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SCSL-03-01-T  
(28630-28635)

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**THE SPECIAL COURT FOR SIERRA LEONE**

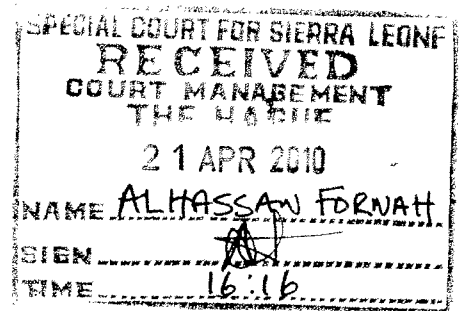
**Trial Chamber II**

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

**Registrar:** Ms. Binta Mansaray

**Date:** 21 April 2010

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



**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

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**PUBLIC**

**DEFENCE REPLY TO PROSECUTION RESPONSE TO DEFENCE MOTION FOR  
LEAVE TO VARY VERSION IV OF THE DEFENCE RULE 73<sup>ter</sup> WITNESS LIST  
AND SUMMARIES**

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**Office of the Prosecutor:**

Ms. Brenda J. Hollis  
Mr. Kathryn Howarth  
Ms. Sigall Horovitz

**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. The Defence files this Reply to *Prosecution Response to Defence Motion for Leave to Vary Version IV of the Defence Rule 73ter Witness List and Summaries*, filed on 16 April 2010.
2. In its Response, the Prosecution does not object to the proposed withdrawal of 86 (eighty-six) witnesses from the Defence witness list.
3. The Prosecution however, opposes the proposed addition of 4 (four) and the Defence submission to reinstate one witness arguing that the request would not be in the interest of justice and therefore should be denied.
4. The Response is unfounded as discussed below, and the Defence maintains its submission as submitted in the *Defence Motion for Leave to Vary Version IV of the Defence Rule 73ter Witness List and Summaries* (“Motion”).<sup>1</sup> The Defence therefore respectfully requests that the Trial Chamber grants the Motion in its entirety and order that the Defence may:
  - a. file Version V of its Rule 73ter witness list and summaries;
  - b. drop the 86 (eighty-six) witnesses whose pseudonyms appear in Annex A of the Motion to Vary its Rule 73ter witness list and summaries when filing Version V;
  - c. add the 4 (four) witnesses whose pseudonyms and summaries appear in Annex B of the Motion to Vary its Rule 73ter witness list and summaries when filing Version V; and
  - d. reinstate one witness whose pseudonym and summary appear in Annex C of the Motion to Vary its Rule 73ter witness list and summaries when filing Version V.

## II. APPLICABLE LEGAL PRINCIPLES AND SUBMISSIONS

5. The Trial Chamber retains the discretion to grant a Defence request to modify its witness list at any time, as long as it is in the interests of justice. The ICTY in *Delalic* has emphasized the need for flexibility when considering modifications to the witness list:

“.... It is thus important to adopt a flexible approach when considering the management of witnesses. Where the testimony of a witness is important to the Prosecution or the Defence, the Trial Chamber will ensure that such witness is heard,

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<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-943, Prosecution Response to Defence Motion for Leave to Vary Version IV of the Defence Rule 73ter Witness List and Summaries, 16 April 2010 (“Response”).

subject, naturally, to the limits prescribed in the Statute of the International Tribunal (“the Statute”) and Rules”.<sup>2</sup>

6. The Trial Chamber in this case and the plain language of Rule 73ter(E) make it clear that the Defence only has to show that varying its witness list is in the *interests of justice*; the Defence does not have to meet a *good cause* standard.<sup>3</sup> The Trial Chamber has explained that the *good cause* standard arises from the Prosecution’s disclosure obligations and *there is no equivalent obligation for the Defence* [emphasis added].<sup>4</sup>
7. Thus at paragraph 13 of its Response, the Prosecution improperly relies on case law from *Bagosora et al* which lists four factors<sup>5</sup> that the Trial Chamber must consider when making a conjunctive *interests of justice* **and** *good cause* assessment.<sup>6</sup> This conjunctive test is not the test applicable to the current Defence request to modify its witness list, and so the four factors are not a required part of our Trial Chamber’s analysis.
8. Even if the *Bagosora et al* criteria are relevant to the instant Defence request to modify its witness list, the Defence has met all four factors and its Motion should be granted in its entirety.

#### The Bagosora et al Factors are Satisfied

9. Denying the Defence leave to add and reinstate witnesses as submitted would be a violation to the Accused’s fair trial rights, in that he would be unable to fully answer the Prosecution’s case. This obviously is not *in the interests of justice*.
10. The Prosecution complains that the evidence from the four additional witnesses is duplicative and cumulative of existing witnesses.<sup>7</sup> However, the new witnesses would testify instead of those witnesses currently listed on the Back-Up Witness List that the Defence is unable or does not intend to call.

<sup>2</sup> *Prosecutor v. Delalic*, IT-96-21-T, Decision on Confidential Motion to Seek to Leave to Call Additional Witnesses”, 4 September 1997, para.7.

<sup>3</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-885, Decision on Defence Motion for Leave to Vary Version III of the Defence Rule 73ter Witness List and Summaries, 22 January 2010, pgs. 3 and 4 (“**Decision**”).

<sup>4</sup> *Id.*

<sup>5</sup> *Bagosora et al*, ICTR-98-41-T, Decision on Bagosora Motion to Present Additional Witnesses and Vary Its Witness List, 17 November 2006, para. 2. (“*Bagosora et al Decision*”) The four *Bagosora et al* factors are: the sufficiency and time of disclosure of the witness’ information; the materiality and probative value of the proposed testimony in relation to existing witnesses and allegations in the indictment; the ability of the other party to make an effective cross examination of the witness; and the justification offered by the party for the addition of the witness.

<sup>6</sup> Response, para. 13.

<sup>7</sup> Response, para. 22.

11. Additional witness DCT-311, a Rule 92<sup>quarter</sup> submission, would replace the evidence of back-up witnesses DCT-027 and DCT-029, to which the Prosecution has objected as being duplicative. Additional witnesses DCT-312 and DCT-313 would replace back-up witnesses DCT-208, DCT-214, and DCT-292. Additional witness DCT-314 would replace back up witnesses DCT-100 and DCT-111. Furthermore, the Defence may not call all of the witnesses currently listed on its Core Witness List, which would avoid other concerns regarding repetitive evidence.
12. Even if the evidence of some witnesses does overlap to an extent, the Defence submits that it is not improper for it to call more than one witness to testify regarding topics featuring prominently in Prosecution allegations, such as child soldiers, or the Defence case, such as the Accused's role in the peace process. Thus it is impossible for the Prosecution to suggest at this stage, that the anticipated evidence of these additional witnesses is duplicative or cumulative and consequently not material or probative.
13. The addition of these witnesses does not prejudice the Prosecution in any way as there is still ample time for the Defence to properly disclose the witnesses' identities and for the Prosecution to then prepare for cross-examination. The anticipated testimony of these individuals should not come as a surprise to the Prosecution, as the Prosecution itself suggests that the evidence is duplicative of other potential witnesses, for whom the Prosecution has no doubt been preparing.
14. The Defence notes that Prosecution again improperly relies on the *Bagosora et al* Decision to suggest that adding witnesses late in a party's case will require extra scrutiny by the Trial Chamber.<sup>8</sup> However, in the instance cited, the Defence had already called the final witness on its original list.<sup>9</sup> In the current proceedings, the Defence case is still in the beginning phase.

*Defence Request Promotes Judicial Economy*

15. On 8 February 2010, the Trial Chamber determined that "the Defence's commitment to review their witness list with a view to reducing the number of witnesses to be called will ultimately result in an expeditious trial..."<sup>10</sup> Thus the Trial Chamber, as recently as three months ago, anticipated a request by the Defence to review and revise its witness list. The Defence has diligently conducted this exercise, considering ongoing

<sup>8</sup> Response, paras. 13 and 20.

<sup>9</sup> *Bagosora et al* Decision, para. 2, footnote 2, citing *Muvunyi*, Decision on Accused's Motion to Expand and Vary the Witness List (TC), 28 March 2006, para. 17.

<sup>10</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, 8 February 2010, p.34879.

investigations, instructions from its client, and analysis of the Defence case. Dropping eighty-six witnesses,<sup>11</sup> twenty-three of which are Core witnesses, significantly advances judicial economy, while adding four witnesses and reinstating one, does not significantly detract from it and protects the fair trial rights of the Accused at the same time.

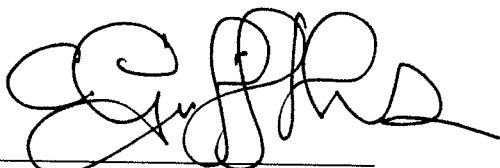
*The Prosecution Objection Regarding Summaries is Premature and Unfounded*

16. The issue of the sufficiency of witness summaries has never before been raised in regard to a motion to vary a witness list and has no place at this time. Such a concern is both premature and unfounded. The summaries of the five witnesses annexed to the Motion provide *a reasonable indication of the evidential areas to be covered by the witness in his sworn evidence* as required by this Trial Chamber.<sup>12</sup>

**III. CONCLUSION**

17. For all of the foregoing reasons, the Defence respectfully submits that the Defence has met the standard of *interests of justice* as laid out in the Decision and the Motion should be granted in its entirety.

Respectfully submitted,



**Courtenay Griffiths, Q.C.**  
**Lead Counsel for Charles G. Taylor**  
Dated this 21 Day of April 2010,  
The Hague, The Netherlands

<sup>11</sup> Dropping the eighty-six witnesses is primarily an effort by the Defence to avoid calling repetitive or duplicative evidence. See Motion, para. 11.

<sup>12</sup> This Trial Chamber has ruled on the issue of summary of expected testimony of Defence witnesses, as quoted by the Prosecution in the Response, *Prosecutor v. Taylor*, Trial Transcript 24 March 2010, p.37949.

**LIST OF AUTHORITIES**

*Prosecutor v. Taylor*, SCSL-03-01-T-885, “Decision on Defence Motion for Leave to Vary Version III of the Defence Rule 73ter Witness List and Summaries”, 22 January 2010.

*Prosecutor v. Taylor*, SCSL-03-01-T-943, “Prosecution Response to Defence Motion for Leave to Vary Version IV of the Defence Rule 73ter Witness List and Summaries”, 16 April 2010.

*Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, 8 February 2010.

**ICTY**

*Prosecutor v. Delalic*, IT-96-21-T, Decision on Confidential Motion to Seek to Leave to Call Additional Witnesses”, 4 September 1997.

<http://www.icty.org/x/cases/mucic/tdec/en/70904WG2.htm>

**ICTR**

*Prosecutor v. Bagosora et al*, ICTR-98-41-T, Decision on Bagosora Motion to Present Additional Witnesses and Vary Its Witness List, 17 November 2006.

<http://69.94.11.53/ENGLISH/cases/Bagosora/decisions/171106.pdf>