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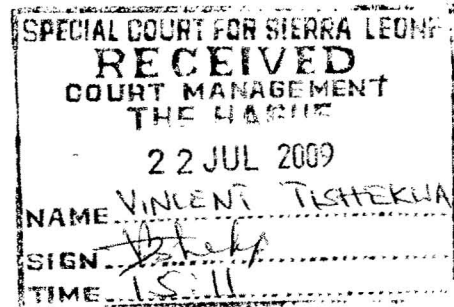
**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone**

TRIAL CHAMBER II

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

Acting Registrar: Ms. Binta Mansaray

Date filed: 22 July 2009



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

**PROSECUTION RESPONSE TO “PUBLIC WITH ANNEX A DEFENCE MOTION FOR
LEAVE TO FILE WITNESS ORDER AND LIST OF EXHIBITS FOR THE WEEK 27 JULY –
31 JULY 2009 OUT OF TIME”**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Ms. Ruth Mary Hackler

Counsel for the Accused:

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

I. INTRODUCTION

1. The Prosecution files this Response to the “Public with Annex A Defence Motion for Leave to File Witness Order and List of Exhibits for the Week 27 July – 31 July 2009 Out of Time” (“Motion”)¹ in compliance with the Trial Chamber’s Order for expedited filing in relation to the Motion.²

II. BACKGROUND

2. The Trial Chamber Order of 8 June 2009 (“Order”) requires the Defence to provide a witness order, language of testimony and anticipated exhibits to be used with witnesses two weeks prior to the week during which the witness is expected to be called.³ The Defence failed to comply with the deadline for items for the week of 27-31 which were due by the terms of the Order on 13 July.⁴
3. On 15 July in a meeting with the Prosecution, the Defence agreed to disclose all documents listed in its “Defence Rule 73ter Filing of Exhibit List (Version II)”⁵ to the Prosecution by close of business the next day. On 16 July, the Prosecution received six binders of documents containing 225 potential Defence exhibits for possible use during the Accused’s testimony.⁶ The list indicating which of those 225 documents would be used during the week of 27-31 July was disclosed to the Prosecution team on Sunday, 19 July, almost a full week after it was due. It is this list which is the subject of the Motion.
4. The Defence asserts that by disclosing all of its Rule 73ter documents and providing the list of exhibits prior to the filing of the Motion, the Prosecution would not be prejudiced *whatsoever*.⁷ The Prosecution disagrees.

III. SUBMISSIONS

5. The Trial Chamber’s Order requiring two weeks notice of the exhibits to be used with a witness is based on the principle of fairness. During the

¹ *Prosecutor v. Taylor*, SCSL-01-T-814, 21 July 2009 (“**Motion**”).

² *Prosecutor v. Taylor*, SCSL-01-T-815, “Order for Expedited Filing in Relation to Public with Annex A Defence Motion for Leave to File Witness Order and List of Exhibits for the Week 27 July - 31 July 2009 Out of Time”, 21 July 2009.

³ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 8 June 2009, 24267:2-9.

⁴ Motion, para. 4.

⁵ *Prosecutor v. Taylor*, SCSL-03-01-T-800, 26 June 2009.

⁶ The disclosure receipt listed 227 documents, but two were missing in their entirety.

⁷ Motion, para. 11 (emphasis added).

Prosecution phase of this case, the Prosecution complied with its other numerous disclosure obligations as well as a two-week deadline identical to this Order. Here, the Defence does not have any disclosure obligations aside from the Order imposing the two-week deadline, and three weeks into this obligation, it has failed to comply.

6. The Prosecution understands that last-minute changes are sometimes unavoidable, and it does not intend to be inflexible or unreasonable. However, the Prosecution *is* prejudiced by receiving the exhibit list essentially one week before the exhibits are to be presented in court, rather than the two-week notice the Trial Chamber has ordered.
7. The notice from the Defence was not only late, but voluminous. The list of exhibits disclosed one week prior to use in court contains 32 documents totalling well over 1,000 pages of material. Furthermore, two of the 32 documents (DCT-256 and DCT-261) on the list of potential exhibits were not disclosed to the Prosecution until 20 July, and include many copies of photographs of such poor quality as to be indiscernible.
8. The Defence states that the delay of the filing does not prejudice the Prosecution because it is aware of the time estimates for the Accused's testimony.⁸ This seems to imply that the Prosecution does not need two weeks to review the documents because cross-examination may not start for several more weeks. This argument fails because first, the Prosecution must be familiar with potential exhibits when they are *initially* presented to the witness in order to make any objections to the document, foundational or otherwise. Second, the Defence has indicated in Court and in the Motion at hand that the testimony of the Accused is proceeding at a faster pace than anticipated.⁹ The Prosecution has no way of knowing how much longer the Accused will be in direct examination, as the Defence has only given its estimate of the length of the entire examination. The Prosecution needs the entire two weeks provided in the Order to properly prepare for cross-examination of the Accused on matters contained within the documents.
9. The Prosecution is trying in good faith to prepare for the use of the exhibits listed by the Defence for next week. However, given the volume of

⁸ Motion, para. 6.

⁹ *Ibid.*, para. 7.

materials and shortness of time, the Prosecution at this time only believes it will be ready for introduction of 23 DCT exhibits: 47, 175, 196, 39, 213, 214, 109, 163, 11, 146, 217, 60, 75, 4, 139, 88, 36, 176, 9, 198, 170, 52 and 144. The Prosecution would also be amenable to introduction of the photographs from DCT-261 if a colour copy is provided this week which would allow it to discern who is pictured. The Prosecution will endeavour to review the larger remaining documents but asks that the Defence accommodate it by holding off on introducing the larger exhibits until later in the week or into the following week after discussing such introduction with the Prosecution's Principal Trial Attorney. These remaining exhibits are DCT 7, 9, 12, 18, 201, 102, 23, and 256.

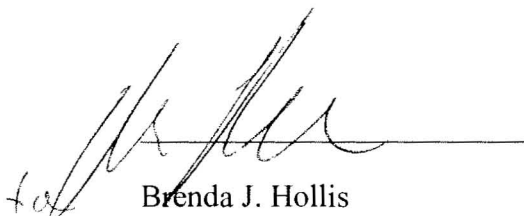
IV. CONCLUSION

10. For the above reasons, the Prosecution respectfully asserts that it is prejudiced by the Defence's failure to comply with the Order. Nevertheless, in the interests of allowing the Accused to present all of his evidence and for the proceedings to continue efficiently, the Prosecution does not object to the Trial Chamber granting the Motion to file the witness list and list of exhibits for the week 27-31 of July 2009 out of time, but it asks the Defence to accommodate its request set forth in Paragraph 9 regarding the presentation of the larger exhibits.

Filed in The Hague,

22 July 2009

For the Prosecution,



Brenda J. Hollis

Principal Trial Attorney

LIST OF AUTHORITIES

SCSL

Prosecutor v. Taylor

1. *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 8 June 2009.
2. *Prosecutor v. Taylor*, SCSL-03-01-T-800, “Defence Rule 73ter Filing of Exhibit List (Version II)”, 26 June 2009.
3. *Prosecutor v. Taylor*, SCSL-03-01-T-814, “Public with Annex A Defence Motion for Leave to File Witness Order and List of Exhibits for the Week 27 July – 31 July 2009 Out of Time”, 21 July 2009.
4. *Prosecutor v. Taylor*, SCSL-03-01-T-815, “Order for Expedited Filing in Relation to Public with Annex A Defence Motion for Leave to File Witness Order and List of Exhibits for the Week 27 July – 31 July 2009 Out of Time”, 21 July 2009.