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SCSL-03-01-T  
(17606 - 17612)

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**THE SPECIAL COURT FOR SIERRA LEONE**

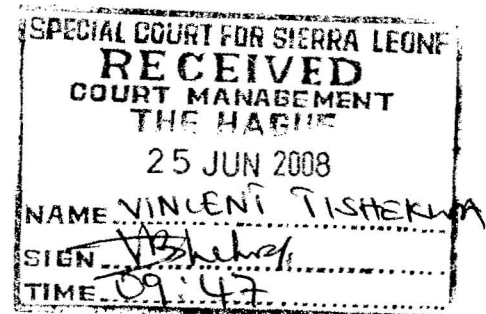
**In Trial Chamber II**

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

**Registrar:** Mr. Herman von Hebel

**Date:** 25 June 2008

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



**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

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PUBLIC

**URGENT DEFENCE APPLICATION FOR TEMPORARY ADJOURNMENT  
OF THE TESTIMONY OF WITNESS TF1-375**

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**Office of the Prosecutor**

Ms. Brenda Hollis  
Mr. Nicholas Koumjian  
Mr. Mohamed Bangura

**Counsel for Charles G. Taylor**

Mr. Courtenay Griffiths Q.C.  
Mr. Terry Munyard  
Mr. Andrew Cayley  
Mr. Morris Anyah

## **I. Introduction**

1. The Defence seeks a temporary adjournment of witness TF1-375's current testimony. As the Prosecution very recently disclosed additional material pertaining to witness TF1-375, Defence counsel respectfully requests four weeks of additional time to investigate and prepare adequately for cross-examination of witness TF1-375.

## **II. Factual background**

2. After 4:00pm on Friday 20 June 2008, the Prosecution disclosed over 5 pages of additional information provided by witness TF1-375. The Prosecution gathered this information in the course of proofing sessions which took place on 15, 16, 17, and 18 June 2008. Due to the late disclosure, this newly disclosed information was received by Defence Counsel early on Monday 23 June 2008. Witness TF1-375 began his testimony that same day.
3. The additional disclosure provided by the Prosecution on Friday 20 June 2008 included the following matters:
  - i) Information relating to other witnesses who have given or are going to give evidence in this trial.
  - ii) Mobile telephone numbers alleged to belong to the Accused and other individuals.
  - iii) Other material factual matters.

## **III. Applicable Legal Principles**

4. The Accused is entitled to a fair hearing, as provided for in Article 17 (2) of the Court's Statute.<sup>1</sup> The Trial Chamber has an obligation to enforce disclosure obligations in the interests of a fair trial, and to ensure that the rights of the Accused are respected.<sup>2</sup>

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<sup>1</sup> Statute of the Special Court for Sierra Leone, Article 17 (2).

<sup>2</sup> *Prosecutor v. Brima et al*, SCSL-04-16-T-246, Decision on Joint Defence Motion on Disclosure of All Original Witness Statements, Interview Notes and Investigators' Notes Pursuant to Rules 66 and/or 68, 4 May 2005, para. 16.

5. Article 17 (4)(e) provides that the Accused has the right:

*To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;*<sup>3</sup>

Effective cross-examination, testing of the Prosecution's evidence against the Accused, is as integral to the Defence as the hearing of witnesses appearing on the Accused's behalf.

6. The ability of the Defence to test effectively the Prosecution's evidence is dependant upon full, proper and timely disclosure of material relating to the witness. Any new evidence elicited during proofing sessions must be disclosed on a continuing basis.<sup>4</sup>
7. Rule 67 (D) of the Rules requires each party to promptly notify the opposing party and the Chamber of the discovery and existence of additional evidence, information and materials that should have been produced earlier pursuant to the Rules.<sup>5</sup>
8. Timely disclosure allows the opposing party time and opportunity to investigate the disclosure and to prepare its case before examining a witness. A decision from the International Criminal Tribunal for Rwanda offers a cogent articulation of this point:

The Prosecution cannot wait for the last moment to give notice of what the Witness will additionally testify to at the trial. It is expected that this additional information will be disclosed as soon as possible after the arrival of a Witness at the seat of the Tribunal, and not immediately before the presentation of a Witness.<sup>6</sup>

9. Timely disclosure is of "primary importance" in criminal trials "precisely because there are certain documents that may require further action by the Defence."<sup>7</sup> When will-say

<sup>3</sup> SCSL Statute, Art. 17 (4) (e).

<sup>4</sup> *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Decisions on Defence Motion for An Order Directing the Prosecution To Effect Reasonably Consistent Disclosure, 18 May 2006, pp. 4.

<sup>5</sup> See also *Prosecutor v. Rwamakuba*, ICTR-98-44C-T, Decision on the Defence Motion Regarding Will-Say Statements, 14 July 2005, para. 4.

<sup>6</sup> *Ibid.*, para. 7.

<sup>7</sup> *Prosecutor v. Delalic et al.*, IT-96-21-T, Decision on the Applications for Adjournment of the Trial Date, 3 February 1997, para. 23.

statements containing new information are not disclosed in a timely fashion, “prejudice may certainly arise or could arise in the preparation of the other party’s case.”<sup>8</sup>

#### IV. Submissions

10. The length of time necessary for the adequate preparation of cross-examination will depend upon the nature of the newly disclosed evidence itself. The information and material disclosed by the Prosecution on Friday 20 June 2008 raises several new factual issues.
11. The Defence submits that some of these factual matters, such as telephone numbers alleged to have belonged to the Accused and other individuals, will foreseeably take four weeks to investigate. The investigative process, already made difficult by the physical separation of the Defence team from its on-the-ground investigators, will be particularly complicated in this case. These matters require the Defence to communicate with phone companies and other third parties in West Africa, with all the attendant difficulties.
12. In this instance, where a late disclosure has occurred – whether or not it involves some fault on the part of the Prosecution – the Trial Chamber must decide “whether some steps are necessary or desirable to ensure that the late disclosure is able to be adequately dealt with by the Defence to ensure a fair trial.”<sup>9</sup> These remedial steps may include postponing the cross-examination of a witness<sup>10</sup> or the exclusion of a witness’ evidence.<sup>11</sup>

<sup>8</sup> *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Sufficiency of Defence Witness Summaries, 5 July 2005, n. 7 (quoting *Nyiramasuhuko et al.*, ICTR-98-42-T, Transcript, 23 February 2005).

<sup>9</sup> *Prosecutor v. Limaj et al.*, IT-03-66-T, Decision on Joint Defence Motion on Prosecution’s Late and Incomplete Disclosure, 7 June 2005, para. 31.

<sup>10</sup> *Prosecutor v. Rwamakuba*, ICTR-98-44C-T, Decision on the Defence Motion Regarding Will-Say Statements, 14 July 2005, para. 6; *Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-42-T, Oral Decision Regarding the Testimony of Witness WBNC, 23 February 2005.

<sup>11</sup> *Prosecutor v. Brima et al.*, SCSL-04-16-T, Decision on Joint Defence Motion on Disclosure of All Original Witness Statements, Interview Notes and Investigators’ Notes Pursuant to Rules 66 and/or 68, 4 May 2005, para. 16 (citing *Prosecutor v. Sesay et al.*, SCSL-2004-15-T, Ruling on Oral Application for the Exclusion of Statements of Witness TF1-141 Dated Respectively 9<sup>th</sup> of October, 2004, 19<sup>th</sup> and 20<sup>th</sup> of October, 2004, and 10<sup>th</sup> of January, 2005, 3 February 2005, para. 20f.).

13. The Defence submits that the appropriate remedy in this case is a four week adjournment of the cross-examination of witness TF1-375. Viewed in relation to the alternatives, the requested adjournment strikes a suitable balance between allowing the Prosecution to present its case and preserving the statutory rights of the Accused to prepare an adequate defence.

**V. Conclusion**

33. For the reasons stated above, the Defence respectfully seeks a four week adjournment of the cross-examination of witness TF1-375.

Respectfully Submitted,

  
S. W. R. C. O. T. S. K. E. R. A.

 **Courtenay Griffiths, Q.C.**  
**Lead Counsel for Charles G. Taylor**  
Dated this 25<sup>th</sup> of June 2008  
The Hague, The Netherlands

## Table of Authorities

### SCSL Material

Statute of the Special Court for Sierra Leone.

### Other SCSL Cases

*Prosecutor v. Brima et al.*, SCSL-04-16-T, Decision on Joint Defence Motion on Disclosure of All Original Witness Statements, Interview Notes and Investigators' Notes Pursuant to Rules 66 and/or 68, 4 May 2005.

*Prosecutor v. Sesay et al.*, SCSL-04-15-T, Decisions on Defence Motion for An Order Directing The prosecution To Effect Reasonably Consistent Disclosure, 18 May 2006.

*Prosecutor v. Sesay et al.*, SCSL-2004-15-T, Ruling on Oral Application for the Exclusion of Statements of Witness TF1-141 Dated Respectively 9<sup>th</sup> of October, 2004, 19<sup>th</sup> and 20<sup>th</sup> of October, 2004, and 10<sup>th</sup> of January, 2005, 3 February 2005.

### ICTR Cases

*Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Sufficiency of Defence Witness Summaries, 5 July 2005. Internet:

<http://trim.unict.org/webdrawer/rec/66246/view/BAGOSORA%20ET%20AL%20-%20DECISION%20ON%20SUFFICIENCY%20OF%20DEFENCE%20WITNESS%20SUMMARIES.pdf>

*Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-42-T, Oral Decision Regarding the Testimony of Witness WBNC, 23 February 2005. Internet:

[http://trim.unict.org/webdrawer/rec/75967/view/\[BUTARE\]%20-%20NYIRAMASUHUKO%20ET%20AL%20-%20REDACTED%20TRANSCRIPT%20OF%2023022005.DOC](http://trim.unict.org/webdrawer/rec/75967/view/[BUTARE]%20-%20NYIRAMASUHUKO%20ET%20AL%20-%20REDACTED%20TRANSCRIPT%20OF%2023022005.DOC)

*Nyiramasuhuko et al.*, ICTR-98-42-T, Transcript, 23 February 2005. Internet:

[http://trim.unict.org/webdrawer/rec/75967/view/\[BUTARE\]%20-%20NYIRAMASUHUKO%20ET%20AL%20-%20REDACTED%20TRANSCRIPT%20OF%2023022005.DOC](http://trim.unict.org/webdrawer/rec/75967/view/[BUTARE]%20-%20NYIRAMASUHUKO%20ET%20AL%20-%20REDACTED%20TRANSCRIPT%20OF%2023022005.DOC)

*Prosecutor v. Rwamakuba*, ICTR-98-44C-T, Decision on the Defence Motion Regarding Will-Say Statements, 14 July 2005. Internet:

<http://69.94.11.53/ENGLISH/cases/Rwamakuba/decisions/140705.htm>.

### ICTY Cases

*Prosecutor v. Delalic et al.*, IT-96-21-T, Decision on the Applications for Adjournment of the Trial Date, 3 February 1997. Internet: <http://www.un.org/icty/celebici/trialc2/decision-e/70203PT2.htm>.

*Prosecutor v. Limaj et al.*, IT-03-66-T, Decision on Joint Defence Motion on Prosecution's Late and Incomplete Disclosure, 7 June 2005. Internet: <http://www.un.org/icty/limaj/trialc/decision-e/050607.htm>.

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### **ICC Cases**

*Situation in the Democratic republic of Congo in the case of the Prosecutor v. Lubanaga Dyilo*, ICC-01/04-01/06, Urgent – Decision on the Consequences of Non-Disclosure of Exculpatory Materials covered by Article 54(3)(e) Agreements and the Application to Stay the prosecution of the Accused, together with Certain other Issues Raised at the Status Conference 10 June 2008, 13 June 2008. Internet: <http://www.icc-cpi.int/library/cases/ICC-01-04-01-06-1401-ENG.pdf>.