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SCSL-03-01-T
(28541-28563)

28541



THE SPECIAL COURT FOR SIERRA LEONE

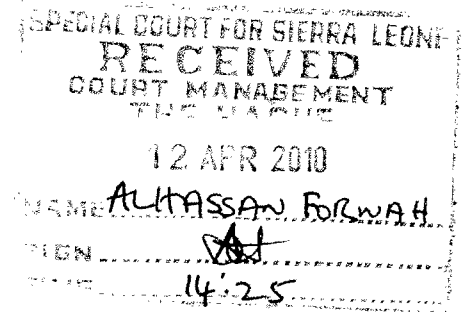
Trial Chamber II

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

Registrar: Ms. Binta Mansaray

Date: 12 April 2010

Case No.: SCSL-2003-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC WITH ANNEXES A, B, C, AND D

**DEFENCE MOTION FOR LEAVE TO VARY VERSION IV OF THE DEFENCE
RULE 73^{ter} WITNESS LIST AND SUMMARIES**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Nicholas Koumjian

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 motion pursuant to Rule 73ter(E),¹ seeking leave of court to vary Version IV of its Rule 73ter witness list and summaries.²
2. This motion is being filed as a result of ongoing Defence investigations and further analysis of testimony critical to the Defence case.
3. For the reasons given below, the Defence considers that it would be in the interests of justice for leave of court to be granted as requested by this motion, and therefore, respectfully requests that the Trial Chamber order the following:
 - a. the Defence may file Version V of its Rule 73ter witness list and summaries;
 - b. the Defence may drop the 86 (eighty-six) witnesses whose pseudonyms appear in Annex A hereto from its Rule 73ter witness list and summaries when filing Version V;
 - c. the Defence may add the 4 (four) witnesses whose pseudonyms and summaries appear in Annex B hereto to its Rule 73ter witness list and summaries when filing Version V; and
 - d. the Defence may reinstate one witness whose pseudonym and summary appear in Annex C hereto to its Rule 73ter witness list and summaries when filing Version V.

II. Background

4. On 29 May 2009, the Defence filed a list of potential Defence witnesses and summaries of their anticipated evidence in accordance with Rule 73ter and with the Trial Chamber's oral Order on 7 May 2009 (Version I).³ Subsequent to that, the Defence filed an updated and corrected Version II of its Rule 73ter witness list and

¹ See, *Rules of Procedure and Evidence of the Special Court for Sierra Leone*, as amended on 27 May 2008 ("Rules"), Rule 73ter(E) ("After the commencement of the defence case, the defence may, if it considers it to be in the interests of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary its Decision As To Which Witnesses Are To Be Called.")

² *Prosecutor v. Taylor*, SCSL-03-01-T-897, "Public with Annex A and Confidential Annex B Defence Rule 73ter Witness List and Summaries- Version Four," 29 January 2010 ("Version IV").

³ *Prosecutor v. Taylor*, SCSL-03-01-T-784, "Public with Annexes A, B, C and Confidential Ex Parte Annex D Defence Rule 73ter Filing of Witness Summaries with a Summary of the Anticipated Testimony of the Accused, Charles Ghankay Taylor," 29 May 2009 ("Version I"); *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, 7 May 2009, p. 24243.

summaries on 12 June 2009⁴ and a further updated and corrected Version III on the 10 July 2009.⁵

5. The Defence has consistently updated the Court and the Prosecution on the status of its investigations and reiterates its arguments stated in its Motion to Vary Witness List filed on 11 December 2009.⁶ As a consequence of its on-going investigations and subsequent to the commencement of the Defence case, on 11 December 2009, pursuant to Rule 73ter(E), the Defence sought leave to vary its witness list. This was granted by the Trial Chamber in its **Decision** dated 22 January 2010.⁷ In the Decision, the Trial Chamber again acknowledges that the Defence investigations were in a state of transition.⁸
6. The Defence consequently filed its Fourth Version of the Rule 73ter filing on 29 January 2010 and dropped the 48 witnesses and added 32 witnesses to its witness list.⁹
7. At the time of Version IV of the Defence Rule 73ter filing, the testimony of the Accused had nearly concluded. On 8 February 2010, Lead Defence Counsel stated that the Defence has a much clearer idea of its witness requirements after the conclusion of the cross-examination. Lead Defence Counsel then requested an adjournment of the proceeding, prior to commencing the re-examination of the Accused, in order to, among other things; review the witness requirements to reduce the witness list considerably, saving time and expense of the court.¹⁰
8. On 18 February 2010, the Defence indicated to the Prosecution that following discussion among the Defence Team, it does not wish to call any experts to give

⁴ *Prosecutor v. Taylor*, SCSL-03-01-T-793, “Public with Annex A and Confidential Annex B Updated and Corrected Defence Rule 73ter Filing of Witness Summaries”, 12 June 2009.

⁵ *Prosecutor v. Taylor*, SCSL-03-01-T-809, “Public with Annex A and Confidential Annex B Updated and Corrected Defence Rule 73ter Filing of Witness Summaries-Version Three”, 10 July 2009.

⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-784, “Public with Annexes A, B, C and Confidential Ex Parte Annex D Defence Rule 73ter Filing of Witness Summaries with a Summary of the Anticipated Testimony of the Accused, Charles Ghankay Taylor,” 29 May 2009 (Version I), para.7, See also: *Prosecutor v. Taylor*, SCSL-03-01-T-869 “Defence Motion for Leave to Vary Version III of the Defence Rule 73ter Witness List and Summaries”, 11 December 2009, para.5-8, *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, 6 July 2009, p. 24278-24281. 13 July 2009; p. 24322; p. 24294 and p. 24295, and 4 May 2009, p. 24220.

⁷ *Prosecutor v. Taylor*, SCSL-03-01-T-885, “Decision on Defence motion for leave to Vary Version III of the Defence Rule 73ter Filing of Witness Summaries”, 22 January 2010

⁸ *Ibid*, p.5 para.2

⁹ *Prosecutor v. Taylor*, SCSL-03-01-T-897, “Public with Annex A and Confidential Annex B Defence Rule 73ter Witness List and Summaries- Version Four,” 29 January 2010 (“Version IV”).

¹⁰ *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, 8 February 2010, p.34874: 18-24

evidence in the Accused Defence and will therefore seek leave from the Trial Chamber to withdraw the three experts from the Version IV of the Rule 73ter filing.¹¹

III. Applicable Legal Principles and Submission

9. Rule 73ter(E) allows the Defence to move the Trial Chamber for leave to vary its decision as to which witnesses are to be called, if doing so is in the interests of justice.¹² In its Decision, this Trial Chamber has ruled that the Defence need only to demonstrate that a Defence Motion for Leave to Vary is “in the interest of justice” and there is no “good cause” standard to be met by the Defence.¹³
10. The Defence wishes to drop several other witnesses on the basis of the results of its on-going investigations. The Defence does not now intend to call any of the 86 (eighty-six) witnesses whose pseudonyms appear in Annex A hereto, and it is submitted that it would be in the interest of justice and judicial economy were the Defence to be granted leave to drop those witnesses.
11. In Annex B are pseudonyms and witness summaries for 4 (four) witnesses that the Defence wishes to include in its witness list.¹⁴ Leave is being sought to add these witnesses to the Defence’s list on the grounds that on-going Defence investigations, as well as developments in court since the commencement of the Defence case renders evidence of each such witnesses relevant and material to the Defence’s case. It is noteworthy that the Defence has tried to minimize the number of witnesses in order to prevent the calling of redundant and cumulative evidence from Defence witnesses. Under these circumstances, the Defence submits that granting it leave to add these witnesses to the list would be in the interests of justice. The Prosecution will suffer no prejudice by the inclusion of the 4 (four) witnesses in the Defence list, as the Defence will still be able to meet the 21 (twenty-one) day disclosure requirements.
12. The Defence wishes to reinstate witness DCT-238 and provides the summary of the Witness’ evidence in Annex C. The witness is among the 48 witnesses who were

¹¹ Annex D Letter from Lead Counsel for Charles G. Taylor date 18 February 2010.

¹² Rule 73ter(E) of the Rules.

¹³ *Prosecutor v. Taylor*, SCSL-03-01-T-885, “Decision on Defence motion for leave to Vary Version III of the Defence Rule 73ter Filing of Witness Summaries”, 22 January 2010 p.4, para.3 quoting *Prosecutor v. Nahimana*, ICTR-99-52-T, “Decision on the defence’s application under Rule 73ter(e) for leave to call additional defence witnesses,” 9 October 2002 (“Nahimana Decision”).

¹⁴ These are witnesses DCT-311 (Rule 92 quarter witness as the witness is deceased), DCT-312, DCT-313 and DCT-314)

dropped from the Defence's Rule 75ter witness list and summaries Version IV.¹⁵ Upon the conclusion of the Accused's testimony the Defence now appreciates that the evidence of the witness is critical to the Defence case and therefore submits that granting it leave to reinstate this witness to the list would be in the interest of justice.

13. In granting the Prosecution's motion for leave to vary its witness list, the Trial Chamber rendered its decision pursuant to Rule 54.¹⁶ That Rule grants the Trial Chamber the discretion and flexibility to grant motions of either party which are "necessary for the purposes of an investigation or for the preparation or conduct of the trial."¹⁷
14. Bearing in mind the provisions of Rule 54 and the ongoing nature of the Defence investigations and preparations as has been alluded to on many occasions, the Defence submits that allowing it to vary its witness list by dropping the witnesses listed in Annex A, including those listed in Annex B, and reinstating the witness in Annex C to its witness list would be consonant with the letter and the spirit of Rule 54, and with the interests of justice.
15. As the Trial Chamber has previously acknowledged that the Defence investigations were in a state of transition,¹⁸ allowing an updated list to be filed would also accord with the Accused's right to "adequate time and facilities for the preparation of [his] defence"¹⁹ under Article 17(4) (b) of the Statute.²⁰ This *minimum guarantee* is fundamental to the Accused's right to a fair trial and the Defence maintains that its ongoing investigation and especially witness interviews are imperative to the Defence's case. Denying the Accused leave to vary the witness list would, under these circumstances, amount to an infringement of his rights under Article 17.

¹⁵ *Prosecutor v. Taylor*, SCSL-03-01-T-897, "Public with Annex A and Confidential Annex B Defence Rule 73ter Witness List and Summaries- Version Four," 29 January 2010 ("Version IV").

¹⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-408, "Decision on Public with Confidential Annex D Motion for Leave to Vary the Witness List and to Disclose Statements of Additional Witnesses," 5 February 2008, p. 4

¹⁷ *Rules*, at Rule 54.

¹⁸ *Prosecutor v. Taylor*, SCSL-03-01-T-885, "Decision on Defence motion for leave to Vary Version III of the Defence Rule 73ter Filing of Witness Summaries", 22 January 2010, p.5, para.2.

¹⁹ *Statute of the Special Court for Sierra Leone*, annexed to the *Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone*, 16 January 2002 ("Statute"), see, Article 17(4)(b).

²⁰ Statute.

IV. Conclusion

16. The Defence submits that it has met the interests of justice standard as laid out in the Decision for all of the foregoing reasons. Therefore, the Defence respectfully requests that the Trial Chamber grant it leave to vary its witness list to conform with the results of necessary and critical Defence investigations by ordering the following:

- (i) the Defence may file Version V of its Rule 73ter witness list and summaries;
- (ii) the Defence may drop the 86 (eighty-six) witnesses whose pseudonyms appear in Annex A hereto from its Rule 73ter witness list and summaries when filing Version V;
- (iii) the Defence may add the 4 (four) witnesses whose pseudonyms and summaries appear in Annex B hereto to its Rule 73ter witness list and summaries when filing Version V; and
- (iv) the Defence may reinstate one witness whose pseudonym and summary appear in Annex C hereto to its Rule 73ter witness list and summaries when filing Version V.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 12th April 2010
The Hague, The Netherlands

List of Authorities

Prosecutor v. Taylor, SCSL-03-01-T-408, “Decision on Public with Confidential Annex D Motion for Leave to Vary the Witness List and to Disclose Statements of Additional Witnesses,” 5 February 2008

Prosecutor v. Taylor, SCSL-03-01-T-784, “Public with Annexes A, B, C and Confidential Ex Parte Annex D Defence Rule 73ter Filing of Witness Summaries with a Summary of the Anticipated Testimony of the Accused, Charles Ghankay Taylor,” 29 May 2009 (“Version I”); *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, 7 May 2009

Prosecutor v. Taylor, SCSL-03-01-T-793, “Public with Annex A and Confidential Annex B Updated and Corrected Defence Rule 73ter Filing of Witness Summaries”, 12 June 2009.

Prosecutor v. Taylor, SCSL-03-01-T-809, “Public with Annex A and Confidential Annex B Updated and Corrected Defence Rule 73ter Filing of Witness Summaries-Version Three”, 10 July 2009.

Prosecutor v. Taylor, SCSL-03-01-T-869 “Defence Motion for Leave to Vary Version III of the Defence Rule 73ter Witness List and Summaries” 11 December 2010

Prosecutor v. Taylor, SCSL-03-01-T-885, “Decision on Defence motion for leave to Vary Version III of the Defence Rule 73ter Filing of Witness Summaries”, 22 January 2010

Prosecutor v. Taylor, SCSL-03-01-T-897, “Public with Annex A and Confidential Annex B Defence Rule 73ter Witness List and Summaries- Version Four,” 29 January 2010 (“Version IV”)

Prosecutor v. Taylor, SCSL-03-01-T, Transcript, 6 July 2009,

Prosecutor v. Taylor, SCSL-03-01-T, Transcript, 13 July 2009;

Prosecutor v. Taylor, SCSL-03-01-T, Transcript, 4 May 2009

ICTR

Prosecutor v. Nahimana, ICTR-99-52-T, “Decision on the defence’s application under Rule 73ter(e) for leave to call additional defence witnesses,” 9 October 2002
www.ictor.org/ENGLISH/cases/Nahimana/decisions/091002.htm

ANNEX A

Taylor Defence: Proposed List of Witnesses to be Dropped/ Withdrawn
from the Defence Witness List

28549

Numeric Number Count	DCT-#
1.	DCT-001
2.	DCT-002
3.	DCT -012
4.	DCT -015
5.	DCT -021
6.	DCT -020
7.	DCT -022
8.	DCT -027
9.	DCT -028
10.	DCT-034
11.	DCT -037
12.	DCT -040
13.	DCT -053
14.	DCT -056

Taylor Defence: Proposed List of Witnesses to be Dropped/ Withdrawn 28550
from the Defence Witness List

Numeric Number Count	DCT-#
15.	DCT -059
16.	DCT -061
17.	DCT -067
18.	DCT -083
19.	DCT -086
20.	DCT -094
21.	DCT -105
22.	DCT -109
23.	DCT -111
24.	DCT- 112
25.	DCT -113
26.	DCT -114
27.	DCT -115
28.	DCT-117

**Taylor Defence: Proposed List of Witnesses to be Dropped/ Withdrawn
from the Defence Witness List**

28551

Numeric Number Count	DCT-#
29.	DCT -124
30.	DCT -126
31.	DCT -129
32.	DCT -136
33.	DCT -141
34.	DCT -148
35.	DCT -149
36.	DCT -153
37.	DCT -155
38.	DCT -159
39.	DCT -164
40.	DCT -166
41.	DCT -168
42.	DCT -184

Taylor Defence: Proposed List of Witnesses to be Dropped/ Withdrawn
from the Defence Witness List

28552

Numeric Number Count	DCT-#
43.	DCT -186
44.	DCT -189
45.	DCT -195
46.	DCT -207
47.	DCT -209
48.	DCT -210
49.	DCT -212
50.	DCT -218
51.	DCT -227
52.	DCT-229
53.	DCT -232
54.	DCT -237
55.	DCT -239
56.	DCT -240

Taylor Defence: Proposed List of Witnesses to be Dropped/ Withdrawn
from the Defence Witness List

28553

Numeric Number Count	DCT-#
57.	DCT -244
58.	DCT -247
59.	DCT -248
60.	DCT -252
61.	DCT -253
62.	DCT -258
63.	DCT-262
64.	DCT-264
65.	DCT-266
66.	DCT-267
67.	DCT-268
68.	DCT-269
69.	DCT-270
70.	DCT-275

Taylor Defence: Proposed List of Witnesses to be Dropped/ Withdrawn
from the Defence Witness List

28554

Numeric Number Count	DCT-#
71.	DCT-276
72.	DCT-280
73.	DCT-284
74.	DCT-287
75.	DCT-293
76.	DCT-294
77.	DCT-295
78.	DCT-296
79.	DCT-297
80.	DCT-301
81.	DCT-302
82.	DCT-303
83.	DCT-307
84.	DCT-308

Taylor Defence: Proposed List of Witnesses to be Dropped/ Withdrawn
from the Defence Witness List

28555

Numeric Number Count	DCT-#
85.	DCT-309
86.	DCT-310

ANNEX B

Taylor Defence: Proposed List of Additional Witnesses and Witness Summaries

28557

Numeric Number Count	DCT ###	Summary of Anticipated Testimony	Relevant Counts in Indictment	Length of Direct Examination
<p style="text-align: center;">1.</p> <p style="text-align: center;">92 quarter (deceased)</p>	<p style="text-align: center;">DCT-311</p>	<p>Background: The witness was a high-ranking official with ECOWAS during the Liberian civil war.</p> <p>The witness will testify about the attempts to obtain a peace settlement during the civil war and about his dealings with Charles Taylor, and other leaders, during this time.</p> <p>The witness will also testify about his knowledge of the circumstances surrounding the RUF invasion of Sierra Leone.</p> <p>The witness will testify about Charles Taylor's role in the peace process in Sierra Leone during his time as President of Liberia.</p>	<p>All counts in the indictment with respect to the modes of liability of aiding and abetting and JCE. Exculpatory evidence.</p>	<p style="text-align: center;">92quarter</p>
<p style="text-align: center;">2.</p>	<p style="text-align: center;">DCT-312</p>	<p>Background: The witness is of the Grabo tribe and was one of the RUF instructors at Camp Naama.</p> <p>The witness will testify about his recruitment as one of the instructors at Camp Naama. The witness will also testify about his experience fighting against LURD. The witness will also testify about his experience training the Vanguardians at Camp Naama.</p>	<p>All counts in the indictment with respect to the modes of liability</p>	<p style="text-align: center;">2 days</p>
<p style="text-align: center;">3.</p>	<p style="text-align: center;">DCT-313</p>	<p>Background: The witness is of the Gissy tribe from Lofa County and was an RUF Vanguardian.</p> <p>The witness will testify about his experience of being recruited by the RUF and his experience of training at Camp Naama. The witness will testify about his</p>	<p>All counts in the indictment with respect to the modes of liability of aiding and abetting and JCE.</p>	<p style="text-align: center;">3 days</p>

Taylor Defence: Proposed List of Additional Witnesses and Witness Summaries

28558

Numeric Number Count	DCT-###	Summary of Anticipated Testimony	Relevant Counts in Indictment	Length of Direct Examination
		<p>involvement with the RUF Revolution in 1991 and his movements during the revolution.</p> <p>The Witness will also testify about his experience staying with the RUF throughout the war and will clarify his relationship with Sam Bockarie.</p>		
4.	DCT-314	<p>The witness will testify about his recruitment and his age when he was recruited by the NPFL. The witness will also talk about his experience and the treatment given to him during his time with the NPFL.</p> <p>The witness is also expected to refute OTP's witnesses namely Varmuyan Sherrif, Joseph "Zig Zag" Marzah, and Moses Blah.</p>	<p>Child soldiers and other relevant counts in the indictment. Credibility of OTP evidence in relation to all counts</p>	2 days

ANNEX C

Taylor Defence: Proposed Witness to be Reinstated

DCT-###	Summary of Anticipated Testimony	Relevant Counts in Indictment	Length of Direct Examination
DCT-238	<p>Background: The witness was a member of the Special Forces. He is a Liberian.</p> <p>He will deal with the alleged "plan" or purpose of the alleged joint criminal enterprise. The witness spent much time in Danane in the Cote D'Ivoire. He is therefore able to speak to the movement of R.U.F. personnel through that location, and the alleged transmission of funds by Foday Sankoh to Monrovia for the purchase of arms.</p>	<p>Modes of liability. Therefore relevant to all counts.</p>	<p>2 days</p>

ANNEX D

28562

27434



**SPECIAL COURT FOR SIERRA LEONE
OFFICE FOR THE DEFENCE OF CHARLES TAYLOR**

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18th February 2010

By Hand Delivery and Electronic Mail

Ms. Brenda Hollis
Principal Trial Attorney
Office of the Prosecutor
Special Court for Sierra Leone
The Hague Sub-Office

Dear Ms.Hollis,

RE:

OTP Motion re disclosure of Defence Experts' Identities: CMS 901

Following discussion among the Defence team we have concluded that we do not wish to call any experts to give evidence in Mr Taylor's defence and we will therefore seek leave from the Trial Chamber to withdraw the three experts from our list of witnesses submitted last year. We trust that such leave will be granted in the most formally economic way.

In the circumstances, having spoken to you during the mid morning adjournment to inform you of our decision, we would invite you to withdraw your pending Motion referred to above, as the matter is no longer in issue between us.

We are grateful to you for your co-operation in this matter and hope it can be resolved in a simple and straightforward manner.

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27435

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'C Griffiths'.

Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
The Hague, The Netherlands

Cc: The Justices of Trial Chamber II.
Mr. Simon Meisenberg, Senior Legal Officer, Trial Chamber II