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SCSL-03-01-T
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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR

TRIAL CHAMBER II

Before:	Justice Julia Sebutinde, Presiding Justice Richard Lussick Justice Teresa Doherty Justice El Hadji Malick Sow, Alternate Judge
Registrar:	Ms. Binta Mansaray
Date filed:	12 March 2010

THE PROSECUTOR **Against** **Charles Ghankay Taylor**

Case No. SCSL-03-01-T

PUBLIC
PROSECUTION REPLY TO DEFENCE RESPONSE TO PROSECUTION REQUEST FOR ORDERS IN RELATION TO THE SCHEDULING OF THE REMAINDER OF THE CASE

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I. INTRODUCTION

1. The Prosecution files this Reply to the "Defence Response to Prosecution Request for Orders in Relation to the Scheduling of the Remainder of the Case."[1]

2. Setting an end date would enable the Defence to determine how best to allot its time and resources between further investigation, preparation and presentation of its evidence while advancing the efficiency of the proceedings, considering that:

   (i) the Defence is now almost eight months into its case,

   (ii) has called only 4 – 5 witnesses,

   (iii) asserts that it has extreme difficulty providing accurate estimates for the length of its case[2], and

   (iv) is "continually conducting its investigations and interviewing witnesses".[3]

II. ARGUMENT

3. Contrary to the unfounded assertion made by the Defence, the Prosecution's request is not premature.[4] Placing a time limit at the commencement of the Defence case would not violate any fair trial rights of the Accused. In this instance, the Defence case is hardly just beginning as it commenced nearly 8 months ago. That the Defence considers the case as just beginning some eight months into its case raises further concern about the expected duration of the Defence case. Further, the Defence bears sole responsibility for the current scenario: namely that "the Court is currently hearing evidence from only the second Defence witness after the Accused".[5] The Defence alone chose to conduct such a lengthy direct examination of the Accused, to request a one week delay before re-direct and to take a week in re-direct examination.

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[1] *Prosecutor v. Taylor*, SCSL-03-01-T-923, Defence Response to Prosecution Request for orders in Relation to the Scheduling of the Remainder of the Case, 8 March 2010 ("Response").
[2] Response para. 13.
[3] Response, para. 13.
[4] Response, paras. 7 – 9.
[5] Response para. 8.

Finally, based on the Defence's own estimate that its case will conclude during the summer,[6] its case is already over half completed.[7]

4. The Defence argument that the Prosecution's request is unnecessary is similarly without merit.[8] An order specifying an end date is appropriate in the present circumstances. First, the time estimates provided by the Defence have thus far proved contradictory and unreliable.[9] Even its latest estimate that its case will conclude sometime in the summer of 2010 is unhelpful.[10] Summer ends in late September. Also, at the same time the Defence gives this estimate, it asserts that it is extremely difficult to give accurate estimates for the length of its case.[11] Without a Defence case end date imposed by this Chamber, there is no reliable measure of how long the Defence case will last. Second, the Defence statements that its investigations and witness interviews are "continually" on-going[12] demonstrate the need to impose an end date, not that such imposition is unnecessary. The Defence in this case has been granted ample time for the conduct of investigations: the adjournment of proceedings on two occasions permitted a further eight months specifically devoted to investigations and trial preparations,[13] this in addition to those investigations and preparations conducted during all other phases of the trial. More importantly, the Defence has no right to unlimited investigations and the search for witnesses. Even for the Defence, "investigations and the search for witnesses cannot continue for an

[6] Response, para. 13 (estimating that the Defence will conclude in the summer of 2010).
[7] The testimony of the Accused and two witnesses has taken 8 months and the most recent estimate provided by the Defence is that the defence case will conclude in the summer of 2010 is less than 4 months away.
[8] Response, paras. 10-11.
[9] In paragraph 9 of the Response, the Defence commits itself to "revising its witness list downward" and yet in paragraph 18, doubts an end date in June 2010, roughly coinciding with its own estimate, would guarantee "an adequate amount of time to present its case." Moreover, at paragraph 13 of the Response, the Defence concedes that providing estimates has been "extremely difficult." See also *Prosecutor v. Taylor*, SCSL-03-01-T-918, Prosecution Request for Orders in Relation to the Scheduling of the Remainder of the Case, 26 February 2010, paras. 20-21 ("Motion")).
[10] Response para. 11.
[11] Response para. 11.
[12] Response, para. 13.
[13] The Defence was granted a four month adjournment between August 2007 and January 2008 (see *Prosecutor v. Taylor*, Trial Transcript, 20 August 2007, 34) and had more than four months between the close of the Prosecution's case-in-chief on 27 February 2009 and commencement of the Defence case on 13 July 2009. Also, see *Prosecutor v. Taylor*, Trial Transcript, 25 June 2007, pp. 36-37 and *Prosecutor v. Taylor*, Trial Transcript, 8 February 2010, pp. 34878-34880 where the Defence requested and was granted additional postponements.

indefinite period of time."[14] Finally, previous Defence guarantees that time to prepare and investigate would in the long run contribute to the efficiency of proceedings have not proven accurate. [15] All these considerations militate in favor of the imposition of an end date.

5. The Defence erroneously claims at paragraphs 12 through 18 of the Response that setting "artificial parameters" will impair the efficiency and fairness of the trial. First, a Trial Chamber setting an end date in the exercise of its trial management function is not setting "artificial parameters". Second, as the jurisprudence set out at length in the Motion demonstrates, the imposition of an end date does not entail any violation of the Accused's fair trial rights.[16] Notably, the ability to modify **upon the showing of good cause** ensures *efficient* deadlines are *fair* to the Accused.[17] Such procedure guarantees that parameters to the Defence case are applied "with reference to the particular circumstances of the case in question", as the Defence itself demands.[18]

6. Additionally, case parameters ensure that the party which does not have the burden of proof is given an appropriate, **proportional** amount of time. The Defence misapprehends the provisions of Article 17(4) (e) of the Statute cited in the Response. The language does not guarantee that the Accused may "*fully* present his case," [19] in the sense that the Accused or his counsel will determine how many witnesses will be called and how long the Defence case will continue. Those provisions guarantee procedural equality in obtaining the attendance of witnesses and in conducting their examination.[20]

7. The Defence argument at paragraph 15 of the Response is unhelpful in resolving the issue before the Trial Chamber. First, as for the evidence led in the Prosecution case

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[14] The *Zigiranyirazo* Trial Chamber refused to modify time limits previously imposed on the length of the Defence Case. *Prosecutor v. Zigiranyirazo,* ICTR-2001-73-T, Decision on Motion to Vary the Defence Witness List, 9 October 2007, para. 11.
[15] e.g. *Prosecutor v. Taylor*, Trial Transcript, 25 June 2007, pp. 36-37; *Prosecutor v. Taylor*, Trial Transcript, 7 May 2009, 24229; *Prosecutor v. Taylor*, Trial Transcript, 8 February 2010, 34871-34875.
[16] Motion, para. 14.
[17] In the past, this Chamber preferred the maintenance or extension of deadlines, to their suspension. e.g. *Prosecutor v. Taylor*, Trial Transcript, 3 July 2007, p. 5.
[18] Response, para. 14.
[19] Response, para. 12 (emphasis added).
[20] SCSL Statute, Article 17.

in chief, the Defence argument ignores the relevance of such evidence to elements the Prosecution must prove beyond reasonable doubt. Second, the argument fails to explain why a Defence case **proportional** in length to that of the Prosecution case-in-chief would be inadequate. The time required to *counter* the Prosecution's case[21] is rightly less than that required by the party with the burden of proof on all elements of all counts in the indictment. Moreover, the 24-day cross-examination merely tested the Accused's 51-day direct-examination with regard to such matters.[22]

8. The Defence arguments at paragraph 17 of the Response are without merit. First, there was no request that time limits be imposed on the Prosecution case in chief so the issue did not arise. Second, the Defence position that the Prosecution presented "arguably cumulative and arguably irrelevant" crime base evidence is disingenuous.[23] As Justice Dougherty confirmed, in the absence of agreement between the parties as to the crime basis, "it [was] an obligation and duty on the Prosecution to prove those crimes."[24] Contrary to its public pronouncements, the Defence did contest the crime base. It failed to enter into any agreement as to the crime base. Indeed the Defence successfully opposed the use of Rule 92*bis* to introduce the evidence of "crime base" witnesses in all but two instances, resulting in the calling of another 21 such witnesses for *viva voce* evidence in whole or in part.[25] Cross examination of some of these witnesses went beyond the Accused's connection to these crimes to include testing the crime basis as well.

9. The Defence illogically claims that the application of "unnecessary guidelines" "fetters" the trial management powers of the Chamber.[26] Taking this argument to its logical conclusion would lead one to argue that any motion requesting the Trial Chamber to take discretionary action is somehow fettering the powers of the Chamber. Additionally, the action requested is necessary, as discussed above, and

[21] Response, para. 16.
[22] Response, para. 15.
[23] Response, para. 16-17.
[24] *Prosecutor v. Taylor*, Trial Transcript, 14 February 2008, pp. 3858-3859.
[25] e.g. *Prosecutor v. Taylor*, SCSL-03-01-T-644, Decision on public with confidential annexes B to G Prosecution notice under Rule 92bis for the admission of evidence related to inter alia Freetown & Western Area, 21 October 2008; *Prosecutor v. Taylor*, SCSL-03-01-T-642, Decision on public with confidential annexes B to G Prosecution notice under Rule 92bis for the admission of evidence related to inter alia Freetown & Western Area - TF1-024, TF1-081 and TF1-084, 20 October 2008.
[26] Response, para. 5.

within the inherent power of the Chamber to control the proceedings.[27] As the Prosecution demonstrated in its Motion, limits on Defence cases are routinely applied at the ICTY and ICTR.[28] Lastly, parties propose and judges dispose; a request for certain action in no way fetters a Trial Chamber's exercise of its powers.

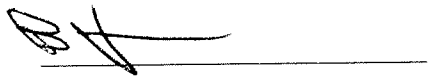
III. CONCLUSION

10. For the above reasons, the Prosecution requests that the Trial Chamber exercise its power to manage the proceedings to order the Defence to conclude its case within a reasonable period of time - on or before a specific date, 1 June 2010.

Filed in The Hague,

12 March 2010,

For the Prosecution,



Brenda J. Hollis
The Prosecutor

[27] *Prosecutor v. Galic*, IT-98-29-T, Scheduling Order, 12 September 2002, p. 2; also see Motion, para. 14.
[28] Motion, paras. 13-18.

INDEX OF AUTHORITIES

SCSL

Prosecutor v. Taylor

Prosecutor v. Taylor, Trial Transcript, 25 June 2007

Prosecutor v. Taylor, Trial Transcript, 3 July 2007

Prosecutor v. Taylor, Trial Transcript, 20 August 2007

Prosecutor v. Taylor, Trial Transcript, 14 February 2008

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