raise an issue of bias.<sup>30</sup> This situation can be clearly distinguished from the situation before the Judges of the Appeals Chamber in these circumstances as they are potentially being asked to rule on the same evidence a second time in the same proceedings. A reasonable observer properly informed of this circumstance would apprehend bias because they would view the judges as already having pre-judged the evidence. The current circumstance is therefore, more akin to the situation where trial judges, who have previously sat on a trial, and therefore made factual findings assessing the evidence, are asked to sit on the appeal of the same case.

20. The Judicial Misconduct Decision made in the proceedings against Mr. Taylor is not simply a general administrative decision relating to the internal functioning of the court. This decision is expressly made pursuant to Rule 15 *bis* relating to the unfitness of a judge to sit in proceedings,<sup>31</sup> which amounts to the judicial disqualification and sanction of the judge. Its key operative paragraph 1 and the following paragraph 2 are made pursuant to Rule 15 *bis*, a rule inherently connected to Rule 15. Reference is also made in this decision to the Plenary exercising its power to decide upon matters relating to the internal functioning of the Chambers and the Special Court pursuant to Rule 24(iii) with respect to paragraph 3 of the Decision,<sup>32</sup> however this flows from the critical substantive findings in paragraphs 1 and 2 made pursuant to the Rule 15 *bis*.

21. Furthermore, the Decision and the sanctions that flow from it are extremely serious and unprecedented in international criminal law. These sanctions directed Justice Sow to refrain

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<sup>30</sup> Justice Thompson Disqualification Appeal Decision, paras. 14-15.

<sup>31</sup> Trial Transcript 16 May 2012, T. 49682 lines 14-22; T. 49683 lines 1-11.

<sup>32</sup> Trial Transcript 16 May 2012, T. 49682 lines 23-29; T. 49683 lines 12-14.

from sitting in further proceedings against Mr. Taylor. However, the Decision goes beyond the court's internal functioning by recommending that the authority that appointed him decide on his further status. This sanction could reasonably be interpreted as a recommendation by the Judges of the Plenary to the United Nations that Judge Sow's appointment be terminated.<sup>33</sup> The finding of misconduct and these two sanctions amounted to the disqualification of Justice Sow from the proceedings against Mr. Taylor and his role in the Special Court. Further, the declaratory effect of the Decision constitutes a particularly severe sanction because it seriously and publicly damages Justice Sow's professional reputation and standing.

22. The Appeals Chamber Judges that have sanctioned a source of evidence for making a statement during the course of trial proceedings would not be viewed by a properly informed reasonable observer as being able to then sit in judgement of the credibility of that source in appellate proceedings where that statement is the fundamental piece of evidence on appeal, without giving rise to a reasonable apprehension of bias.

23. It should be noted that the ICTY Bureau of judges has previously found that judges who make an administrative decision in plenary regarding the general competence of a judge to sit on a court unrelated to the specific question as to whether that judge should be disqualified from sitting a specific case, are not precluded from judicially considering the disqualification of the said judge on appeal.<sup>34</sup> However, the circumstances of the present case are markedly different and therefore this finding does not operate to preclude the appearance of bias. First, the Judges of the Plenary in this case have passed judgement on the specific issue as to whether Judge Sow could continue sitting in the case against Mr. Taylor pursuant to Rule 15*bis* and have effectively disqualified him from doing so. Second, the decision is not simply administrative because it involved serious sanctions going beyond the internal administration of the court. Third, the issue on appeal in this case is not Justice Sow's general competence to sit as a judge or the question of his disqualification, but his credibility as a source of evidence.

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<sup>33</sup> See Email dated 11 May 2012 from Judge El Hadji Malick Sow to all of the Judges of the Special Court for Sierra Leone (except Justice Sebutinde), copying lead Defence and Prosecution Counsel. See CONFIDENTIAL ANNEX B.

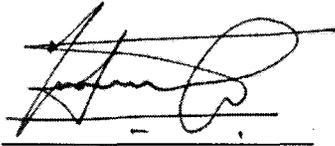
<sup>34</sup> *Prosecutor v. Delalić et al.*, IT-96-21, Decision of the Bureau on Motion to Disqualify Judges Pursuant to Rule 15 or in the Alternative that Certain Judges Recuse Themselves, 25 October 1999, paras. 13-15.

24. While the issues before the Plenary and the issue before the Appeals Chamber may not formally be expressed in the same way, the specific issue for consideration is overlapping: the credibility of Justice Sow. A reasonable observer, properly informed, would reasonably apprehend bias because the Judges of the Appeal Chamber, sitting in plenary, have already passed an adverse judgement on an aspect of Justice Sow's professional credibility and as such they have pre-judged the issue of his credibility as a source of critical evidence on appeal.

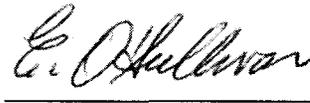
#### D. Conclusion

33. As previously emphasised by this Appeals Chamber, the apprehension of bias test reflects the "sacred and overriding principle" that "justice must not only be done, but should manifestly and undoubtedly be seen to be done."<sup>35</sup> Ultimately, the decision taken with respect to this motion will reflect on the integrity and standing of the Special Court, and the fair conduct of this appeal. Accordingly, Mr. Taylor respectfully requests the relief sought herein.

Respectfully Submitted,



Morris Anyah  
Lead Counsel for Charles G. Taylor  
Dated this 19<sup>th</sup> Day of July 2012,  
The Hague, The Netherlands



Eugene O'Sullivan  
Co-Counsel for Charles G. Taylor



Christopher Gosnell  
Co-Counsel for Charles G. Taylor



Kate Gibson  
Co-Counsel for Charles G. Taylor

<sup>35</sup> Justice Robertson Disqualification Decision, para. 16. Also see Justice Thompson Disqualification Trial Decision, para. 52.

### List of Authorities

#### *Prosecutor v. Taylor*

*Prosecutor v. Taylor*, SCSL-03-01-A, Notice of Appeal of Charles Ghankay Taylor, 19 July 2012.

*Prosecutor v. Taylor*, SCSL-03-1-PT-240, Order Designating Alternate Judge, 18 May 2007.

#### Other SCSL Jurisprudence

*Prosecutor v. Sesay et al.*, SCSL-2004-15-T, Decision on Sesay, Kallon and Gbao Appeal Against Decision on Sesay and Gbao Motion for Voluntary Withdrawal or Disqualification of Hon. Justice Bankole Thompson From the RUF Case, 24 January 2008.

<http://www.sc-sl.org/LinkClick.aspx?fileticket=pUqk8yUB3yc%3d&tabid=195>

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*Prosecutor v. Sesay*, SCSL-2004-15-AR15, Decision on Defence Motion Seeking the Disqualification of Justice Robertson from the Appeals Chamber, 13 March 2004.

<http://www.sc-sl.org/LinkClick.aspx?fileticket=uabm35Hc0jg%3d&tabid=195>

#### ICTY Jurisprudence

*Prosecutor v. Galić*, IT-98-29-A, Judgement, 30 November 2006.

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*Prosecutor v. Delalić, et al.*, IT-96-21-A, Judgement, 20 February 2001.

<http://www.icty.org/x/cases/mucic/acjug/en/cel-aj010220.pdf>

*Prosecutor v. Furundžija*, IT-95-17/1-A, Judgment, 21 July 2000.

<http://www.icty.org/x/cases/furundzija/acjug/en/fur-aj000721e.pdf>

*Prosecutor v. Delalić, et al.*, Case No. IT-96-21-T, Decision of the Bureau on Motion to Disqualify Judges Pursuant to Rule 15 or in the Alternative that Certain Judges Recuse Themselves, 25 October 1999.

<http://www.icty.org/x/cases/mucic/acdec/en/91025DQX12987.htm>

**ICTR Jurisprudence**

*Prosecutor v. Nahimana et al.*, ICTR-99-52-A, Judgement, 28 November 2007.  
[http://unictr.org/Portals/0/Case/English/Nahimana/decisions/071128\\_judgement.pdf](http://unictr.org/Portals/0/Case/English/Nahimana/decisions/071128_judgement.pdf)

*Prosecutor v. Rutaganda*, Case No. ICTR-96-3-A, Judgement, 26 May 2003.  
<http://unictr.org/Portals/0/Case/English/Rutaganda/decisions/030526.pdf>

*Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-A, Judgement, 1 June 2001.  
<http://unictr.org/Portals/0/Case/English/Akayesu/decisions/index.pdf>

**ICC Jurisprudence**

*Prosecutor v. Al Bashir*, ICC-02/05-01/09-76-ANN2, Annex II, Notification of the Decision on the Request for Excusal of a Judge, 19 March 2010.  
<http://www.icc-cpi.int/iccdocs/doc/doc848237.pdf>

# Annex A



DEFENCE (network) [Assigned Transcript: 07/01/2008 Taylor, LiveNote, Thomson West Business]

- 427 transcripts
- 07/01/2008 Taylor

Sort By: [Date]

1:00

- A
- a's
  - 21:8
  - a.m
  - 1:4 64:12,22,24
  - abandoned
  - 21:8 60:4
  - abducted
  - 11:14 12:7 13:7,10,14
  - ,19 44:3
  - abduction
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  - abductions
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  - 57:1
  - abetting
  - 50:8,11,21,23 57:2,21
  - 61:16,25
  - abidjan
  - 3:13 37:11,13,16 56:8
  - ability
  - 48:4
  - able
  - 28:7
  - above
  - 3:23 5:23 45:15
  - absence
  - 37:24
  - abu
  - 22:20 32:15,18 53:19
  - abuja
  - 44:24
  - abuse
  - 9:17
  - accept
  - 42:23
  - accented

25 than seven days after that, which would be by close of business  
 64:1 Thursday, 10th of May.  
 2 Under Rule 100, the parties can provide information  
 3 relating to factors that affect sentencing, which would include  
 4 written submissions and testimonials, if any. The extensive  
 5 judgement summary that is being delivered today will suffice for  
 6 this purpose, since it is a reasoned opinion of the Trial Chamber  
 7 which sets out comprehensively the grounds for convicting  
 8 Mr. Taylor.  
 9 Now, secondly, the Trial Chamber considers that this is an  
 10 appropriate case to fix a sentencing hearing, and fixes such  
 11 hearing, which will be for additional oral arguments only, for  
 12 Wednesday, 16th of May, at 9.30 a.m. At the sentencing hearing,  
 13 the Prosecution shall limit the length of its sentencing  
 14 submissions to a time not exceeding one hour. The Defence shall  
 15 limit the length of its sentencing submissions to a time not  
 16 exceeding one hour.  
 17 If Mr. Taylor wishes to address the Court prior to being  
 18 sentenced, then this will be his opportunity to do so, and he  
 19 shall limit the length of his address to a time not exceeding 30  
 20 minutes.  
 21 Thirdly, a sentencing judgement will be pronounced on  
 22 Wednesday, 30th of May, at 11.00 a.m.  
 23 Lastly, the accused is remanded until Wednesday, 16th of  
 24 May, at 9.30 a.m. for a sentencing hearing.  
 25 The Court is hereby adjourned to that date.  
 65:1 The only moment where a Judge can express his opinion is  
 2 during deliberations or in the courtroom, and pursuant to the  
 3 Rules, when there is no ^ deliberations, the only place left for  
 4 me in the courtroom. I won't get -- because I think we have been  
 5 sitting for too long but for me I have my dissenting opinion and  
 6 I disagree with the findings and conclusions of the other Judges,  
 7 because for me under any mode of liability, under any accepted  
 8 standard of proof the guilt of the accused from the evidence  
 9 provided in this trial is not proved beyond reasonable doubt by  
 10 the Prosecution. And my only worry is that the whole system is  
 11 not consistent with all the principles we know and love, and the  
 12 system is not consistent with all the values of international  
 13 criminal justice, and I'm afraid the whole system is under grave  
 14 danger of just losing all credibility, and I'm afraid this whole  
 15 thing is headed for failure.  
 16 Thank you for your attention.  
 17 [Whereupon the hearing adjourned at 1.17  
 18 p.m.]

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**SPECIAL COURT FOR SIERRA LEONE**

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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- Charles Ghankay Taylor**

Case Number: **SCSL-03-01-T-A**

Document Index Number: **1302**

Document Date: **19 July 2012**

Filing Date: **19 July 2012**

Document Type: **Confidential Annex B**

Number of Pages: **3** Number from: **106-108**

- Application
- Order
- Indictment
- Other**
- Motion
- Correspondence

Document Title:

**Public with Public Annex A and Confidential Annex B  
Charles Ghankay Taylor's motion for partial voluntary withdrawal or  
disqualification of Appeals Chamber Judges**

Name of Officer:

Samuel Fornah

Signed: 