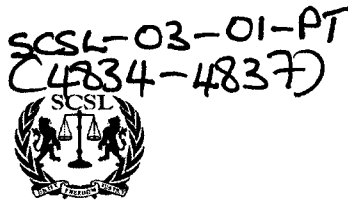


212.)



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THE SPECIAL COURT FOR SIERRA LEONE

In Trial Chamber II

Before: Justice Julia Sebutinde,
Justice Richard Lussick
Justice Teresa Doherty

Registrar: Mr. Herman von Hebel,

Date: 23 March 2007

Case No.: SCSL-2003-01-PT

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT MANAGEMENT	
Presiding	23 MAR 2007
NAME	Adura Msiira K.
SIGN	Msiira
ACMF Registrar	14:56

THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

RESPONSE TO "PUBLIC URGENT PROSECUTION MOTION FOR LEAVE TO SUBSTITUTE A SUPPLEMENTED WITNESS LIST AS ANNEX A(4) OF THE CONFIDENTIAL PROSECUTION MOTION FOR IMMEDIATE PROTECTIVE MEASURES FOR WITNESSES AND FOR NON-PUBLIC DISCLOSURE FILED ON 8 MARCH 2007"

Office of the Prosecution

Mr. Stephen Rapp
Mr. Brenda Hollis
Ms. Wendy van Tongeren
Ms. Ann Sutherland
Ms. Shyamala Alagendra
Mr. Alain Werner
Ms. Leigh Lawrie

Counsel for Charles Taylor

Mr. Karim A. A. Khan
Mr. Roger Sahota

1. This is the Counsel for Mr. Charles Taylor (the “Defence”) response to the “Public Urgent Prosecution Motion for Leave to Substitute a Supplemented Witness List as Annex A(4) of the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure filed on 8 March 2007” (the “Motion”), filed 19 March 2007.¹ The Defence response is made filed today pursuant to the Trial Chamber (the “Chamber”) “Order For Expedited Filing”, filed 22 March 2007.²
2. The Defence are confident, in light of the previous Prosecution Reply,³ that the Prosecution will continue to take at face value the Defence intention not to oppose the order sought in the Motion.
3. The Defence maintain its previous submissions in regard to the Prosecution’s methodology in seeking protective measures. Towards this, the Special Court’s Rule 66 (A)(ii) of the Rules of Procedure and Evidence (the “Rules”) states:

Rule 66: Disclosure of materials by the Prosecutor (amended 29 May 2004)

- (a) Subject to the provisions of Rules 50, 53, 69 and 75, the Prosecutor shall:
 - (i) Within 30 days of the initial appearance of an accused, disclose to the Defence copies of the statements of all witnesses whom the Prosecutor intends to call to testify and all evidence to be presented pursuant to Rule 92 *bis* at trial.
 - (ii) Continuously disclose to the Defence copies of the statements of all additional prosecution witnesses whom the Prosecutor intends to call to testify, but not later than 60 days before the date for trial, or as otherwise ordered by a Judge of the Trial Chamber either before or after the commencement of the trial, upon good cause being shown by the Prosecution. Upon good cause being shown by the Defence, a Judge of the Trial Chamber may order that copies of the statements of additional prosecution witnesses that the Prosecutor does not intend to call be made available to the defence within a prescribed time.

As is apparent in the plain language of the rule, the Prosecution’s primary duty is to continuously disclose the witness statements of additional prosecution witnesses whom the

¹ *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-205, Public Urgent Prosecution Motion for Leave to Substitute a Supplemented Witness List as Annex A(4) of the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure filed on 8 March 2007, 19 March 2007.

² *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-211, Order For Expedited Filing, 22 March 2007.

³ *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-208, Public Prosecution’s Reply to “Defence Response to ‘Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and Non-Public Disclosure’”, 21 March 2007, para. 2.

Prosecution intends to call. "Additional" clearly refers to witnesses not included in the initial Rule 66(A)(i) disclosure. Thus, the "no later than 60 days" is a cut off point after which, absence a showing of good cause, no disclosure will be admitted. It does not purport to establish an acceptable time schedule for Prosecutorial disclosure, so as to displace the primary obligation to continuously disclose witness statements (at the earliest opportunity). Such practice is consistent with the "cards on the table" approach enjoined by the jurisprudence of international tribunals.⁴

Respectfully Submitted,



Karim A. A. Khan

Counsel for Mr. Charles Ghankay Taylor

Dated this 23rd Day of March 2007.

⁴ See ICC Rules of Procedure and Evidence, Rule 76, which is expressive on the subject, and should inform the Prosecutor in fulfilling his disclosure obligations. Online at:
http://www.icc-cpi.int/library/about/officialjournal/Rules_of_Proc_and_Evid_070704-EN.pdf

Rule 76 (1) "[Disclosure] shall be done sufficiently in advance to enable the adequate preparation of the defence."

Rule 76 (2) "The Prosecutor shall subsequently advise the defense of the names of any additional witnesses and provide copies of their statements when the decision is made to call these witnesses."

Table of Authorities

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Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-PT-205, Public Urgent Prosecution Motion for Leave to Substitute a Supplemented Witness List as Annex A(4) of the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure filed on 8 March 2007, 19 March 2007

Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-PT-208, Public Prosecution's Reply to "Defence Response to 'Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and Non-Public Disclosure'", 21 March 2007

Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-PT-211, Order For Expedited Filing, 22 March 2007