

1100)

SCSL-03-01-T  
(30700-30706)

30700



**THE SPECIAL COURT FOR SIERRA LEONE**

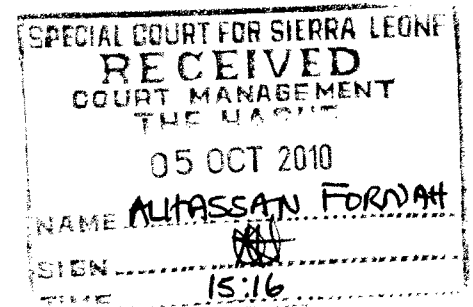
**Trial Chamber II**

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

**Registrar:** Ms. Binta Mansaray

**Date:** 5 October 2010

**Case No.:** SCSL-03-01-T



**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

---

**PUBLIC**

**DEFENCE REPLY TO PROSECUTION RESPONSE TO DEFENCE MOTION  
TO EXCLUDE EVIDENCE FALLING OUTSIDE THE SCOPE OF THE  
INDICTMENT AND/OR THE JURISDICTION OF THE SPECIAL COURT FOR  
SIERRA LEONE**

---

**Office of the Prosecutor:**

Ms. Brenda J. Hollis  
Ms. Leigh Lawrie  
Ms. Kathryn Howarth

**Counsel for Charles G. Taylor:**

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

## I. INTRODUCTION

1. This is the Defence's reply to the *Prosecution Response to Defence Motion to Exclude Evidence falling outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone*.<sup>1</sup>
2. On 24 September 2010, the Defence filed the *Defence Motion to Exclude Evidence falling outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone*.<sup>2</sup>
3. On 29 September 2010, the Prosecution filed the *Prosecution Response to Defence Motion to Exclude Evidence falling outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone*.<sup>3</sup>
4. The Defence has considered the Prosecution's arguments in the Response, but is left with the unwavering conviction that the relief sought by the Motion should be granted.

## II. ARGUMENT

5. The Response argues that the Motion is (i) untimely; (ii) insufficiently specific; and (iii) contrary to accepted international jurisprudence.<sup>4</sup> However, the Prosecution has failed to grasp the essential nature of the Defence's complaint or of the relief being sought, arguing that, so long as its nebulous concept of "relevance" is satisfied, there should be no limit to the introduction of evidence falling outside the scope of the Indictment.<sup>5</sup> It is more than noteworthy, therefore, that the Response fails to make a single mention of Rule 95, despite a primary basis of the Motion being the effect of adverse prejudice.

---

<sup>1</sup> Hereinafter "the Reply".

<sup>2</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1086, "Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone", 24 September 2010 ("the Motion").

<sup>3</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1093, "Prosecution Response to Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone", 29 September 2010 ("the Response").

<sup>4</sup> Response, para. 1.

<sup>5</sup> Response, paras. 11 and 12. It is difficult to see what evidence would actually fall foul of the Prosecution's own definition of relevance, which, presumably, is its objective.

6. Indeed, the Prosecution's objection that the Motion is "tantamount to an application for re-consideration" demonstrates this essential point.<sup>6</sup> The Motion does not request reconsideration of any oral or other decision of the Court (no such requests are to be found anywhere within the Motion). Rather, the Motion submits that the Prosecution evidence which falls outside the scope of the Indictment, when taken together, amounts to adverse prejudice contravening Article 17 and Rule 95.<sup>7</sup>
7. In addition, the Defence takes exception to issues that the Response does raise, and these are addressed, in turn, below.
  - (i) The Response's first complaint: the Motion is untimely
8. The Response argues that the Motion is untimely. It does this because (a) it challenges Prosecution evidence adduced over 19 months ago;<sup>8</sup> and (b) it has not materially impaired the Accused's ability to defend himself.<sup>9</sup>
9. The general complaint that the Motion is untimely is curious, given the continuous nature of the introduction and use of ex-temporal and ex-territorial evidence throughout the case. Ironically, the Response also details Defence objections raised at different stages in the trial.<sup>10</sup> Given such continuity, it seems prudent and expeditious, rather than untimely, that the Defence has made its submissions on this issue when it has; especially because, as the Motion pointed out, the Defence's general objection to ex-temporal and ex-territorial evidence has been an obvious and long-standing one.<sup>11</sup>
10. Yet, timeliness is only half the issue; even if the Motion was deemed untimely, it is clearly in the interests of justice to address the issue. The Motion itself detailed authority for examining the issue even out of time, where it is in the interests of justice to do so.<sup>12</sup>
11. As for the Response's more specific complaint that, for the Defence to have filed a timely objection, a motion should have been filed at the close of the Prosecution

---

<sup>6</sup> Response, para. 2.

<sup>7</sup> Special Court for Sierra Leone, Statute, Article 17 ("the Statute"). Special Court for Sierra Leone, Rules of Procedure and Evidence, Rule 95 ("the Rules").

<sup>8</sup> Response paras. 4 and 5.

<sup>9</sup> Response, paras. 6 and 7.

<sup>10</sup> Response, fn. 2.

<sup>11</sup> Motion, para. 6.

<sup>12</sup> Motion, para. 5.

case,<sup>13</sup> there is nothing in the Rules or case-law to suggest this, and indeed the presumption is unsupported.

12. The rest of the Prosecution argument under this head is about notice, not timeliness, and once again ignores the import of Rule 95, for notice cannot be given for evidence *in toto*. That class of notice, ironically, is what the Indictment is for – a point the Prosecution has consistently failed to grasp.

(ii) The Response's second complaint: the Defence objections are insufficiently specific

13. The Response argues that the Motion should identify specific pieces of evidence. However, it cites no authority to support this rather general contention, and once again demonstrates the Prosecution's misconception of the Defence's complaint.

14. The Motion makes clear that its concerns are ex-temporal and ex-territorial evidence led by the Prosecution. The Defence submits that such evidence is easily identifiable and discernible in the trial record of this case. For example, any evidence concerning the Accused's involvement in, or connection to, crimes occurring in Liberia are clearly distinct and identifiable for purposes of exclusion as requested by the Motion. Secondly, Article 1(1) of the Court's Statute makes clear that the temporal jurisdiction of the Court starts on 30 November 1996 and its geographic scope is limited to the territory of Sierra Leone. Thirdly, the Indictment at bar goes further by prescribing 18 January 2002 as the end date for all crimes alleged therein and in particularising the geographic scope of the pleaded counts to specified districts of Sierra Leone. Those districts are explicitly stated in the Indictment in relation to counts 2 through 11 and Count 1 incorporates them by reference to sustain its own viability. Accordingly, evidence occurring before 30 November 1996 or after 18 January 2002, or outside those specifically-pleaded districts Sierra Leone are the subject of the Motion.

15. It is curious and ironic that the Response cites the ICTR authority of *Bagosora* as having import;<sup>14</sup> for it is a case which has established that probative value and prejudice should be taken into account alongside relevance when assessing

---

<sup>13</sup> Response, para. 5.

<sup>14</sup> Response, fn. 11.

evidence,<sup>15</sup> the very process the Response fails to mention and the Prosecution seems to reject. Indeed, as mentioned above, the Response fails to tackle the issue of prejudice in any way.

(iii) The Response's third complaint: the Motion is contrary to accepted international jurisprudence

16. It is argued in the Response that the Motion is contrary to accepted international jurisprudence, though no argument has been made under this head in the Response, with the effect being that there is nothing to argue against. Indeed, the Response contradicts itself by citing, with apparent approval, a finding in *Milutinović et al.*, to the effect that “it is difficult to distill a general jurisprudential principle that can apply across the board to all other cases”.<sup>16</sup>
17. The Response, of course, goes on to do just that, citing cases in which evidence falling outside the scope of the indictment was permissible.<sup>17</sup> However, in doing so, the Prosecution fails to spot the most pertinent point: none of the cases cited, indeed no other case at the ICTY or ICTR, include such widespread use of evidence falling outside the indictment. The reason for this is simple, and it may sound trite to repeat it, but the point does not seem to have been appreciated. Cases are determined upon the evidence which supports indictments; yet in the case at bar such evidence has become shrouded in a mist of extraneous evidence to such an impermissible degree that it contravenes Article 17 of the Statute and Rule 95 of the Rules, as submitted in the Motion.

### III. CONCLUSION

18. For all of the foregoing reasons, the Defence respectfully requests that the Trial Chamber grant the relief sought in the Motion.

---

<sup>15</sup> *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, “Decision on Admissibility of Proposed Testimony of Witness DBY”, 18 September 2003, para. 16.

<sup>16</sup> Response, fn. 11, citing *Prosecutor v. Milutinović et al.*, IT-05-87-T, “Decision on Evidence Tendered through Witness K82”, 3 October 2006, para. 12.

<sup>17</sup> For example, Response, para. 13, citing, *Prosecutor v. Ngeze and Nahimana*, ICTR-99-52-A, “Decision on the Interlocutory Appeals – Separate Opinion of Judge Shahabuddeen”, 5 September 2000, paras. 23 and 24; Response, fn. 18.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'C. Griffiths' with a flourish at the end.

---

**Courtenay Griffiths, Q.C.**  
**Lead Counsel for Charles G. Taylor**

Dated this 5th Day of October 2010,  
The Hague, The Netherlands

**LIST OF AUTHORITIES****Prosecutor v. Taylor**

*Prosecutor v. Taylor*, SCSL-03-01-T-1086, “Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone”, 24 September 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-1093, “Prosecution Response to Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone”, 29 September 2010

**ICTR**

*Prosecutor v. Bagosora et al.*, ICTR-98-41-T, “Decision on Admissibility of Proposed Testimony of Witness DBY”, 18 September 2003  
<http://www.ictrcaselaw.org/docs/doc39146.PDF>

*Prosecutor v. Ngeze and Nahimana*, ICTR-99-52-A, “Decision on the Interlocutory Appeals – Separate Opinion of Judge Shahabuddeen”, 5 September 2000  
<http://www.ictrcaselaw.org/docs/doc59310.pdf>

**ICTY**

*Prosecutor v. Milutinović et al.*, IT-05-87-T, “Decision on Evidence Tendered through Witness K82”, 3 October 2006  
<http://www.icty.org/x/cases/milutinovic/tdec/en/061003.pdf>