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SCSL-03-01-T  
(26565-26568)

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SPECIAL COURT FOR SIERRA LEONE

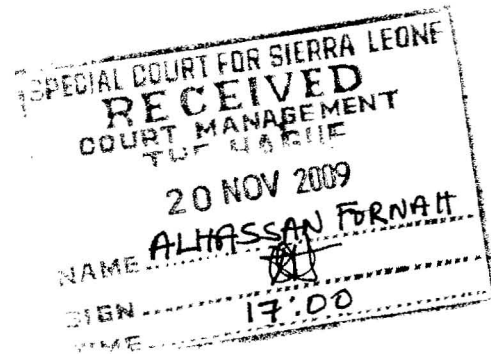
TRIAL CHAMBER II

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

**Acting Registrar:** Binta Mansaray

**Case No.:** SCSL-03-1-T

**Date:** 20 November 2009



PROSECUTOR

v.

Charles Ghankay TAYLOR

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DECISION ON PROSECUTION MOTION FOR AN ORDER RESTRICTING CONTACT BETWEEN  
THE ACCUSED AND DEFENCE COUNSEL DURING CROSS-EXAMINATION

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Office of the Prosecutor:

Brenda J. Hollis  
Nicholas Koumjian  
Nina Jørgensen  
Kathryn Howarth

Defence Counsel for Charles G. Taylor:

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

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);

SEISED of the “Prosecution Motion for an Order Restricting Contact between the Accused and Defence Counsel during Cross-Examination”, filed on 12 November 2009 (“Motion”),<sup>1</sup> wherein the Prosecution seeks an order restricting the Accused’s access to Defence Counsel for the duration of his cross-examination, with the caveat that should the Defence need to speak with the Accused about a matter not related to his testimony then they should provide notice of the same to the Prosecution and that any dispute regarding the same should be resolved by the Trial Chamber;<sup>2</sup>

NOTING the Oral Order of 10 November 2009 wherein the Trial Chamber ordered expedited filings;<sup>3</sup>

NOTING the “Public with confidential Annex A Defence Response to the Public Prosecution Motion for an Order Restricting Contact between the Accused and Defence Counsel during Cross-Examination”, filed on 16 November 2009 (“Response”),<sup>4</sup> wherein the Defence opposes the Motion and submits that it should be dismissed in its entirety;<sup>5</sup>

NOTING that the Prosecution indicated that it does not intend to file a Reply;<sup>6</sup>

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”) and Rules 54, 73, 85 and 90 of the Rules of Procedure and Evidence (“Rules”);

CONSIDERING that while witnesses are generally prevented from communicating with counsel during the course of their testimony,<sup>7</sup> it is recognised that there is a fundamental difference between an accused who is testifying on his own behalf and any other witness;<sup>8</sup>

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<sup>1</sup> SCSL-03-01-T-854.

<sup>2</sup> Motion, para. 2.

<sup>3</sup> *Prosecutor v. Taylor*, Transcript 10 November 2009, pp. 31556-31564.

<sup>4</sup> SCSL-03-01-T-858.

<sup>5</sup> Response, paras 2 and 30.

<sup>6</sup> E-mail from Office of the Prosecutor to Senior Legal Officer Trial Chamber II and the Defence, dated 18 November 2009.

<sup>7</sup> *Prosecutor v. Prlić et al.*, IT-04-74-AR73.10, “Decision on Prosecution’s Appeal against Trial Chamber’s Order on Contact between the Accused and Counsel during an Accused’s Testimony pursuant to Rule 85(C)”, 5 September 2008, [hereinafter “*Prlić Appeals Chamber Decision*”], para. 12.

<sup>8</sup> *Prlić Appeals Chamber Decision*, para. 11 citing *Prosecutor v. Galić*, Case No. IT-98-29-A, Judgement, 30 November 2006, para. 17; *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-A, Judgement, 28 February 2005.

CONSIDERING that it is the right of an accused to communicate with counsel of his or her own choosing under Article 17(4)(b) of the Statute and to appear as a witness in his or her own Defence under Rule 85(C);

CONSIDERING that the fundamental right of an accused to have access to counsel applies at any stage of the proceedings<sup>9</sup> and that curtailing this right for an extended period of time could potentially undermine one of the most important basic rights of an accused and endanger the integrity and fairness of the proceedings as a whole;<sup>10</sup>

CONSIDERING that in the instant case investigation and preparation of the Defence case is still ongoing, necessitating frequent contact between the Accused and his Counsel during his testimony;<sup>11</sup>

SATISFIED that the integrity of the proceedings is protected by the Trial Chamber's standing Order to the Accused "*not to discuss his evidence with any other person*"<sup>12</sup> (which Order the Defence has misquoted in its Response in stating that "the Presiding Judge observed that the usual words of caution would be given each day in order to remind the Accused not to discuss the evidence with any other person *but his Counsel*" [emphasis added]);<sup>13</sup>

SATISFIED FURTHER that the integrity of the proceedings is also protected by the professional and ethical obligations assumed by Counsel under Articles 5 and 6 of the Code of Professional Conduct for Counsel with the Right of Audience before the Special Court for Sierra Leone;<sup>14</sup>

CONSIDERING that there has been no suggestion that Defence Counsel have acted unethically or inappropriately in their communications with the Accused during the course of his examination-in-

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<sup>9</sup> *Prlić* Appeals Chamber Decision, para. 14.

<sup>10</sup> *Prlić* Appeals Chamber Decision, para. 16.

<sup>11</sup> Response, paras 22-24.

<sup>12</sup> *Prosecutor v. Taylor*, Transcript 14 July 2009, pp 24455.

<sup>13</sup> Response, para. 7.

<sup>14</sup> Code of Professional Conduct for Counsel with the Right of Audience before the Special Court for Sierra Leone as amended on 13 May 2006. Article 5 "Competence, Independence and Integrity" holds in relevant part that "Counsel shall act with: (i) competence, honesty, skill and professionalism in the presentation and conduct of the case" [...] and (iii) integrity to ensure that his actions do not bring the administration of justice into disrepute." Article 6 "Integrity of Evidence" holds in relevant part that "(A) Counsel shall not introduce evidence which he knows to be false or which he reasonably believes was obtained through recourse to unlawful methods..."

chief and that Trial Chamber has indicated that there is a rebuttable presumption of *bona fides* when counsel deals with his witness while the witness is giving evidence;<sup>15</sup>

**NOTING** that should the Prosecution suspect that inappropriate or unethical communication has occurred between the Accused and his Counsel, the Prosecution may test the credibility of the Accused in cross-examination;


**RECALLING** that the Trial Chamber has held that it would rule on particular issues as they arise<sup>16</sup> and has indicated that the scope of cross-examination on contact between the Accused and his counsel would be looked at on a case-by-case basis;<sup>17</sup>

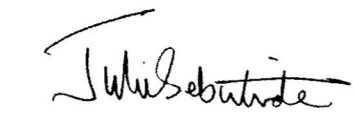
**FINDING THEREFORE** that the Prosecution Motion is without merit;

**HEREBY DENIES THE MOTION**

Done at The Hague, The Netherlands, this 20<sup>th</sup> day of November 2009.

  
Justice Teresa Doherty

  
Justice Richard Lussick  
Presiding Judge

  
Justice Julia Sebutinde



<sup>15</sup> *Prosecutor v. Taylor*, Transcript 14 July 2009, p. 24454, citing *Prljić Appeals Chamber Decision*, para. 18.

<sup>16</sup> *Prosecutor v. Taylor*, Pre-Trial Defence Conference, Transcript 8 June 2009, p. 24252.

<sup>17</sup> *Prosecutor v. Taylor*, Transcript 14 July 2009, p. 24456.