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SCSL-03-01-T  
(28300-28307)

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**THE SPECIAL COURT FOR SIERRA LEONE**

**In 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:** 8 March 2010

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

SPECIAL COURT FOR SIERRA LEONE	
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NAME	ALHASSAN TORNAH
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**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

PUBLIC

**DEFENCE RESPONSE TO PROSECUTION REQUEST FOR ORDERS  
IN RELATION TO THE SCHEDULING OF THE REMAINDER OF THE CASE**

**Office of the Prosecutor:**

Ms. Brenda J. Hollis  
Mr. Nicholas Koumjian  
Ms. Nina Jorgensen  
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. On 26 March 2010, the Prosecution filed a *Request for Orders in Relation to the Scheduling of the Remainder of the Case*,<sup>1</sup> which specifically requested the Trial Chamber to order the defence to conclude its case by 1 June 2010.
2. The Defence objects to this Request, and many of the Prosecution contentions contained therein, on the basis that it is premature, unnecessary, and unfair.

## II. Applicable Legal Principles

3. Article 17(4)(e) of the Special Court Statute guarantees the Accused's fair trial rights, including the right, "to examine, or have examined, the witnesses against him...and to obtain the attendance of witnesses on his or her behalf under the same conditions as witnesses against him or her".
4. Pursuant to Rule 85(A), each party is entitled to call witnesses and present evidence. There is no specific mention in the rules about limiting a party's case in wholesale fashion. Rule 73ter (C) and (D) however give the Trial Chamber the discretion to shorten the estimated length of examination-in-chief for some witness or to reduce the number of witnesses, if it considers that an excessive number of witnesses are being called to prove the same facts.
5. As this Trial Chamber has previously stated, its discretionary powers in relation to trial management issues should not be fettered by unnecessary guidelines.<sup>2</sup>
6. If the Trial Chamber is however inclined to limit the length of the Defence case at this early stage, the ICTY Appeals Chamber *Orić* Decision is instructive. The decision states that in addition to the "question whether, relative to the time allocated to the Prosecution, the time given to the Accused is reasonably proportional, a Trial Chamber must also consider whether the amount of time is objectively adequate to permit the Accused to set forth his case in a manner consistent with his rights".<sup>3</sup> The complexity of the issues that the Defence needs to confront should also be taken into account.<sup>4</sup>

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<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-918, Prosecution Request for Orders in Relation to the Scheduling of the Remainder of the Case, 26 February 2010 ("**Request**").

<sup>2</sup> *Prosecutor v. Taylor*, SCSL-03-01-PT-319, Decision on Prosecution's Motion for an Order Establishing Guidelines for the Conduct of the Trial Proceedings, 16 July 2007, p. 2.

<sup>3</sup> *Prosecutor v. Orić*, IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, 20 July 2005, para. 8.

<sup>4</sup> *Ibid*, para. 9 ("**Orić Decision**").

### III. Submissions

#### The Prosecution Request is Premature

7. The Trial Chamber's discretion to put time limits on the Defence case does not arise yet in principle or in practice. The Defence has acted in good faith with regard to its obligations for the presentation of evidence during the Defence case. The Defence has not caused unjustified delay to the trial to this point, thus it is highly inappropriate for the Prosecution to suggest that the Defence will behave unprofessionally or inefficiently when presenting its case.
8. It is premature to suggest that the Trial Chamber should set a date for the conclusion of the Defence case, just as it is beginning. The Court is currently hearing evidence from only the second Defence witness after the Accused. The first Defence witness, DCT-179, and the current Defence witness, DCT-125 are critical to the Defence's case in terms of responding to allegations of a Joint Criminal Enterprise dating as far back as the Accused's time in Libya and their evidence cannot be said to be cumulative.
9. The Defence has indicated that it is still revising its witness list downward<sup>5</sup> and reiterates its commitment to this process. The Prosecution might do well to remember that its own preliminary assessment of the number of witnesses it wished to call, according to the witness numbers given in its Pre-Trial Brief of April 2007, changed significantly over the course of its case. Ultimately, despite having indicated a total of 139 Core Witnesses (62 linkage and 77 crime base),<sup>6</sup> the Prosecution only called 91 witnesses. This is not to say that the Prosecution case should have been longer, but to illustrate that the Prosecution well knows that only as the case unfolds does it become clear precisely what evidence is necessary.

#### The Prosecution Request is Unnecessary

10. The Defence finds the suggestion underlying the Prosecution's Motion that it seeks to drag this case out unnecessarily to be impertinent and patronising both to itself and to the Trial Chamber. The argument assumes either that the Defence intends to abuse the judicial process by prolonging the case inordinately or alternatively that it lacks the judgement to present its case in an efficient manner. Most significantly, the Motion suggests that the Trial

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<sup>5</sup> See, for example, *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 5 and 8 February 2010.

<sup>6</sup> *Prosecutor v. Taylor*, SCSL-03-01-PT-219, Prosecution Corrigendum & Motion for Leave to Substitute Pages of the Prosecution Rule 73bis Pre-Trial Conference Materials, 17 April 2007, Annex 2.

Chamber, of its own volition, would not be able to determine an efficient management of the Defence case without the Prosecution's prompting.

11. The Defence submits that it has no interest in dragging out its case any longer than it is necessary to guarantee the Accused's fair trial rights, in particular the right to confront the Prosecution's case through his own witnesses and the right to call his own witnesses to give his own side of the story. Notwithstanding the wide scope of the case against the Accused as argued below in paragraph 15, the Defence aims to conduct its case in the most efficient manner possible, with the fewest witnesses possible. Consequently, the selection of witnesses is of utmost importance and must be done carefully and without undue haste.

*The Prosecution Request is Unfair*

12. The Prosecution request abrogates the rights of the Accused to fully present his case, as protected by Article 17(4)(e) of the Statute. Putting artificial parameters on the court schedule will not enhance the fairness or efficiency of the trial.
13. Put simply, the Defence case will not last two years. The Defence has already stated that the witnesses listed in the Rule 73ter filings provide a pool from which the Defence will draw, and not the total number of witnesses it will call.<sup>7</sup> What has remained true since this issue was first raised on 8 June 2009,<sup>8</sup> and indeed before then, is that the Defence has been continually conducting its investigations and interviewing witnesses; as such it has been extremely difficult for the Defence to provide accurate estimates for the length of its case. Currently, it estimates that its case will last for approximately one year, and thus will conclude sometime in the summer of 2010.
14. In its Request, the Prosecution evidences previous cases in which certain time-limits have been deemed sufficient, and such limits have been of the order of 60 per cent, or even 15 per cent of the Prosecution case.<sup>9</sup> Yet, such values are, by themselves, meaningless. As the Appeals Chamber in *Orić* indicated, limits can only be determined on a case-by-case basis, with reference to the particular circumstances of the case in question.<sup>10</sup> The length of time

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<sup>7</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 8 June 2009, p. 24264.

<sup>8</sup> *Ibid.*

<sup>9</sup> Request, para. 23.

<sup>10</sup> *Orić* Decision, para. 8. It is noteworthy, however, that several of the cases cited by the Prosecution were allocated dates which later had to be extended. See, ex., *Prosecutor v. Krajišnik*, IT-00-39-A, Judgment, Appeals Chamber, 17 March 2009, para. 107.

sufficient for this purpose depends on the gravity and complexity of the case the Accused has to answer.

15. The reality is that the Defence is in the unfortunate position of having to call more witnesses than it would otherwise want to, only because the Prosecution case focused largely on events and people and incidents outside the scope of the Indictment. Through its allegations of a Joint Criminal Enterprise, the Prosecution has broadened the scope of the case against the Accused well beyond the temporal and geographical limitations of the Indictment. As a result, much of the Prosecution case, and certainly the bulk of Mr. Taylor's cross-examination, dealt with matters pre-1996, matters of NPFL activities during the Liberian civil war, and unrelated matters of Taylor's presidency. Since the Prosecution has brought these facts into evidence, and the Trial Chamber may be inclined to consider them under Rule 93, based on alleged continuous patterns of conduct, the Defence now has to lead evidence on many of the same areas. This is not of the Defence's own choosing, but rather a direct consequence of the broad brush by which the Prosecution has painted the case against the Accused.
16. The Prosecution had free reign during its case to present witnesses without pressure from the Judges or the Defence as to when to conclude or how many witnesses to call. Even if the Defence does not match Prosecution witnesses one to one in terms of numbers, the Defence should be allowed the discretion to challenge the Prosecution case as it sees fit. The Defence intends to put forth its own coherent narrative of the conflict(s) in order to properly counter, and not just "poke holes in" the Prosecution's case. For example, much of the Prosecution's case centred around the Accused's contact with the likes of Foday Sankoh, Sam Bockarie and Issa Sesay, but made no mention of the Accused's role in the peace process or of the ECOWAS Committee on Sierra Leone (namely, the reason for such contact). It is critical that the Defence be permitted time to adduce the appropriate evidence in this regard, and indeed much of the Accused's testimony involved the detailed analysis of evidence relevant to this point.
17. It is notable that much of the evidence presented by the Prosecution through its 52 crime base witnesses was repetitive, unnecessarily cumulative, and arguably irrelevant, yet no one ordered the Prosecution to cut down its list or close its case by a certain date. The Prosecution could have presented this evidence through more efficient means. Thus, it

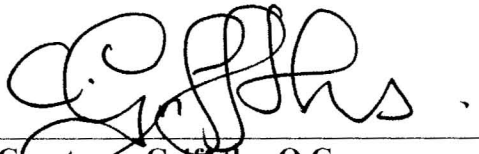
would be unfair, on the basis of summaries alone, to suggest that the Defence evidence is duplicative and thus the Defence must be told when to close its case.

18. Furthermore, to tie the Defence to a specific date, less than three months into the future, when the daily courtroom sitting schedule itself is varied and uncertain does not guarantee that the Defence would have an adequate amount of time to present its case.

#### **IV. Conclusion**

19. For the above reasons, the Defence respectfully requests the Trial Chamber to dismiss the Prosecution's request to order the Defence to conclude its case by 1 June 2010. Such an order is premature, unnecessary and unfair.

Respectfully Submitted,



**Courtenay Griffiths, Q.C.**  
**Lead Counsel for Charles G. Taylor**  
Dated this 8<sup>th</sup> Day of March 2010  
The Hague, The Netherlands

**Table of Authorities**

*Prosecutor v. Taylor*, SCSL-03-01-PT-219, Prosecution Corrigendum & Motion for Leave to Substitute Pages of the Prosecution Rule 73bis Pre-Trial Conference Materials, 17 April 2007, Annex 2

*Prosecutor v. Taylor*, SCSL-03-01-PT-319, Decision on Prosecution's Motion for an Order Establishing Guidelines for the Conduct of the Trial Proceedings, 16 July 2007

*Prosecutor v. Taylor*, SCSL-03-01-T-918, Prosecution Request for Orders in Relation to the Scheduling of the Remainder of the Case, 26 February 2010

*Prosecutor v. Oric*, IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, 20 July 2005, available at <http://www.icty.org/x/cases/oric/acdec/en/050720.htm>.

*Prosecutor v. Krajišnik*, IT-00-39-A, Judgment, Appeals Chamber, 17 March 2009, available at <http://www.icty.org/x/cases/krajisnik/acjug/en/090317.pdf>