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SCSL-03-01-T  
(26426-26431)

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**THE SPECIAL COURT FOR SIERRA LEONE**

**Trial Chamber II**

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

**Acting Registrar:** Ms. Binta Mansaray

**Date:** 26 October 2009

**Case No.:** SCSL-03-01-T

SPECIAL COURT FOR SIERRA LEONE	
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**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

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**PUBLIC**

**DEFENCE RESPONSE TO PROSECUTION MOTION FOR RELIEF IN  
RESPECT OF THE REQUIREMENTS OF RULE 67**

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**Office of the Prosecutor:**

Ms. Brenda J. Hollis  
Mr. Nicholas Koumjian  
Ms. Kathryn Howarth

**Counsel for Charles G. Taylor:**

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

## I. INTRODUCTION

1. This is the Defence Response to the “Confidential with Annex A Prosecution Motion for Relief in Respect of the Requirements of Rule 67,”<sup>1</sup> filed on 1 October 2009.
2. The Defence submits that the Motion is misconceived in that it fails to appreciate the legal import of Rule 67. The Defence is under no obligation to comply with Rule 67 as the Defence has not, and does not, intend to put forth any alibi defence. The Motion should be dismissed in its entirety for the reasons articulated below.

## II. BACKGROUND

3. On 14 September 2009, in the course of the Accused’s testimony, allegations made by a Prosecution witness, TF1-567, were put to the Accused. The Accused was given the chance to refute and explain certain allegations that TF1-567 made during the Prosecution’s case.
4. One allegation was that the witness, TF1-567, was present in the same location in Monrovia as the Accused on the night of 8 May 2000. TF1-567 claimed that he was taken to talk to the Accused at the Executive Mansion regarding the shootout that had occurred earlier that day at Foday Sankoh’s house at Spur Road in Freetown.<sup>2</sup>
5. The Accused disputed the assertion made by TF1-567 that he (TF1-567) had met with him (the Accused) on the night in question. The Accused asserted that this meeting could not have taken place as he was not in Monrovia at the time of the alleged meeting. The Accused explained that he left Monrovia on 8 May 2000 to travel to Abuja for an ECOWAS Summit that started on the morning of 9 May 2000.<sup>3</sup>
6. In corroboration of this oral testimony by the Accused, Defence Lead Counsel referred the Accused to a document (MFI-133) which indicated that the Heads of State meeting indeed took place in Abuja on 9 and 10 May 2000, including a list of the delegates.<sup>4</sup> Furthermore, Defence Lead Counsel referred the Accused to the Final

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<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-842, “Confidential with Annex A Prosecution Motion for Relief in Respect of the Requirements of Rule 67,” 1 October 2009 (“**Motion**”).

<sup>2</sup> *Prosecutor v. Taylor*, Trial Transcript (Private Session), 14 September 2009, p. 28822.

<sup>3</sup> *Prosecutor v. Taylor*, Trial Transcript (Private Session), 14 September 2009, p. 28823-4.

<sup>4</sup> *Prosecutor v. Taylor*, Trial Transcript (Open Session), 15 September 2009, p. 28849-51.

Communiqué (MFI-139) from the meeting which lists the Accused as one of the Heads of State present at the Summit.<sup>5</sup>

7. While, during the course of the testimony, this verification of the Accused's location at the time in question was characterized by Lead Counsel as an "alibi," it was only meant to say that, "I was not there."<sup>6</sup> The term "alibi" was not presented as a legal assertion of a defence against the charges in the Indictment. Instead, Defence Lead Counsel through the oral testimony of the Accused and by reference to official ECOWAS documents simply intended to discredit TF1-567's allegation about the meeting with the Accused on 8 May 2000 and thereby show that TF1-567 was lying.
8. The Accused did not notify his counsel that he was in a location other than Monrovia on 9 May 2000 until it occurred to him during the review of the allegations made by TF1-567.<sup>7</sup>
9. On 14 September and 15 September 2009, the Prosecution sent letters to Defence Lead Counsel, stating that the Defence had failed to comply with Rule 67 of the Rules of Procedure and Evidence and requesting that the Defence now comply with Rule 67.

### III. ARGUMENT

*Location Evidence was Not Provided as a Legal Alibi, but as Evidence Intended to Discredit the Testimony of a Prosecution Witness.*

10. The Defence submits that the Accused's reference to his location, which was characterized as an "alibi" during testimony on 14 September 2009, is not a legal alibi which falls within the scope of Rule 67. Rule 67(A)(ii) only calls for notification of an intent to use an alibi defence if the Accused plans to combat an "alleged crime" in the Indictment with an alibi.<sup>8</sup> There is no alleged crime that the Accused is trying, or could try, to defend by stating *simpliciter* that he was somewhere other than where a Prosecution witness claimed him to have been. The Accused is not putting forward a

<sup>5</sup> *Prosecutor v. Taylor*, Trial Transcript (Open Session), 15 September 2009, p. 28851-2.

<sup>6</sup> *Prosecutor v. Taylor*, Trial Transcript (Private Session), 14 September 2009, p. 28824, 2-4.

<sup>7</sup> *Prosecutor v. Taylor*, Trial Transcript (Open Session), 15 September 2009, p. 28852.

<sup>8</sup> Special Court for Sierra Leone, Rules of Procedure and Evidence, Rule 67(A)(ii)(a). The rule specifies that if the Defence intends to use the "defence of alibi", the Accused must notify the Prosecutor of the location the Accused claims to be instead of the location of the "alleged crime."

legal alibi to “specify the place or places at which [he] claims to have been present at the time of the alleged crime.”<sup>9</sup> The oral and documentary evidence regarding the Accused’s location does not attempt to, and cannot, provide a defence against any or all of the charges in the Indictment. Rather it is solely relevant to the credibility of the witness in question. Thus, no notification to the Prosecution of the intent to enter a legal alibi under Rule 67 is legally required.

11. The Defence submits that the meaning of a legal alibi is trite and relates to the Accused’s denial “that he was in a position to commit the crime with which he was charged.”<sup>10</sup> The use of a legal alibi which invokes the legal obligations of Rule 67 would have the purpose of “establish[ing] with precision and certainty that the accused was not present at the scene of the crimes charged.”<sup>11</sup> This was not the purpose of the location evidence given by the Accused on 14 and 15 September 2009.

*No Pre-Trial Notice to Prosecution Necessary or Possible*

12. The Defence does not question the legal obligation to notify the Prosecution of an intention to enter a defence of alibi. The Defence appreciates that the purpose of the rule is to prevent an “ambush” defence, for the purpose of this notification “allows the Prosecution to organize its evidence and to prepare its case prior to the commencement of the trial on the merits.”<sup>12</sup>
13. However, the need for the Accused to dispute his location on the night of 8 May 2000 was not evident to the Defence until the Prosecution witness TF1-567 had testified. Prior to TF1-567’s testimony, the Accused’s location on 8 May 2000 was not a point of contention. Further, the Accused’s location on 8 May 2000 was certainly not raised by the Prosecution in the Indictment or Case Summary, such that the Defence could have known it was in dispute, or an essential component of the Indictment. Consequently, the Defence could not have, and was not, provided pre-trial notice of its need to dispute the truthfulness of this aspect of a Prosecution witness’s testimony.

<sup>9</sup> Special Court for Sierra Leone, Rules of Procedure and Evidence, Rule 67(A)(ii)(a).

<sup>10</sup> *Prosecutor v. Kunarac et al.*, IT-96-23-T & IT-96-23/1-T, “Judgement,” 22 February 2001, para. 463.

<sup>11</sup> *Prosecutor v. Kayishema et al.*, ICTR-95-1-A, Appeals Chamber, “Judgement,” 1 June 2001, para. 129-131.

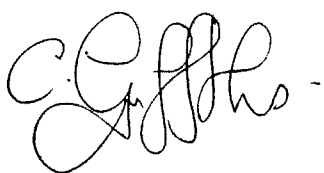
<sup>12</sup> *Prosecutor v. Brima et al.*, SCSL-04-16-T, “Decision on Prosecution Motion for Relief in Respect of Violations of Rule 67,” 26 July 2006, para. 15.

14. Rule 67(B) further stipulates that “failure to provide timely disclosure” of the intent to “rely on the defence of alibi” would “undermine the prosecution’s ability to prepare its case and investigate the evidence on which the alibi defence rests.”<sup>13</sup> In the present case, the Prosecution has no need to “prepare its case” against the Accused’s reference to his location made on 14 and 15 September 2009 because it was from the Prosecution’s prepared and presented case that this detail on the Accused’s location originated. Furthermore, in any event, the Prosecution is now in possession of documents that would enable it to verify the truthfulness of the Accused’s testimony in relation to his location on the night of 8 May 2000 if it so wishes or if this is legally necessary with regard to the allegations contained in the Indictment. These documents were referred to during the Accused’s testimony as MFI-133 and MFI-139.<sup>14</sup>

#### IV. CONCLUSION

15. The Defence does not intend to rely on the Accused’s location on the night of 8 May 2000 as an alibi defence to any crime charged in the Indictment. Therefore, Rule 67 and its notification requirements are irrelevant. As such, the Prosecution Motion should be dismissed.

Respectfully Submitted,



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**Courtenay Griffiths, Q.C.**  
**Lead Counsel for Charles G. Taylor**

Dated this 26th Day of October 2009,  
The Hague, The Netherlands

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<sup>13</sup> Special Court for Sierra Leone, Rules of Procedure and Evidence, Rule 67(B).

<sup>14</sup> *Prosecutor v. Taylor*, Trial Transcript (Open Session), 15 September 2009, p. 28849-51; *Prosecutor v. Taylor*, Trial Transcript (Open Session), 15 September 2009, p. 28851-2.

## LIST OF AUTHORITIES

### SCSL

Special Court for Sierra Leone, Rules of Procedure and Evidence

#### *Prosecutor v. Taylor*

*Prosecutor v. Taylor*, SCSL-03-01-T, “Transcript of Proceedings,” 14 September 2009

*Prosecutor v. Taylor*, SCSL-03-01-T, “Transcript of Proceedings,” 15 September 2009

*Prosecutor v. Taylor*, SCSL-03-01-T-842, “Confidential with Annex A Prosecution Motion for Relief in Respect of the Requirements of Rule 67,” 1 October 2009

#### *Prosecutor v. Brima, Kamara and Kanu*

*Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T-521, “Decision on Prosecution Motion for Relief in Respect of Violations of Rule 67,” 26 July 2006

*Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T-785, “Public Defence for Morris Kallon’s Notification of Alibi,” 8 May 2007

### ICTY

*Prosecutor v. Kunarac et al.*, IT-96-23-T & IT-96-23/1-T, “Judgement,” 22 February 2001

<http://www.icty.org/x/cases/kunarac/tjug/en/kun-tj010222e.pdf>

### ICTR

*Prosecutor v. Kayishema et al.*, ICTR-95-1-A, Appeals Chamber, “Judgement,” 1 June 2001

<http://www.icty.org/ENGLISH/cases/KayRuz/appeal/index.htm>

<http://www.icty.org/ENGLISH/cases/KayRuz/appeal/3c.htm>