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SCSL-03-01-T  
(14367-14373)

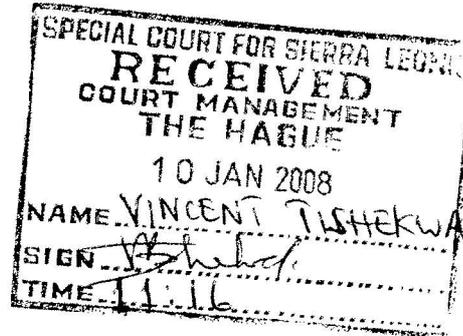
14367

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

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

Registrar: Mr. Herman von Hebel

Date filed: 10 January 2008



**THE PROSECUTOR**

**Against**

**Charles Ghankay Taylor**

Case No. SCSL-03-01-T

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**PUBLIC**

**PROSECUTION RESPONSE TO "MOTION FOR EXTENSION OF TIME PURSUANT TO  
RULE 7bis IN RESPECT OF TWO PROSECUTION MOTIONS: SCSL-03-01-T-372 AND  
SCSL-03-01-T-375"**

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Office of the Prosecutor:

Ms. Brenda J. Hollis  
Mr. Nicholas Koumjian  
Ms. Leigh Lawrie

Counsel for the Accused:

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

## I. INTRODUCTION

1. Pursuant to Rule 73 of the Rules of Procedure and Evidence (“**Rules**”), the Prosecution files this response to the “Motion for Extension of Time Pursuant to Rule 7bis in Respect of Two Prosecution Motions: SCSL-03-01-T-372 and SCSL-03-01-T-375”.<sup>1</sup>
2. The Motion requests leave to submit the Motion and, should such leave be granted, to be given until 14 January 2008 to file responses to two Prosecution motions.<sup>2</sup>
3. The Defence request should be dismissed as first, the Defence have failed to make a showing of good cause justifying the grant of leave and the extension of time. Secondly, the Prosecution is prejudiced by the failure of the Defence to timely file responses. Finally, the Defence do not establish that it is in the interests of justice to favour an extension of time.

## II. APPLICABLE LAW

4. Despite the title, the Motion is filed pursuant to Rule 73 (Motions) rather than Rule 7bis (Motions for Extension of Time) and has not been filed on an urgent basis. Accordingly, if the request by the Defence were granted it would deny the Prosecution the right to respond. Pursuant to Rule 7(C), the Prosecution has until 18 January 2008 to file a response to the Motion.
5. Furthermore, the Prosecution should have the opportunity to respond to the Motion, even if the Trial Chamber determines that it will treat the Motion as though filed under Rule 7bis.

## II. SUBMISSIONS

### Failure to show good cause

6. The Defence did not file the responses to the Prosecution Motions within the time period required by Rule 7(C) and further did not avail themselves of the

<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-382, “Motion for Extension of Time Pursuant to Rule 7bis in Respect of Two Prosecution Motions: SCSL-03-01-T-372 and SCSL-03-01-T-375”, 8 January 2008 (“**Motion**”).

<sup>2</sup> The two Prosecution motions are: (i) *Prosecutor v. Taylor*, SCSL-03-01-T-372, “Confidential Prosecution Motion for the Testimony of Witnesses TF1-548, TF1-555 & TF1-561 to be Held in Closed Session”, 13 December 2007 (“**Closed Session Motion**”); and (ii) *Prosecutor v. Taylor*, SCSL-03-01-T-375, “Public with Confidential Annexes Prosecution Motion for Admission of Part of the Prior Evidence of TF1-362 & TF1-371 Pursuant to Rule 92ter”, 14 December 2007 (“**92ter Motion**”) (together the “**Prosecution Motions**”).

procedure laid down in Rule 7bis which allows a party to request an extension of time.<sup>3</sup> While the Defence provide reasons in the Motion for their failure to file responses to the Prosecution Motions,<sup>4</sup> no explanation is provided regarding their failure to seek the Court's permission for additional time to respond pursuant to Rule 7bis.

7. The Defence state that their failure to respond to the Prosecution Motions was due to: (i) the fact that the motions were filed on the eve of the judicial recess at a time when members of the Defence team were not all in the same location,<sup>5</sup> and (ii) were distracted by the personal events surrounding the holiday season.<sup>6</sup> The result of these factors was the failure by the Defence to assign a team member to work on the responses during the recess. This explanation is insufficient on its face and not fully accurate.
8. The explanation is inaccurate as the Closed Session Motion was not filed on the eve of the judicial recess. This Prosecution motion was filed at 1.34 pm on Thursday, 13 December 2007.
9. The explanation is insufficient as it fails to acknowledge that, despite not being in the same location, the Defence were themselves able to file two motions and one notification on the eve of the judicial recess,<sup>7</sup> all filed after the Prosecution's 92<sup>ter</sup> Motion. To accept explanations based on the fact that a team is split between several locations (the Prosecution is also split with some members normally in Freetown) sets a dangerous precedent.
10. Given the need to litigate this case expeditiously, a party cannot plan to have their entire team unavailable throughout judicial recesses. Rule 7(B) provides that the time limits in the Rules continue to run during the judicial recess with the proviso that any deadline for filing that falls during the judicial recess is automatically extended to the subsequent working day.

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<sup>3</sup> A motion may be filed pursuant to Rule 7bis should either party require to seek an extension of time.

<sup>4</sup> Motion, para. 4.

<sup>5</sup> Motion, para. 4

<sup>6</sup> *Ibid.*

<sup>7</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-376, "Public with *Ex Parte* & Confidential Annex Second Defence Notification on Composition of Defence Team Members having Access to OTP Disclosure Pursuant to 5 May 2006 Protective Measures Decision", 14 December 2007, *Prosecutor v. Taylor*, SCSL-03-01-T-377, "Public Defence Motion Pursuant to Rule 75(G) to Modify Sesay Defence Protective Measures Decision of 30 November 2006 for Access to Closed Session Defence Witness Testimony and Limited Disclosure of Defence Witness Names and Related Exculpatory Material", 14 December 2007 and *Prosecutor v. Taylor*, SCSL-03-01-T-378, "Public Urgent Defence Motion Regarding a Fatal Defect in the Prosecution's Second Amended Indictment Relating to the Pleading of JCE", 14 December 2007.

11. The Defence do not argue that no defence team members were able to prepare the responses, simply that they were not *all* in the Hague. No explanation is provided as to why the Defence would need to have all team members in the Hague to prepare the responses, particularly in view of the fact that filings are electronically served and teams can communicate electronically.
12. The Defence explanation does not establish good cause to grant the relief requested.

Prejudice to the Prosecution

13. The Defence request to be granted an extension of time until 14 January 2008, 4 days prior to the date on which the Prosecution response to the Motion is due, is prejudicial as it would deny the Prosecution the right to be heard.
14. In relation to the *92ter* Motion in particular, the Prosecution and, indeed other organs of the Court, are prejudiced by the failure of the Defence to file a timely response. It is the intention of the Prosecution to call the witness TF1-371 to testify during the fourth week of trial. Travel arrangements, which include the necessity of applying for limited duration visas, have already begun. Should the Prosecution's application in the *92ter* Motion be granted in respect of this witness, then it would mean that the duration of this witness' testimony, and the matters to be covered by that testimony, would be considerably shorter, significantly impacting the scheduling of the presentation of testimony of the witnesses who follow TF1-371 in the call order. At present, the Prosecution in conjunction with the Witnesses and Victims Section of the Registry must plan for two scenarios – the first where the Prosecution's Rule *92ter* application is accepted and the other whereby it is rejected. Therefore, granting the requested extension would delay the Trial Chamber's decision on the issue which, in turn, would impact on the logistical arrangements that need to be made, or changed.

Failure to establish that it is in the interests of justice to grant extension of time

15. The *92ter* Motion does not prejudice the right to the Accused to “confront the witnesses against him”<sup>8</sup> as it specifically acknowledges Rule *92ter*(ii) which

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<sup>8</sup> Motion, para. 7.

requires that a witness whose evidence is admitted under this Rule must be available for cross-examination. Rule 92ter simply provides another mechanism whereby evidence may be tendered to the Court and seeks to promote judicial efficiency rather than abrogate the rights of the Accused. Therefore, the arguments raised by the Defence in support of their right to respond to the 92ter Motion are based on an inaccurate reading of the Rule and its purpose.

16. In relation to the Closed Session Motion, such motions are not novel and have been raised on many occasions before the Special Court, and this Trial Chamber. Further, the Defence will also be able to confront the witnesses at issue, albeit that, should the motion be granted, such confrontation will be conducted in closed session. The Defence have, therefore, not established that it is in the interests of justice that they be given the opportunity to respond to the Closed Session Motion or that the rights of the Accused will be prejudiced if such opportunity is denied.

Extension until 14 January 2008

17. In addition to the Prosecution's submissions above concerning the issues surrounding the Defence's selection of the date, 14 January 2008, the Prosecution also wishes to draw the Trial Chamber's attention to two related points concerning the length of the motions. First, contrary to the Defence's claim concerning the "considerable length" of the motions,<sup>9</sup> an extension to 14 January 2008 is not justified on the basis of the length of the Closed Session Motion. This motion amounts to 9 pages. Second, while the 92ter Motion does have annexes of almost 1000 pages in length, none of this material is new to the Defence. The annexes contain the transcripts and exhibits of TF1-362 and TF1-371 which have been disclosed to the Defence in both redacted and then unredacted form.<sup>10</sup> Further, prior to filing the 92ter Motion, the

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<sup>9</sup> Motion, para. 9.

<sup>10</sup> As noted in paragraph 5 of the 92ter Motion, "The prior trial transcripts of TF1-362 were disclosed in redacted format to the Defence on 17 May 2006 and in unredacted format on 4 June 2007. RUF Exhibit No. 25 was disclosed to the Defence on 11 August 2006. This exhibit was also included as Exhibit No. 1.038 on the Prosecution exhibit list filed with the court as part of its Pre-Trial Conference Materials on 4 April 2007." Further, at paragraph 6 of the 92ter Motion it is stated that "The prior trial transcripts of TF1-371 were disclosed in redacted format to the Defence on 27 October 2006 and in unredacted format on 10 December 2007. RUF Exhibit No. 137 was disclosed to the Defence on 11 August 2006. This exhibit was also included as Exhibit No. 1.039 on the exhibit list filed with the Pre-

Prosecution corresponded with the Defence regarding this issue and advised the Defence team by email on 4 December 2007 of its intention to file a motion pursuant to Rule 92ter on 14 December 2007 and, indeed, highlighted the fact that if it did so, a response would be due on 7 January 2008.

### III. CONCLUSION

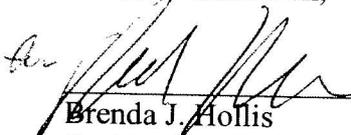
18. The Prosecution respectfully requests that the Trial Chamber dismiss the Defence Motion as:

- (i) the Defence has not shown good cause justifying the grant of leave and the extension of time;
- (ii) the Prosecution and other organs of the Court are prejudiced by the failure of the Defence to timely file responses; and
- (iii) the Defence do not establish that it is in the interests of justice to favour an extension of time.

· Filed in The Hague,

10 January 2008,

For the Prosecution,

  
Brenda J. Hollis  
Senior Trial Attorney

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Trial Conference Materials. RUF Exhibit Nos. 185 to 189 are prior statements of the witness and were disclosed to the Defence on 17 May 2006 in redacted format and in unredacted format on 10 December 2007.”

**LIST OF AUTHORITIES****SCSL Cases**

*Prosecutor v. Taylor*, SCSL-03-01-T-372, “Confidential Prosecution Motion for the Testimony of Witnesses TF1-548, TF1-555 & TF1-561 to be Held in Closed Session”, 13 December 2007

*Prosecutor v. Taylor*, SCSL-03-01-T-375, “Public with Confidential Annexes Prosecution Motion for Admission of Part of the Prior Evidence of TF1-362 & TF1-371 Pursuant to Rule 92ter”, 14 December 2007

*Prosecutor v. Taylor*, SCSL-03-01-T-377, “Public Defence Motion Pursuant to Rule 75(G) to Modify Sesay Defence Protective Measures Decision of 30 November 2006 for Access to Closed Session Defence Witness Testimony and Limited Disclosure of Defence Witness Names and Related Exculpatory Material”, 14 December 2007

*Prosecutor v. Taylor*, SCSL-03-01-T-378, “Public Urgent Defence Motion Regarding a Fatal Defect in the Prosecution’s Second Amended Indictment Relating to the Pleading of JCE”, 14 December 2007

*Prosecutor v. Taylor*, SCSL-03-01-T-382, “Motion for Extension of Time Pursuant to Rule 7bis in Respect of Two Prosecution Motions: SCSL-03-01-T-372 and SCSL-03-01-T-375”, 8 January 2008