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SCSL-03-01-T
(26649-26679)

26649



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: 11 December 2009

Case No.: SCSL-2003-01-T

THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC WITH ANNEXES A AND B AND CONFIDENTIAL ANNEX C

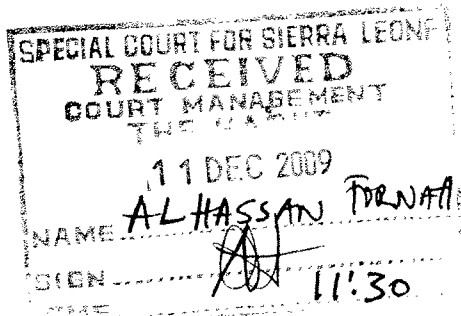
**DEFENCE MOTION FOR LEAVE TO VARY VERSION III OF THE DEFENCE
RULE 73ter WITNESS LIST AND SUMMARIES**

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 III² of its Rule 73ter witness list and summaries.
2. This motion is being filed as a result of ongoing Defence investigations and further analysis of testimony critical to the Defence Case, information received regarding the death of certain witnesses since the filing of Version III, and to drop duplicative witness entries that have been identified in Version III.
3. For 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: (i) the Defence may file Version IV of its Rule 73ter witness list and summaries; (ii) the Defence may drop the forty-nine (49) witnesses whose pseudonyms appear in Annex A hereto from its Rule 73ter witness list and summaries when filing Version IV; and (iii) the Defence may add the thirty-two (32) witnesses whose pseudonyms and summaries appear in Annexes B and C hereto to its Rule 73ter witness list and summaries when filing Version IV.

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 2009.³ The Defence made clear in that initial filing that investigations for the Defence Case were still on-going⁴ and noted that some witnesses on the list had not yet been interviewed; the Defence, nonetheless, included witness summaries (whenever feasible) for such witnesses in order to properly comply with Rule 73ter and the Trial Chamber's 7 May 2009 Order.⁵ The Defence provided such indications to the Trial

¹ See, *Rules of Procedure and Evidence of the Special Court for Sierra Leone*, as amended on 27 May 2008 ("Rules"), Rule 73 ter(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.**" Emphasis added.)

² See, *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" ("Version III").

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.

⁴ Version I, para. 7.

⁵ *Id.*, at para. 7.

Chamber because it was apparent at the time of the filing of Version I that the Defence would update and clarify various matters in its witness list and summaries as its investigations continued and more information about witnesses became available.

5. Indeed, and since the filing of Version I, the Defence has maintained clarity and consistency regarding the on-going nature of the preparation of the Defence Case and has continually updated the Court and the Prosecution (in various pleadings and orally in court) as to the progress of its investigations. For example, the on-going nature of the defence investigations were alluded to during the Pre-Defence Conference of 8 June 2009, during which Lead Defence Counsel alluded to the time pressures relating to the Rule 73*ter* filing, reiterating that having not been able to conduct a thorough sifting process vis-à-vis witness selection, the investigations would continue whilst the Accused was giving evidence.⁶ During the 6 July 2009 Status Conference, Lead Defence Counsel also indicated that investigations were on-going⁷, with one resulting consequence being that the Defence had been “unable to complete the sifting process”⁸ in respect of its witnesses. Again, and while opening the Defence Case on 13 July 2009, Lead Defence Counsel not only conceded that the Defence was continuing its preparation of the Defence Case,⁹ all those there present were reminded of the fact that the Defence had initially sought and been “granted four months to prepare”¹⁰ a “case involving voluminous documentation” which the Prosecution “had taken years to prepare.”¹¹

6. On 4 May 2009, the Trial Chamber made an oral decision concerning the appropriate date for the commencement of the Defence case.¹² Though the Trial Chamber did not grant the additional time sought by the Defence and ordered that the Trial commence 29 June 2009, the Trial Chamber noted that the Defence was still conducting on-going investigations in order to properly prepare for the Defence Case whilst the Accused would be testifying.¹³

7. The Defence appealed the 4 May 2009 oral decision of the Trial Chamber regarding the date for the commencement of the Defence case. In its Application for Leave to Appeal, the Defence made it clear that preparation for the Accused’s case required extensive

⁶ *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, 8 June 2009, p. 24245; p. 24248; p. 24249 – p. 24250; p. 24262 – p. 24263 and p. 24264.

⁷ *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, 6 July 2009, p. 24278; p. 24279; p. 24280; and p. 24281.

⁸ *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, 6 July 2009, p. 24278.

⁹ *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, 13 July 2009, p. 24322; p. 24294 and p. 24295.

¹⁰ *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, 13 July 2009, p. 24294.

¹¹ *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, 13 July 2009, p. 24295.

¹² *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, 4 May 2009, p. 24220.

¹³ *Id.*, at p. 24220.

preparation and could not be compared “with the period granted in the AFRC or even in the RUF case.”¹⁴ The Defence stressed that the logistics of conducting investigations in both Sierra Leone and Liberia while communicating with the Defence team “affects the time required by the Defence to prepare its case adequately.”¹⁵ The Defence reiterated the fact that investigations were on-going and logistically complicated in its Reply to the Prosecution’s Response to the Defence’s application for leave to appeal.¹⁶

8. In its motion of 12 June 2009, seeking an adjournment of the start of the Defence case due to the then inability of Defence Counsel to take instructions from the Accused, the Defence stressed the importance of access to the Accused, thereby explicating that the Defence was still in a crucial phase of investigation and preparation of the Defence case.¹⁷ The Trial Chamber’s Decision of 18 June 2009 recognised that the Defence was still preparing and investigating the Defence case and the Court noted the importance of that on-going preparation when it observed that interference with the Accused’s time to prepare his case “would be unfairly prejudicial to the Accused.”¹⁸

9. It should be noted that after the 4 April 2007 filing of the Prosecution’s Rule 73*bis* Pre-Trial Conference materials (including a list of, and summaries for, all witnesses the Prosecution intended to call), the Prosecution moved the Trial Chamber on 13 December 2007 for Leave to Vary its witness list by adding additional witnesses to the list.¹⁹ The legal standards that were advanced by the Prosecution when it moved to vary its witness list included a showing of “good cause” and that proposed amendments would be “in the interest of justice.”²⁰ The Trial Chamber granted the Prosecution’s motion to vary its witness list,

¹⁴ *Prosecutor v. Taylor*, SCSL-03-01-T-777, “Defence Application for Leave to Appeal the 4 May 2009 Oral Decision requiring the Defence to Commence its Case on 29 June 2009,” 11 May 2009 (“Application for Leave to Appeal”), para. 6, citing *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, 4 May 2009, p. 24221. The Defence cites to Justice Sebutinde’s acknowledgment of the magnitude of Mr. Taylor’s case compared to other cases before the Special Court for Sierra Leone.

¹⁵ Application for Leave to Appeal, para. 6.

¹⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-781, “Defence Reply to Prosecution Response to ‘Public with Annex a Defence Application for Leave to Appeal the 4 May 2009 Oral Decision Requiring the Defence to Commence its Case on 29 June 2009’,” 25 May 2009, para.6. The Defence made known that Defence investigations are on-going and complicated by stating that “The difficulties of field work in West Africa are such that irrespective of what resources are available to the Defence, it nevertheless takes time to interview a large number of witnesses.”

¹⁷ *Prosecutor v. Taylor*, SCSL-03-01-T-792, “Urgent Defence Motion for Adjournment of Trial Stat-Date due to Inability to Take Instructions from the Accused, Charles Ghankay Taylor,” 12 June 2009, para. 8.

¹⁸ *Prosecutor v. Taylor*, SCSL-03-01-T-798, “Decision on Urgent Defence Motion for Adjournment of Trial Start-Date due to Inability to Take Instructions from the Accused,” 18 June 2009, para. 21.

¹⁹ *Prosecutor v. Taylor*, SCSL-03-01-PT-218, “Public Rule 73*bis* Pre-Trial Conference Materials”, 4 April 2007; *Prosecutor v. Taylor*, SCSL-03-01-T-374, “Public, with Confidential Annex D Motion for Leave to Vary the Witness List and to Disclose Statements of Additional Witnesses,” 13 December 2007.

²⁰ *Prosecutor v. Taylor*, SCSL-03-01-T-374, “Public, with Confidential Annex D Motion for Leave to Vary the Witness List of to Disclose Statements of Additional Witnesses,” 13 December 2007, para. 11. citing

after observing that the Prosecution had shown “good cause” pursuant to Rule 66(A)(ii) and that the amendments were “in the interest of justice” pursuant to Rule 73bis(E).²¹

III. Applicable Legal Principles and Analysis

10. 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.²² Jurisprudence of the ICTR in the case of *Prosecutor v. Nahimana* holds that though the Prosecution must show both “good cause” under Rule 66(A)(ii) and that the request is “in the interest of justice” under Rule 73bis, the Defence is only required to show that a Defence motion for Leave to Vary is “in the interest of justice.”²³

11. *Prosecutor v. Nahimana* sets out guiding principles to assess what constitutes “good cause” to vary the witness list pursuant to Rule 73²⁴ and what amounts to “the interest of justice.”²⁵ Such *guiding principles* include “the materiality of the testimony, the complexity of the case, prejudice to the Defence, including elements of surprise, on-going investigations, replacements and corroboration of evidence.”²⁶ This Court relied on those guiding principles

Prosecutor v. Brima et al., SCSL-04-16-T-365, “Decision on Prosecution request for Leave to Call an Additional Witness (Zainab Hawa Bangura) Pursuant to Rule 73bis(E) and on Joint Defence Notice to Inform the Trial Chamber of its Position vis-à-vis the Proposed Expert Witness (Mrs. Bangura) Pursuant to Rule 94bis”, 5 August 2005, para. 21; *Prosecutor v. Nahimana*, ICTR-99-52-I, “Decision on the Prosecutor’s Oral Motion for Leave to Amend the List of Selected witnesses”, Trial Chamber, 26 June 2001, para. 20. The Prosecution motion cited to the *Brima* Trial Chamber’s use of the guiding principals set out in *Nahimana*. *Nahimana* helped define a standard to assess what constitutes “good cause” and what amounts to “the interest of justice.” The *Nahimana* case looked at guiding principals such as “the materiality of the testimony, the complexity of the case, prejudice to the Defence, including elements of surprise, on-going investigations, replacements and corroboration of evidence.” This evidence must be “balanced against the right of the Accused to have adequate time and facilities to prepare his Defence.” *Nahimana*, at para. 20.

²¹ *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.; *Rules*, at Rule 66(A)(ii); *Rules*, at 73bis(E).

²² Rule 73ter(E).

²³ *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”).

²⁴ *Rules*, at 73bis(G); 73ter(E).

²⁵ *Prosecutor v. Nahimana*, ICTR-99-52-I, “Decision on the Prosecutor’s Oral Motion for Leave to Amend the List of Selected witnesses”, Trial Chamber, 26 June 2001, para. 20; *Nahimana* Decision.

²⁶ *Prosecutor v. Nahimana*, ICTR-99-52-I, “Decision on the Prosecutor’s Oral Motion for Leave to Amend the List of Selected witnesses”, Trial Chamber, 26 June 2001, para. 20.

in addressing our Rule 73 provision on varying the witness list in *Prosecutor v. Brima*²⁷ and again in *Prosecutor v. Taylor*.²⁸

12. Though the Trial Chamber in *Nahimana* initially set-out those guiding principles in light of the Prosecution's motion to vary the witness list, *the Nahimana* Court reiterated the same principles when it granted the Defence leave to vary the witness list.²⁹ It observed that "the requirement under Rule 66(A)(ii) relating to a showing of "good cause" applies to disclosure by the Prosecution and there is no similar provision in respect of disclosure by the Defence."³⁰ And when deciding whether the defence had met the interests of the justice standard, the *Nahimana* Court stated that because "the proposed witness would provide relevant material evidence," that it was in the interests of justice to add the witness to the Defence's witness list.³¹

13. The Prosecution relied on the interpretation of "good cause" and "the interests of justice" in the *Nahimana* case when it sought leave of court to vary its witness list in this case.³² Significantly, the said request to vary was sought after the commencement of the Prosecution's case on 4 June 2007 and well after 7 January 2008 when the first Prosecution witness was called to the witness stand. Nonetheless, and in its Decision of 5 February 2008, this Court stated that the Prosecution had properly supported its request by showing "good cause" under Rule 66(A)(ii) and that the request met the "the interest of justice" requirement under Rule 73bis(E); the Prosecution motion was accordingly granted by the Trial Chamber.³³ Accordingly, the Defence submits that *Nahimana*³⁴ may be relied on as well when evaluating the relevant "interests of justice" standard in the context this motion.

14. Since the filing of Version III on 10 July 2009, it has been brought to the Defence's attention that five of its prospective witnesses have died. They are DCT-036, DCT-193, DCT-135, DCT-132, and DCT-052, and the Defence submits that variation of the witness list to reflect these unfortunate occurrences would be in the interests of justice. Additionally, the

²⁷ *Prosecutor v. Brima et al.*, SCSL-04-16-T-365, "Decision on Prosecution request for Leave to Call an Additional Witness (Zainab Hawa Bangura) Pursuant to Rule 73bis(E) and on Joint Defence Notice to Inform the Trial Chamber of its Position vis-à-vis the Proposed Expert Witness (Mrs. Bangura) Pursuant to Rule 94bis", 5 August 2005, para. 21.

²⁸ *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.

²⁹ *Nahimana* Decision.

³⁰ *Nahimana* Decision.

³¹ *Nahimana* Decision.

³² *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.

³³ *Id.*

³⁴ *Nahimana* Decision.

Defence has discovered that a duplicate entry was made in Version III regarding DCT-220. DCT-220 is the same person as DCT-256 and the Defence seeks to drop the pseudonym "DCT-256" and to retain only "DCT_220" in respect of that witness. Likewise, and in respect of DCT-043, the same witness was assigned DCT-235 and the Defence wishes to merge DCT-043 into DCT-235, retaining only the latter pseudonym for that witness. Here again, and in respect of such duplicate entries, it is submitted that permitting the sought variation of the witness list would be in the interests of justice. These and other modifications to the Defence witness list are proposed in Annex A hereto.

15. The Defence also wishes to drop several other witnesses on the basis of the results of its on-going investigations, one of whom was twice listed in Version III (i.e., DCT-169 and DCT-173 are the same person). The Defence does not now intend to call any of the forty-nine (49) witnesses whose pseudonyms appear in Annex A hereto, and it is submitted that it would be in the interest of justice were the Defence granted leave to drop those witnesses.

16. In Annexes B and C hereto are pseudonyms and witness summaries for thirty-two (32) witnesses that the Defence wishes to include in its witness list. 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 during the examination-in-chief and cross-examination of the Accused make the evidence of each such witness relevant and material to the Defence's case. Under these circumstances, the Defence submits that granting it leave to add these witnesses to the list would be in the interests of justice, especially where the Prosecution will not be prejudiced by their inclusion in the Defence list and leave was granted the Prosecution under similar circumstances in February 2008 to vary its list of witnesses, after the commencement of the Prosecution's case. That the Prosecution will not be prejudiced by the inclusion of these witnesses in the Defence list is illustrated by the fact that the Defence case is still in its infancy with the Accused having been the only Defence witness to give evidence thus far, and current indications are that the evidence of additional Defence witnesses (if any) is not likely to be called until perhaps February 2010, bearing in mind the amount of time it would take the Prosecution to complete its on-going cross-examination of the Accused and the Defence's possible re-examination of the Accused.

17. By way of background, the current total number of Defence witnesses that is reflected in Version III is 261, notwithstanding the fact that pseudonyms seemingly have been assigned to 282 witnesses as of Version III. The reasons for that discrepancy have been conveyed in

Version II³⁵ and Version III, respectively, and are as follows: four (4) DCT numbers/pseudonyms are unused and have never been assigned to any witness (i.e., DCT-054, DCT-087, DCT-213, and DCT-222)³⁶; the Defence identified six (6) duplicate entries and consequently dropped six (6) DCT numbers for twice listed witnesses by merging DCT-074 into DCT-075, DCT-202 into DCT-203, DCT-085 into DCT-184, DCT-070 into DCT-166, DCT 106 into DCT-115, and DCT-048 into DCT-252³⁷; notice of the death of three (3) witnesses was previously provided (i.e., DCT-161, DCT-038, and DCT-075)³⁸; and the Defence additionally dropped the following 8 witnesses in Version III: DCT-004, DCT-119, DCT-121, DCT-145, DCT-176, DCT-204, DCT-216, and DCT-225³⁹. When the 4 unassigned pseudonyms are added to the 3 pseudonyms for the deceased witnesses and those are, in turn, added to the 6 pseudonyms for merged witnesses and the pseudonyms for the 8 dropped witnesses, a total of 21 pseudonyms form no part of the current Defence witness list.

18. The first 4 of the 32 proposed witnesses in Annexes B and C have been assigned the four previously unused pseudonyms (i.e., DCT-054, DCT-087, DCT-213, and DCT-222, respectively) and the pseudonyms for the remaining 28 witnesses commence with the next sequentially available pseudonym number after DCT-282 – i.e., DCT-283. In the Defence's evaluation and submission, all thirty-two (32) proposed witnesses come within the ambit of the Trial Chamber's "Decision on Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials" dated 27 May 2009 ("Decision")⁴⁰ and consequently, their names are not being disclosed at this time. Additionally, the witness summary for DCT-213 has been filed confidentially in Annex C hereto because it details certain telephone numbers, the calling of which by any member of the public could disclose the identity of the witness -- something which is currently proscribed by the 27 May 2009 protective measures Decision⁴¹.

³⁵ See, *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 ("Version II").

³⁶ See, para. 4(x) of Version II.

³⁷ See, paras. 4(iv) and 4(v) of Version II and para. 3(iii) of Version III.

³⁸ See, para. 4(iii) of Version II and para. 3(i) of Version III.

³⁹ See, para. 2(i) of Version III.

⁴⁰ *Prosecutor v. Taylor*, SCSL-03-1-T-782, "Decision on Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials", 27 May 2009.

⁴¹ It goes without saying that the disclosure of the same details to the Prosecution does not contravene the Court's directive against disclosure of the identity of the witness, inasmuch the Prosecution is duty bound not to undertake any action that would disclose the identity of the witness, including telephoning any of the listed numbers.

19. In granting the Prosecution's motion for leave to vary its witness list, the Trial Chamber rendered its decision pursuant to Rule 54.⁴² 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."⁴³

20. Bearing in mind the provisions of Rule 54 and the ongoing nature of the Defence investigations and preparations as has been alluded to at every opportunity, the Defence submits that allowing it to vary its witness list by dropping the witnesses listed in Annex A and including those listed in Annexes B and C to its witness list would be consonant with the letter and the spirit of Rule 54, and with the interests of justice.

21. As the Defence has consistently informed the Court that its investigations have been on-going, 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"⁴⁴ under Article 17(4)(b) of the Statute⁴⁵. This *minimum guarantee* is fundamental to the Accused's right to a fair trial and the Defence maintains that its on-going investigation and especially witness interviews are imperative to the Defence's case and denying the Accused leave to vary the witness list would, under these circumstances, amount to an infringement of his rights under Article 17.

IV. Conclusion

22. The Defence submits that it has met the interests of justice standard as laid out in *Nahimana* 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 IV of its Rule 73ter witness list and summaries; (ii) the Defence may drop the forty-nine (49) witnesses whose pseudonyms appear in Annex A hereto from its Rule 73ter witness list and summaries when filing Version IV; and (iii) the Defence may add the thirty-two (32) witnesses whose pseudonyms and summaries appear in Annexes B and C hereto to its Rule 73ter witness list and summaries when filing Version IV.

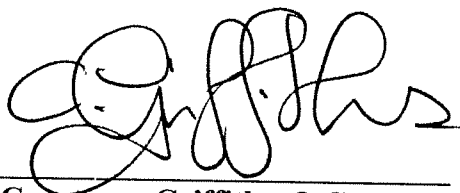
⁴² *Prosecutor v. Taylor*, SCSL-03-01-T-408, "Decision on Public with Confidential Annex D Motion for Leave to Vary the Witness List and to Disclose Statements of Additional Witnesses," 5 February 2008, p. 4

⁴³ *Rules*, at Rule 54.

⁴⁴ *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).

⁴⁵ Statute.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'C. Griffiths', written over a horizontal line.

Courtenay Griffiths, Q.C.

Lead Counsel for Charles G. Taylor

Dated this 11th day of December 2009

The Hague, The Netherlands

List of Authorities

SCSL

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-PT-218, “Public Rule 73bis Pre-Trial Conference Materials,” 4 April 2007.

Prosecutor v. Taylor, SCSL-03-01-T-374, “Public, with Confidential Annex D Motion for Leave to Vary the Witness List of to Disclose Statements of Additional Witnesses,” 13 December 2007.

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-777, “Defence Application for Leave to Appeal the 4 May 2009 Oral Decision requiring the Defence to Commence its Case on 29 June 2009,” 11 May 2009.

Prosecutor v. Taylor, SCSL-03-01-T-781, “Defence Reply to Prosecution Response to ‘Public with Annex a Defence Application for Leave to Appeal the 4 May 2009 Oral Decision Requiring the Defence to Commence its Case on 29 June 2009’,” 25 may 2009.

Prosecutor v. Taylor, SCSL-03-1-T-782, “Decision on Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials,” 27 May 2009.

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.

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-792, “Urgent Defence Motion for Adjournment of Trial Stat-Date due to Inability to Take Instructions from the Accused, Charles Ghankay Taylor,” 12 June 2009.

Prosecutor v. Taylor, SCSL-03-01-T-798, “Decision on Urgent Defence Motion for Adjournment of Trial Start-Date due to Inability to Take Instructions from the Accused,” 18 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, Trial Transcript, 4 May 2009.

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcript, 7 May 2009.

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcript, 8 June 2009.

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

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

AFRC

Prosecutor v. Brima et al., SCSL-04-16-T-365, “Decision on Prosecution request for Leave to Call an Additional Witness (Zainab Hawa Bangura) Pursuant to Rule 73bis(E) and on Joint Defence Notice to Inform the Trial Chamber of its Position vis-à-vis the Proposed Expert Witness (Mrs. Bangura) Pursuant to Rule 94bis”, 5 August 2005, para. 21.

ICTR

Prosecutor v. Nahimana, ICTR-99-52-I, “Decision on the Prosecutor’s Oral Motion for Leave to Amend the List of Selected witnesses”, Trial Chamber, 26 June 2001.
www.ictr.org/ENGLISH/cases/Nahimana/decisions/260601.htm

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.ictr.org/ENGLISH/cases/Nahimana/decisions/091002.htm

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**PUBLIC
ANNEX A**

Numeric Number Count	Taylor Defence: Proposed List of Witnesses to be Dropped/ Withdrawn from the Defence Witness List by DCT-Number
1.	DCT -006
2.	DCT -017
3.	DCT -030
4.	DCT-277
5.	DCT -033
6.	DCT -036 (deceased)
7.	DCT -041
8.	DCT-044
9.	DCT -066
10.	DCT -069
11.	DCT -072
12.	DCT -073
13.	DCT -077
14.	DCT -080
15.	DCT -084
16.	DCT -090
17.	DCT -092
18.	DCT -093
19.	DCT -099
20.	DCT -104
21.	DCT -259

Numeric Number Count	Taylor Defence: Proposed List of Witnesses to be Dropped/ Withdrawn from the Defence Witness List by DCT-Number
22.	DCT -134
23.	DCT -135
24.	DCT -150
25.	DCT -151
26.	DCT -152
27.	DCT -157
28.	DCT -238
29.	DCT -251
30.	DCT -254
31.	DCT -171
32.	DCT -178
33.	DCT-261
34.	DCT -182
35.	DCT -187
36.	DCT -193 (deceased)
37.	DCT -194
38.	DCT -139
39.	DCT-278
40.	DCT -058
41.	DCT -135 (deceased)
42.	DCT -132 (deceased)

Numeric Number Count	Taylor Defence: Proposed List of Witnesses to be Dropped/ Withdrawn from the Defence Witness List by DCT-Number
43.	DCT -043 (same person was listed as DCT-235 and is to be merged into DCT-235, dropping DCT-043)
44.	DCT -169 (duplicate listing; same person as DCT-173; both to be dropped)
45.	DCT -078
46.	DCT -130
47.	DCT -256 (duplicated in DCT-220 & to be merged into DCT-220, dropping DCT-256)
48.	DCT -052 (deceased)
49.	DCT -173 (same person as DCT -169; both to be dropped)

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**PUBLIC
ANNEX B**

Taylor Defence: Proposed List of Additional Witnesses and Witness Summaries

Numeric Number Count	DCT-###	Summary of Anticipated Testimony	Relevant Counts in Indictment	Length of Direct Examination
1.	DCT-054	<p>Background: the witness is a former member of the Special Forces and was trained in Libya.</p> <p>The witness will testify about dissidents' attempts to invade Liberia. The witness will testify on a number of issues surrounding training in Libya, the NPFL attack on Liberia, and cross-border trade. The witness is a former Ambassador of the Republic of Liberia to the Republic of Guinea.</p>	All counts and modes of liability	2 days
2.	DCT-087	<p>Background: the witness is a former Vanguard soldier.</p> <p>The witness is expected to talk about his experience working with Foday Sankoh. The witness is also expected to testify on his knowledge of the meetings between the RUF and the Accused during the peace process. The witness will testify on the procurement of ammunition from ECOMOG in Monrovia.</p>	All Counts in the Indictment with respect to the modes of liability of aiding and abetting and JCE	2 days
3.	DCT-213	FILED CONFIDENTIALLY IN ANNEX C		
4.	DCT -222	<p>Background: The witness is a founding member of LURD and was present at almost all meetings held by LURD in Sierra Leone.</p> <p>The witness is expected to testify about the connection between LURD and the Government of Guinea. The witness is also expected to talk about the connection between LURD, David Crane (former Prosecutor at the Special Court for Sierra Leone) and the connection between LURD and the Special</p>	All counts and modes of liability	2 days

Taylor Defence: Proposed List of Additional Witnesses and Witness Summaries

5.	<p>DCT-283</p>	<p>Court for Sierra Leone. Further, the witness is expected to talk about general and specific issues of funding, training and arming of LURD forces. The witness will talk generally about the rebellion of LURD against Charles Taylor's government.</p> <p>Background: the witness is a qualified lawyer who was actively involved in the Military Tribunal in Gbarnga.</p> <p>The witness is expected to testify about his arrival in the NPFL area and his knowledge of the Military Tribunal which was set up in Gbarnga. The witness will talk about his involvement in the Military Tribunal. Further, the witness is expected to talk about the radio communications of the NPFL and the protection which was given by the NPFL to the people of Liberia.</p>	<p>All Counts in the Indictment with respect to the modes of liability of aiding and abetting and JCE</p>	<p>1 day</p>
6.	<p>DCT-284</p>	<p>Background: the witness was a trained Junior Commando and once commanded forces of the Navy Division.</p> <p>The witness is expected to talk about the activity within the Navy during the disarmament and demobilisation period. The witness is expected to testify on the cross border activities with regard to the alleged sending of arms and ammunition through Liberia's national ports during his time at the National Port Authority. The witness is expected to testify about his knowledge of the Lofa Border, and about the allegation of Johnny Paul Koroma's entrance into Liberia.</p>	<p>All Counts in the Indictment with respect to the modes of liability of aiding and abetting and JCE</p>	<p>2 days</p>

Taylor Defence: Proposed List of Additional Witnesses and Witness Summaries

7.	DCT-285	<p>Background: the witness is the wife of a former Vice President of Liberia, now deceased.</p> <p>The witness will testify regarding the sickness of, and circumstances leading to the death of one of the vice presidents of the Republic of Liberia.</p>	Credibility of OTP evidence in relation to all counts	1 day
8.	DCT-286	<p>Background: The witness is a former leader of LURD.</p> <p>The witness will testify about the formation of LURD, its objectives, organisational structure, armed incursions into Liberia of LURD, and fighting between LURD forces and the Armed Forces of Liberia during Mr. Taylor's Presidency. The witness will also testify about the peace process and agreement involving LURD, MODEL, and the Government of Liberia.</p>	All counts and modes of liability	2.5 days
9.	DCT-287	<p>Background: the witness was the adjutant of the Executive Mansion Guard Battalion.</p> <p>The witness is expected to testify to the structure, membership, and role of the Executive Mansion Guard Battalion in Gbarnga during the NPRAG government. The witness is also expected to talk about general issues regarding the retrieval of NPFL soldiers from Sierra Leone in 1992. The witness will testify as to the Accused's alleged visit to Lofa at about the end of 1991. The witness is also expected to talk about the specific allegation made by OTP witness Isaac Mongor who claimed that he was a part of the Executive Mansion Guard battalion and is also expected to discuss Cassius Jacob's involvement in taking over the Executive</p>	Credibility of OTP evidence in relation to all counts and all counts in the Indictment regarding the modes of liability of aiding and abetting and JCE	2 days

Taylor Defence: Proposed List of Additional Witnesses and Witness Summaries

10.	DCT-288	<p>Mansion Battalion.</p> <p>Background: the witness is a former speaker of the Liberian House of Representatives.</p> <p>The witness is expected to testify about legislation passed during the presidency of Charles Taylor (in particular, those authorising President Taylor to assist in bringing peace to Sierra Leone). The witness will also testify regarding the role played by the Liberian Legislature in the Sierra Leonean peace process.</p>	Credibility of OTP evidence in relation to all counts	1 day
11.	DCT-289	<p>Background: the witness is presently a Senator in the Republic of Liberia.</p> <p>The witness is expected to talk about the Accused's schedules and routines, and habits starting from the presidency period. The witness will further testify about the household matters of the Executive Mansion and White Flower. The witness is also expected to talk about the meetings which the Accused had during his presidency period.</p>	Credibility of OTP evidence in relation to all counts.	1 day
12.	DCT-290	<p>Background: the witness was heavily involved in the operation of an orphanage in Liberia for about 20 years.</p> <p>The witness was in Monrovia during Operation Octopus in 1992 and is expected to talk about the experience regarding her orphanage. The witness is expected to talk about the orphanage's evacuation to Gbarnga and testify that she was given a place of refuge with regard to her and the children. The witness will</p>	Child soldiers and other relevant counts in the indictment.	2 days

Taylor Defence: Proposed List of Additional Witnesses and Witness Summaries

13.	<p>DCI-291</p>	<p>explain the status of the children and that the children were mostly orphans of the war. The witness will further testify that none of these children were ever used as child combatants, were never involved in any kind of fighting, and mostly were recruited to protect their well-being. Further, the witness is expected to talk about a subsequent evacuation to Totota.</p> <p>Background: the witness was one of the bodyguards for the late Anthony Menkunagbe a.k.a., General Dry Pepper during the early stages of the Liberia civil conflict.</p> <p>The witness is expected to testify on how, why and when the initial incursion into Sierra Leone from Liberia occurred. The witness will testify on how the funds used to purchase the arms were obtain, the source of the arms and the leadership of the team that eventually led the attack. He will further testify on the Accused's initial response or reaction when news of the attack reached him.</p>	<p>Credibility of OTP evidence in relation to all counts and all counts in the Indictment regarding the modes of liability of aiding and abetting and JCE.</p>	<p>1 day</p>
14.	<p>DCI-292</p>	<p>Background: the witness is a former Vanguard soldier and was later appointed by Sankoh as the RUF adjutant.</p> <p>The witness will talk about the launch of the NPFL revolution in 1989 in Liberia.</p> <p>The witness is expected to give a comprehensive account about the recruitment of RUF fighters in Liberia in 1990, about Camp Naama and the training of RUF Vanguards in Camp Naama, and about the planning of the</p>	<p>All Counts in the Indictment with respect to the modes of liability of aiding and abetting and JCE.</p>	<p>2.5 days</p>

Taylor Defence: Proposed List of Additional Witnesses and Witness Summaries

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		<p>1991 invasion of Sierra Leone. The witness is also expected to talk about Top20, Top 40 and Top Final. Further, the witness is expected to testify about the RUF war strategy, including the acquisition of military hardware and logistics in about 1991-1993, about the RUF command structure (including the functions and duties of each stage on the organogram), and about RUF ideology.</p> <p>The witness will also testify on the alleged palace coup in the RUF that led to the execution of Rashid Mansaray and others, and its consequences on the RUF command structure. Other areas in which the witness is expected to testify are: mining in the RUF, the peace accords made at Yamoussoukro and Abidjan, the RUF under Sankoh's regime (1991-1996), under Mosquito's regime (1996-1999), and under Issa Sesay's regime (1999-2000).</p>		
<p>15.</p>	<p>DCT-293</p>	<p>Background: the witness was a radio operator (signaller) between 1996 and 1999.</p> <p>The witness is expected to testify on his knowledge of the RUF under Sankoh's regime (1991-1996), under Mosquito's regime (1996-1999), and under Issa Sesay's regime (1999-2000). Further, the witness is expected to testify generally on the RUF's war campaign, and radio operator code and ethics between 1991 and 2000.</p>	<p>All Counts in the Indictment with respect to the modes of liability of aiding and abetting and JCE.</p>	<p>2 days</p>

Taylor Defence: Proposed List of Additional Witnesses and Witness Summaries

16.	DCT-294	<p>Background: the witness was a radio operator (signaller) between 1996 and 1999.</p> <p>The witness is expected to testify generally on the overall radio commander for the RUF and his knowledge of Sam Bockarie's flight to Liberia in 1999.</p>	All Counts in the Indictment with respect to the modes of liability of aiding and abetting and JCE.	1 day
17.	DCT-295	<p>Background: the witness is a former RUF Vanguard and combat medic at Camp Naama.</p> <p>The witness is expected to testify on the RUF high command and management at Camp Naama (1990-1991). The witness is also expected to talk about the planning of the invasion of Sierra Leone in 1991 and the RUF military campaign in Sierra Leone (1991-2000).</p>	All counts and modes of liability, especially JCE	1 day
18.	DCT-296	<p>Background: the witness is a former Vanguard commander and was trained in Camp Naama.</p> <p>The witness became one of the commanders and subsequently was appointed as one of the RUF mining commanders between about 1996-1999 and was a senior mining commander between 1999 and 2000.</p> <p>The witness is also expected to testify about the invasion of Sierra Leone in 1991. The witness will testify about the mining activity of the RUF throughout the years when he was serving as the commander. The witness will also testify about the RUF possession of the arms and</p>	All Counts in the Indictment with respect to the modes of liability of aiding and abetting and JCE.	2 days

Taylor Defence: Proposed List of Additional Witnesses and Witness Summaries

19.		<p>ammunitions. Further, the witness is expected to talk about the Yamoussoukro Peace Agreement, Abidjan Peace Agreement accord and the Lomé Peace Accord.</p> <p>Background: the witness was a radio operator for the RUF and served, as such, with Sam Bockarie 1996-1999.</p>	All counts and modes of liability	1 day
20.	<p>DCT-297</p>	<p>The witness is expected to testify in general about the RUF radio codes and operators as well as alleged communication between Sam Bockarie and radio operators in Liberia. The witness is expected to testify about his knowledge of the 8th of May 2000 incident around Foday Sankoh's residence. Further, the witness is also expected to talk about the arrest of peace keepers.</p>	Credibility of OTP evidence in relation to all counts	1 day
21.	<p>DCT-298</p>	<p>Background: the witness served as adjutant G1 for the Executive Mansion Guard.</p> <p>The witness is expected to talk about the general issue of the Executive Mansion Guard Battalion and is also expected to talk about Cassius Jacob's involvement in taking over the Executive Mansion Battalion. The witness is also expected to talk about the alleged connection between Small Boys Unit and the Executive Mansion Guard Battalion.</p> <p>Background: the witness is a Sierra Leonean born in Makeni. The witness first moved to Liberia from Sierra Leone in 1968.</p>	All Counts in the Indictment with respect to the modes of liability of aiding and	2 days
	<p>DCT-299</p>	<p>The witness is expected to testify about the</p>		

Taylor Defence: Proposed List of Additional Witnesses and Witness Summaries

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		cross-border trade between the RUF and Guinean soldiers which included trading for arms and ammunition. The witness is also expected to testify about RUF diamond trading at the Bemalu crossing point. Further, the witness will testify on the movement of the RUF external delegation to Ivory Coast via Guinea.	abetting and JCE.	
22.	DCT-300	<p>Background: the witness is a retired Sierra Leonean military commander and a member of the Kissi ethnic group that occupied the border between Sierra Leone and Liberia.</p> <p>The witness is expected to testify about the overthrow of the NPRC leader Valentine Strasser. The witness is also expected to testify as to his involvement in the SLA convoys attacked by the RUF in the south and east of Sierra Leone. Further, the witness will talk about his involvement with foreign troops such as the Nigerians, Guineans, and other mercenaries in Sierra Leone.</p>	All counts and modes of liability	1 day
23.	DCT-301	<p>Background: the witness is a former security for RUF mining operations.</p> <p>The witness is expected to testify about his knowledge on the security issues for the RUF mining operations. The witness will testify regarding the RUF mining system and the use of civilians in that process.</p>	All counts, in particular forced labour, and modes of liability	1 day
24.		Background: the witness is a former Vanguard soldier and was close to Foday Sankoh.	All Counts in the Indictment with respect to the	2 days

Taylor Defence: Proposed List of Additional Witnesses and Witness Summaries

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	DCT-302	The witness is expected to talk about the diamond transactions between Foday Sankoh and the Ukrainians. The witness is also expected to talk about the connection between such transactions and the Magburaka arms shipment(s).	modes of liability of aiding and abetting and JCE.	
25.	DCT-303	Background: the witness was one of the Sierra Leonean Special Forces. The witness is expected to testify on the alleged existence of the common plan between the leaders of the RUF and NPFL. The witness is also expected to testify about his knowledge during the time he was serving as a senior commander (during the conflict) and will talk about the RUF's operations and chain of command/hierarchy.	All Counts in the Indictment with respect to the modes of liability of aiding and abetting and JCE.	2 days
26.	DCT-304	Background: the witness was a Gambian Special Forces who later joined the NPFL. The witness is expected to testify about the inclusion of the Gambians in the NPFL and their purpose and role within the NPFL.	All counts and modes of liability, especially JCE.	1 day
27.	DCT-305	Background: the witness was one of the Togolese revolutionary leaders. The witness will testify on the alleged existence of the common plan. In particular, the witness is expected to testify about the fact that Foday Sankoh was never in Burkina Faso. Further, the witness is expected to testify on his knowledge of Tajura and Mataba in connection with Foday	All Counts in the Indictment with respect to the modes of liability of aiding and abetting and JCE.	1 day

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28.	DCT-306	<p>Sankoh.</p> <p>Background: the witness was a former member of the external delegation.</p> <p>The witness is expected to discredit one of the OTP witness and is also expected to testify and give an explanation of Foday Sankoh's fundraising trips around the sub-region prior to the Abidjan Accord.</p>	All Counts in the Indictment with respect to the modes of liability of aiding and abetting and JCE.	1.5 days
29.	DCT-307	<p>Background: the witness was a senior radio operator of the RUF and was with Foday Sankoh during the early years.</p> <p>The witness is expected to testify about his knowledge of the radio operations at Geima, Kailahun, Pendembu, Kuiva, Buedu, and the RUF headquarters from 1998 onwards.</p>	Credibility of OTP evidence in relation to all counts	1 day
30.	DCT-308	<p>Background: the witness was a senior RUF radio operator.</p> <p>The witness is expected to talk about his knowledge of the control station at Zogoda and his knowledge of the radio operations in the Northern Jungle.</p>	Credibility of OTP evidence in relation to all counts	1 day
31.	DCT-309	<p>Background: the witness was a senior RUF radio operator.</p> <p>The witness is expected to talk about his knowledge of the control station at Zogoda and his knowledge of the radio communications</p>	Credibility of OTP evidence in relation to all counts	1 day

Taylor Defence: Proposed List of Additional Witnesses and Witness Summaries

32.		<p>between Foday Sankoh and the external delegation to the Ivory Coast.</p> <p>Background: the witness is a former senior RUF radio operator.</p> <p>The witness is expected to testify in general about the RUF radio codes and operators and, in particular, about the RUF radio operations in Freetown during the war in SL. The witness is also expected to talk about the arrest of the peacekeepers.</p>	Credibility of OTP evidence in relation to all counts	1 day
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Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the Confidential Case File.

Case Name: **The Prosecutor – v- Charles Ghankay Taylor**

Case Number: **SCSL-03-01-T**

Document Index Number: **869**

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- Application
- Order
- Indictment
- Motion**
- Other
- Correspondence

Document Title:

PUBLIC WITH ANNEXES A AND B AND CONFIDENTIAL ANNEX C DEFENCE MOTION FOR LEAVE TO VARY VERSION III OF THE DEFENCE RULE 73ter WITNESS LIST AND SUMMARIES

Name of Officer:

Alhassan Fornah

Signed: