(148) SCSL-03-01-PT (3760 — 3773) 3760

THE SPECIAL COURT FOR SIERRA LEONE

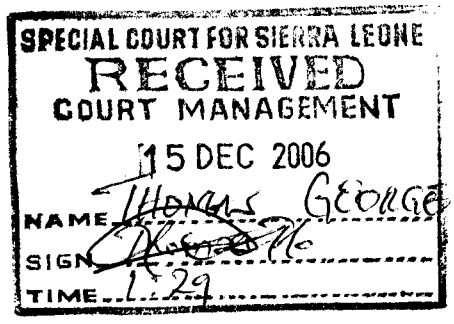
In Trial Chamber II

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

Registrar: Mr. Lovemore Munlo SC

Date: 15 December 2006

Case No.: SCSL-2003-01-PT



THE PROSECUTOR

–v–

CHARLES GHANKAY TAYLOR

PUBLIC

DEFENCE MOTION ON ADEQUATE TIME FOR THE PREPARATION OF MR TAYLOR'S DEFENCE

Office of the Prosecution
Mr. Christopher Staker
Mr. James C. Johnson
Ms. Wendy van Tongeren
Ms. Shyamala Alagendra
Mr. Alain Werner

Counsel for Charles Taylor
Mr. Karim A. A. Khan
Mr. Roger Sahota

I. Introduction

1. Counsel for Mr. Charles Taylor (the "Defence") seeks the intervention of this Trial Chamber (the "Chamber") to ensure the provision of adequate time for the preparation of Mr. Taylor's defence. The Defence urges the Chamber to exercise its statutory power pursuant to Rule 54 of the Rules of Procedure and Evidence (the "Rules") as well as its inherent powers to guarantee Mr. Taylor's right to a fair trial under Article 17 of the Statute of the Special Court for Sierra Leone (the "Statute").

2. The Chamber has set 2 April 2007 as the tentative date for the commencement of the trial (the "Tentative Trial Date"). However, recognizing the Defence's concern that such a goal was overly ambitious, not to say impossible, the Presiding Judge repeatedly emphasised that the Tentative Trial Date was merely an administrative benchmark which would be moved upon a showing of good cause. As further adumbrated below in Section V, the Defence submits that each of the following factors—standing alone and, *a fortiori*, collectively—amounts to a showing of good cause for the postponement of the trial: (i) the geographic complexity of the case; (ii) the volume of material disclosed by the Office of the Prosecutor (the "Prosecution"); (iii) the number and variety of the Prosecution's proposed expert witnesses; (iv) the fact that the Defence is not yet fully functional, having only very recently assembled a complete legal and investigative team and still lacking proper office space in both The Hague and Monrovia; and (v) the inordinate amount of time spent in unsuccessfully attempting to resolve these issues through administrative channels. Points (iv) and (v) above are dealt with in a separate motion filed by the Defence today entitled Defence Motion for Adequate Facilities for the Preparation of Mr. Taylor's Defence and we do not intend to repeat the points raised there herein.

3. Accordingly, in order to ensure that the time, resources, and facilities allocated to the parties are not stacked wholly in favour of the Prosecution, the Defence respectfully requests the Chamber to postpone the commencement of the trial to a more realistic date, namely 3 September 2007.

II. The Chamber's Jurisdiction

4. The Chamber possesses the necessary jurisdiction to alter the Tentative Trial Date. The Chamber is endowed with statutory power under Rule 54 to, either *sua sponte* or at the request of a party, "issue such orders [...] as may be necessary [...] for the preparation or

conduct of the trial". The Defence's request to assign a new date for the commencement of the trial falls squarely within Rule 54's purview.

III. The Right to a Fair Trial and Equality of Arms

5. Article 17(4) of the Statute sets out the *mandatory* minimum guarantees to which an accused person is *entitled* "in full equality". Specifically, Article 17(4)(b) mandates the provision of "adequate time and facilities for the preparation" of an accused person's defence.

6. International Criminal Tribunals tend to examine the adequacy or inadequacy of time and facilities in combination.[1] For the European Court of Human Rights, rights violations are viewed on the whole, and even if, *ex arguendo*, none of the individual deficiencies themselves amount to violations of the right to a fair trial, their combination may well rise to that level.[2] On this basis the Defence request that the Trial Chamber consider this motion in conjunction with our Defence Motion for Adequate Facilities for the Preparation of Mr Taylor's Defence filed simultaneously today.

7. The Defence submits that the right to a speedy trial must not abrogate the right to a fair one.[3] While pre-trial detention of over one year may, as Justice Sebutinde observed, constitute an "inordinate delay" in another trial, in Mr. Taylor's case the Defence submits it is necessary to have a lengthier pre-trial detention to ensure Mr. Taylor has adequate opportunity to prepare his case.[4] The right to a speedy trial does not necessarily require an earlier date. The guarantee of adequate time, as clarified by the Human Rights Committee, "relates not only to the time by which a trial should commence, but also the time by which it should end and judgement be rendered".[5]

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[1] *Prosecutor v. Milosevic*, IT-02-54-AR73.6, Decision on the interlocutory appeal by the amici curiae against the Trial Chamber order concerning the presentation and preparation of the defence case, 20 January 2004, para. 13.
[2] *Stanford v. United Kingdom*, ECrtHR Judgement of 30 August 1990, Series A, No. 182, para. 24; Case of *Kamasinski v. Austria, (Application no. 9783/82)*, 19 December 1989, para. 98.
[3] *Prosecutor v. Milosevic*, IT-02-54-AR73.6, Decision on the interlocutory appeal by the amici curiae against the Trial Chamber order concerning the presentation and preparation of the defence case, 20 January 2004, paras. 8 & 17.
[4] *Prosecutor v. Charles Ghankay Taylor*, SCSL-2003-01-PT, Status Conference, 22 September 2006, p. 40.
[5] ICCPR General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14): 13/04/84 (twenty-first session). Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 14 (1994).

8. A premature commencement may leave the possibility of a fair trial still-born as a lack of adequate time for preparation would inevitably lead to protracted trial proceedings punctuated with adjournments, with the Defence unable to focus on and agree admissions and areas of dispute with the Prosecution. The *Milosevic* case provides an instructive lesson. After only eight months of pre-trial preparation, the much-publicised and well-known chaos of the trial endured for years.[6] In contrast, the AFRC case before this Chamber, had a pre-trial period of one year and eleven months, but, with the exception of the rather lengthy Rule 98 proceedings, the trial itself was relatively brief. The Defence estimates that, if the trial is postponed until September 2007, the entire case could be finished by September or October 2008. In the final analysis, the right to an expeditious trial belongs to Mr. Taylor and not to the donor countries funding the SCSL.[7] If an accused person is satisfied, upon the best advice of counsel, that postponing the commencement of trial for a reasonable period is in his best interests to allow for adequate defence preparation, then, absent bad faith or proven bad judgement of counsel, the Chamber should be persuaded, *ceteris paribus*, that such postponement is in the interests of justice.

IV. The Tentative Trial Date is Subject to Change Upon Showing of Good Cause

9. As emphasised by the Trial Chamber at several points during the 22 September 2006 Status Conference, the Tentative Trial Date was just that—*tentative*—and subject to change upon a showing of good cause:

> We are of the view that this is the right time to fix a tentative trial date, more importantly to focus the activities of the pre-trial stage towards this date. I've carefully called it a tentative or provisional trial date because it is subject to adjustment. It is subject to adjustment for good cause. We are prepared to adjust it."[8]

> Now, I emphasize the word "tentative". This is a tentative trial date which is going to assist the parties and the Bench to work towards the final trial date. It is flexible; it is adjustable. But I'm just calling on the parties to focus on this date and to focus your activities towards this date.[9]

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[6] On 14 December 2006, Human Rights Watch released its report "*Weighing the Evidence: Lessons of the Slobodan Milosevic Trial*", Ensuring an adequate pre-trial period in order to narrow the issues and allow all parties to fully prepare was listed as one of the most important ways to ensure a more expeditious trial. See Human Rights Watch, "ICTY: Milosevic Trial Exposed Belgrade's Role in Wars," 14 December 2006, available online at http://hrw.org/english/docs/2006/12/14/yugosl14800.htm.

[7] *Prosecutor v. Charles Ghankay Taylor*, SCSL-2003-01-PT, Status Conference, 22 September 2006, p. 44, lns. 23-28.

[8] *Ibid.*, p. 46, lns. 5-10.

[9] *Ibid.*, p. 54, lns. 6-10.

10. The Tentative Trial Date was implicitly contingent upon a fully functional defence team able to work uninterrupted for six months as of 30 September 2006. Again, this was clearly articulated by the Presiding Judge:

> ..it is my view, and that of my colleagues, that a period of six months from the time that a full—from the time that a contract has been signed providing Mr. Taylor with the Defence team, and I'm taking that to be end of September, say, 30th September effectively, and I'm saying that from the 30th of September this year, we consider that the Defence is in a position to work, to investigate, carry out investigations fairly comfortably, as is envisaged under the Statute and the rules. I'm also of the view, as are my colleagues in Freetown, that six months would not been unreasonable time to be given to this Defence team...to fairly get on with the case and do their investigations.[10]
>
> We feel that six months afforded to a full Defence team would go a long way in preparing them towards a real trial date or the final fixed trial date. So the date that I have set is the 2nd April 2007.[11]

11. The Chamber had previously recognised the need to afford the Defence sufficient time to prepare,[12] and the Presiding Judge again confirmed this:

> We're talking about different things, Mr. Khan. I am talking about a provisional start date. You are talking about a start date. Now, it is my understanding that the parties themselves cannot agree on a start date. The Prosecution is talking February; the Defence is talking September—[13] That's all I'm saying. I'm not, in any way, saying, "The Defence is lazy; the Defence hasn't got time; the Defence will not be given time." That's not what I'm saying.[14]

V. Good Cause Exists for Granting the Extension

12. The following factors, either standing alone or in conjunction with each other, establish good cause for postponing the commencement of the trial to 3 September 2007.

A. The Geographic Complexity of the Case

13. The breadth of the indictment, its geographic and temporal scope, as well as other specific practical and political considerations place this matter in a different category to the other cases tried before the SCSL. Consequently, the Defence is, and will continue to be, faced

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[10] *Ibid.*, p. 53, ln. 20 – p. 54, ln. 3.
[11] *Ibid.*, p. 54, lns. 10-14.
[12] *Prosecutor v. Charles Ghankay Taylor*, SCSL-2003-01-PT, Status Conference, 21 July 2006, p. 8 (Justice Lussick: "I certainly would not suggest to you, Mr. Khan, that you were not going to get adequate time to prepare your case.")
[13] *Prosecutor v. Charles Ghankay Taylor*, SCSL-2003-01-PT, Status Conference, 22 September 2006, p. 46, ln. 29 – p. 27, ln. 4.
[14] *Prosecutor v. Charles Ghankay Taylor*, SCSL-2003-01-PT, Status Conference, 22 September 2006, p. 49, lns. 9-11.

with exceptional demands. For example, Defence investigations in the instant case will not be confined to the territories of Sierra Leone and Liberia, but will necessarily span the greater West African sub-region as well as parts of Europe and North America. Such unique investigative challenges are illustrated by a cursory review of the evidence of one of the approximately 150 witnesses ("Witness A") that the prosecution intend to call.

14. Witness A alleges that five African countries and at least three heads of state, in addition to various defence ministers, chief of staff, and chief of security, were directly involved in the shipment of arms into Liberia or the signing of end-user certificates. Witness A goes on to claim that people brought diamonds to Taylor himself so that Taylor could inspect them and determine which ones to sell to foreign countries and which ones to keep.[15]

15. Additionally, Witness A claims that numerous other individuals, none of whom the Defence believes to be resident in Sierra Leone or Liberia, were, together with many others, involved in the alleged arms-for-diamonds transaction. Allegations involve individuals, terrorist organizations and companies in the Middle East, Eastern Europe and West Africa.[17]

16. It is self-evident that Witness A will be presented by the Prosecution as a witness of truth. Accordingly, each assertion made in his statement will need to be closely scrutinised, the individuals named contacted, and a multiplicity of other related enquiries initiated. Such enquiries cannot always be conducted expeditiously for obvious logistical reasons, a factor the Chamber must be cognisant of when considering the instant motion.

B. The Volume of Material Disclosed by the Prosecution

17. It is further submitted that the Chamber must also take due regard of the volume of material disclosed by the Prosecution when deciding if the Defence has been given sufficient time to prepare. The volume of material served to date far exceeds that of any other case before the SCSL. On 17 May 2006, the Defence was served with an initial tranche of some 34,000 pages of material including statements and transcripts of 226

[15] See Confidential Annex, paras. 1 and 2, for the relevant transcript testimony of Witness A.
[17] See Confidential Annex, para. 3 for the relevant transcript testimony of Witness A.

witnesses. Six further disclosure packages have been received with approximately 154 additional statements and transcripts, 105 Exhibits, 97 open-source documents, 3 television programmes and 9 radio programmes.

18. The Defence is still in the process of reviewing the disclosure and it is impossible to determine when this task will be completed. However, the Defence estimates that, at five minutes per page, perusal of the 17 May 2006 disclosure would take some 2,666 hours, or 333 eight-hour working days. Even with three team members working full-time on nothing else, the Defence would not be able to finish its assessment of that first batch of disclosure by the Tentative Trial Date.

19. Compounding the equation is the Prosecution's recent assertion that it expects to serve approximately 1000 exhibits, the vast majority of which have not been disclosed to date. The Defence also awaits copies of the so-called "unused material" which is expected to be substantial. Prosecution enquiries are ongoing and additional new material is likely to surface at any time. Furthermore, all but six of the Prosecution's proposed witnesses have requested protective measures and the Defence has therefore only received edited summaries of most of their statements. Unredacted statements will be received 42 days prior to trial. Much of this material will have to be considered afresh and a new phase of investigations triggered, potentially before the Defence has the opportunity to examine all the material previously disclosed.

C. The Number and Variety of the Prosecution's Proposed Expert Witnesses

20. The Prosecution has indicated that it will seek to call 14 to 19 expert witnesses in the following areas: 2 to 3 experts on Sierra Leone and Liberia; 1 to 2 experts on transportation of arms and ammunition; 1 forensic pathologist; 1 to 3 medical experts; 1 to 2 child-soldier experts; 1 demographics expert; 1 expert in psychological aspects of captivity, maintaining control, and military strategy; 1 diamonds expert; 1 firearms expert; 1 human rights violations historian; 1 expert in sexual violence; 1 expert in human memory and trauma; and 1 military command structure expert.

21. Not all the proposed expert witness statements have been served to date. The evidence of each purported expert will need to be carefully examined, full instructions obtained and a decision made as to whether a corresponding Defence expert will need to be instructed. If

so, a suitable candidate will have to be identified, funding provisions put in place, and instructions prepared. However, in the time that has elapsed since 30 September 2006, the Defence has been preoccupied with eliciting instructions from Mr. Taylor with regard to the Prosecution's main factual witnesses.

D. The Defence is Not Yet Fully Functional

22. The Defence is still not fully functional in the manner envisaged by the Chamber. In particular and as further outlined below, the Defence (i) has only completed a fraction of its investigative preparations due to administrative hurdles and the sheer bulk of work required; (ii) has expended a significant amount of time and energy on administrative matters to the detriment of substantive preparations and (iii) has yet to be provided with proper office space in The Hague and Monrovia. Points (ii) and (iii) are primarily dealt with in today's simultaneously filed Defence Motion for Adequate Facilities for the Preparation of Mr. Taylor's Defence.

1. Administrative Hurdles

23. The Defence has acted with all due diligence to assemble a fully functional team from the date a Legal Services Contract was signed.[18] By 16 October 2006, two full-time legal assistants had been recruited in The Hague together with co-counsel. An investigator based in Sierra Leone and a pro-bono Liberian legal assistant were recruited shortly thereafter. A work-plan has since been implemented, pursuant to which members of the Hague-based team meet regularly with Mr. Taylor, on average four days a week. An additional legal assistant has also been recently appointed. A request for an indication of funds available for an international investigator was submitted to the Office of the Principal Defender (the "OPD") on 14 November 2006, and a reply is still awaited. [19]

24. The appointment of each team member has been a time consuming process. Each appointment is subject to the approval of the OPD. The Defence has voluntarily asked the

[18] *Prosecutor v. Charles Ghankay Taylor*, SCSL-2003-01-PT, Status Conference, 22 September 2006, p. 39, lns. 12-18 ("The Defence, we are looking forward to finishing this matter, because it's the intention of the Defence, [that] at the end, our client will be acquitted. So we're not going to delay matters. We're not going to grandstand. We are going to play this very straight because we have a very real legal defence.").
[19] Annex 2: Letter from the Defence Counsel for Mr. Taylor to the Principal Defender, dated 11 November 2006, transmitted 14 November 2006.

Prosecution to vet each candidate.[20] Accordingly, it was unrealistic for the Chamber to have expected the Defence to be fully functional within eight days of the signing of a Legal Services Contract. Simply put, it has not been possible to prepare in the time frame suggested by the Chamber, and the problems outlined above have only been exacerbated by the lack of facilities in The Hague and Monrovia. These shortcomings contrast starkly with the facilities available to the Prosecution and the five year time window the Prosecution has had to prepare its case against Mr. Taylor.

25. The pronouncement at the 22 September 2006 Status Conference by Counsel for Mr. Taylor that the Defence would be trial-ready by July 2007 was made before the Defence had made significant progress in tackling the morass of Prosecution disclosure and a full team was in place. As the evidential, logistic, and administrative complexities became apparent, the Defence concluded that a September 2007 start date was manifestly necessary for the proper conduct of the case.

2. Preparation for Investigations

26. Mr. Taylor has the right to know the case against him. In order to fulfil its professional obligations, the Defence is tasked not only with reviewing and analysing the Prosecution's evidence but further with obtaining complete instructions from Mr. Taylor. An indication of the challenges facing the Defence in this endeavour is illustrated by a brief case study of the evidence of proposed witness TF1-046.

27. The Prosecution have disclosed some 2,400 pages of material in connection to TFI-046, covering events said to have taken place over eleven years in at least seven countries. The Defence have spent 200 man-hours considering this material and a further 10 hours to draft a summary, a task which occupied a Defence team member from 17 October 2006 until 15 November 2006. It then took nine days to obtain instructions from Mr. Taylor. The Defence subsequently prepared an instruction summary, a task that required an additional two days, outlining Mr. Taylor's instructions chronologically. As a result, the Defence have identified at least 23 individuals in Liberia, 10 in Sierra Leone, 6 in other

[20] On 4 December 2006, Defence provided the OTP with the name and *curriculum vitae* of its preferred Sierra Leone-based investigator. A response is expected imminently from them. The Defence have also formally provided the *curriculum vitae* and details of the proposed investigator to the Principal Defender and requested that the OPD proceed with its administrative responsibilities regarding him, so that a contract can be offered without delay upon "clearance" by the OTP.

and the United Kingdom. The investigative task-list generated from this witness is foreboding and while it is hoped that this procedure will not be duplicated for all the other Prosecution witnesses the Defence must be equipped to deal with such an eventuality.

VI. Conclusion

28. For the reasons adumbrated above, standing alone and collectively, especially when considered in conjunction with the Defence Motion for Adequate Facilities for the Preparation of Mr Taylor's Defence filed today, and in order to ensure that Mr. Taylor's right to a fair trial is not compromised, the Defence respectfully urges the Chamber to postpone the commencement of the trial to a more realistic date, namely 3 September 2007

Respectfully submitted this 15th day of December 2006.

Karim A. A. Khan
Lead Counsel for Mr. Charles Taylor

List of Authorities

SCSL Jurisprudence

1. *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-2003-01-PT, Status Conference, 21 July 2006. Online: http://www.sc-sl.org/Transcripts/Taylor/CGT21JULY06SC.pdf

2. *Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-2003-01-PT, Status Conference, 22 September 2006. Online: http://www.sc-sl.org/Transcripts/Taylor/CGT22SEP06.SC.pdf

ICTY Jurisprudence

3. *Prosecutor v. Milosevic*, IT-02-54-AR73.6, Decision on the interlocutory appeal by the amici curiae against the Trial Chamber order concerning the presentation and preparation of the defence case, 20 January 2004, para. 13. Online: http://www.un.org/icty/milosevic/appeal/decision-e/040120.htm

ECHR Jurisprudence

4. *Stanford v. United Kingdom*, ECrtHR Judgement of 30 August 1990, Series A, No. 182, para. 24; Case of *Kamasinski v. Austria, (Application no. 9783/82)*, 19 December 1989, para. 98. Online: http://cmiskp.echr.coe.int////tkp197/viewhbkm.asp?action=open&table=1132746FF1FE2A468ACCBCD1763D4D8149&key=455&sessionId=9773275&skin=hudoc-en&attachment=true

General Comments and Reports

5. ICCPR General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14): 13/04/84 (twenty-first session). Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 14 (1994). Online: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bb722416a295f264c12563ed0049dfbd?Opendocument

6. Human Rights Watch, "ICTY: Milosevic Trial Exposed Belgrade's Role in Wars," 14 December 2006. Online: http://hrw.org/english/docs/2006/12/14/yugosl14800.htm.

Annex 2

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Second Letter of the 11th November 2006

Dear Vincent

International Investigator

Further to our earlier discussions regarding this issue we confirm that we would like to appoint an International Investigator as soon as possible. Given the scale of the enquiries that we are obliged to undertake (as outlined briefly in Stage Plan 1 although further elaboration can be provided if you so wish) the Investigator will be required as a full time member of the Defence team until the conclusion of trial. We would therefore be grateful if you would clarify the funding arrangements that are available to us so that we can begin the recruitment process immediately.

We would be grateful for a reply to this letter within the next seven working days.

Yours faithfully

Karim A Khan
Roger J sahota