



Case No. SCSL-2003-01-T

THE PROSECUTOR OF
THE SPECIAL COURT
V.
CHARLES GHANKAY TAYLOR

MONDAY, 6 JULY 2009
9.30 A.M.
TRIAL

TRIAL CHAMBER II

Before the Judges:

Justice Richard Lussick, Presiding
Justice Teresa Doherty
Justice Julia Sebutinde
Justice Al Hadji Malick Sow, Alternate

For Chambers:

Mr Simon Meisenberg
Ms Sidney Thompson

For the Registry:

Mr Gregory Townsend
Ms Advera Nsiima Kamuzora
Ms Rachel Irura
Mr Benedict Williams

For the Prosecution:

Ms Brenda J Hollis
Ms Maja Dimitrova

**For the accused Charles Ghankay
Taylor:**

Mr Courtenay Griffiths QC
Mr Morris Anyah
Mr Terry Munyard
Ms Salla Moilanen

1 Monday, 06 July 2009

2 [Open session]

3 [The accused not present]

4 [Upon commencing at 9.30 a.m.]

09:23:08 5 PRESIDING JUDGE: Good morning. We will take appearances
6 first, please.

7 MS HOLLIS: Good morning Mr President, your Honours,
8 opposing counsel. This morning for the Prosecution, Brenda J
9 Hollis and Maja Dimitrova.

09:29:42 10 MR GRIFFITHS: Good morning your Honours, opposing counsel.
11 For the Defence today myself Courtenay Griffiths, my learned
12 friends Mr Morris Anyah, Mr Terry Munyard and our case manager
13 Ms Salla Moilanen.

14 PRESIDING JUDGE: Thank you, Mr Griffiths. Well, firstly,
09:30:00 15 I note that the accused is not present in Court but he is
16 represented by counsel and the accused has expressly waived his
17 right to be present. Accordingly, pursuant to Rule 60, this
18 status conference will proceed in the absence of the accused.

19 Basically this status conference has been appointed so that
09:30:40 20 the parties can raise any last minute issues, if any, bearing in
21 mind that the Defence stage of the trial has been ordered to
22 proceed next week on 13 July.

23 Mr Griffiths, do you have anything to raise?

24 MR GRIFFITHS: Just one matter, Mr President, and it's
09:31:08 25 this: It's the format we should follow next week. What I would
26 propose is that we open our case on the Monday and that we
27 commence with Mr Taylor's testimony on the Tuesday morning, if
28 that's agreeable, on the basis that everyone might need some time
29 on the Monday to digest what it is we are submitting in opening

1 and they would have the remainder of Monday to do that in
2 preparation for the start of testimony on Tuesday morning.

3 PRESIDING JUDGE: Thank you, Mr Griffiths. What's your
4 view on that, Ms Hollis?

09:31:56 5 MS HOLLIS: Well, the Prosecution would have no need for
6 additional time, but we have no objection to the suggestion.

7 PRESIDING JUDGE: Yes, Mr Griffiths, we will proceed along
8 those lines. We will expect the Defence opening statement on the
9 Monday and evidence called by the Defence can be commenced on the
09:32:32 10 next day.

11 MR GRIFFITHS: I am most grateful.

12 PRESIDING JUDGE: Mr Griffiths, while we are on the subject
13 of opening statements, I know it's not necessary to point this
14 out to you but I would draw your attention to Rule 84 which
09:32:53 15 states a well-known principle anyway; that the opening statement
16 will be confined to the evidence the Defence intends to present
17 in support of its case. I simply draw your attention to those
18 requirements.

19 Did you have anything else to raise?

09:33:11 20 MR GRIFFITHS: Nothing further, your Honour.

21 PRESIDING JUDGE: Thank you. Yes, Ms Hollis.

22 MS HOLLIS: Thank you, Mr President. Unfortunately, there
23 remains several issues that the Prosecution wishes to once again
24 address.

09:33:32 25 The first matter relates to the issue that was raised
26 before in relation to the number of witnesses to be called by the
27 Defence and the estimated time for the direct examination of
28 those witnesses.

29 The Defence has filed an updated and corrected witness

1 summary and in that witness summary they have provided estimates
2 of testimony. There may be one witness for whom no estimate was
3 provided, but the greatest majority of witnesses now have time
4 estimates and the Defence has added witnesses and we now have
09:34:09 5 some 256 witnesses, plus the accused, which is of course almost
6 three times the number of witnesses for the Prosecution.

7 Now, in terms of the estimated time, we did request that
8 the Defence, as an alternative means of determining the length of
9 their case, provide us with the estimated length of their case in
09:34:33 10 toto and we were told basically to work with the time estimates
11 given in the updated and corrected filing of witness summaries.
12 If we work with those estimates we now have a time of some 94
13 weeks in court for direct examination.

14 If we were to follow the practice in the Prosecution's case
09:34:56 15 and have almost the same amount of time for the Prosecution, the
16 Defence case would take about four years. Now, we suggest again
17 that these are disproportionate numbers of witnesses and
18 excessive length of the Defence case.

19 Now, in a related request we made to the Defence to try to
09:35:18 20 get a better understanding of what might be the time limit for
21 the witnesses they truly intend to call, we asked again the
22 Defence provide us a list of core witnesses and those witnesses
23 they considered back-up and the Defence indicated that it was
24 unable to do that and was not required to do so.

09:35:39 25 The Defence, however, did state that it would endeavour to
26 give the Prosecution a more defined list of witnesses towards the
27 end of the accused's evidence.

28 Now, with that being the status of matters we would ask
29 that the Trial Chamber request the Defence to provide a list of

1 core and back-up witnesses by the conclusion of the accused's
2 testimony. That would put both the Trial Chamber and the
3 Prosecution in the position of trying to determine if a request
4 for further orders, or further orders, might be appropriate. So
09:36:15 5 we would request that of the Trial Chamber.

6 Now, in terms of the adequacy of the summaries, which was
7 an issue before, the Defence has now provided summaries for
8 witnesses for whom they had not provided summaries and in some
9 instances appears to have updated the summaries that they had
09:36:39 10 previously given. We find most of those summaries remain
11 inadequate.

12 However, the Defence has stated that it will ensure that
13 all the information related to upcoming witnesses will be
14 provided 21 days before the witness testifies, when the witness's
09:37:00 15 identity is provided to the Prosecution. The Defence has also
16 stated that a summary of any new information they obtain as they
17 conduct proofing sessions will be provided to the Prosecution
18 forthwith. So at this point we rely on those assurances, keeping
19 in mind of course that it is not simply a matter of providing the
09:37:26 20 Prosecution with what it asks, but if we have inadequate
21 summaries it will impact our ability to conduct effective
22 cross-examination in a timely matter.

23 We also raise the issue relating to three witnesses who by
24 their summaries appeared to be called to give expert evidence and
09:37:47 25 that was 034, 052 and 082. The Defence has responded that they
26 are not calling these witnesses as experts. However, if you look
27 at the summaries - and it is the nature of the evidence they give
28 which determines if they are an expert, not how the party calling
29 the witness characterises it. If you look at the summaries it

1 appears that this is evidence that would have to be given by
2 expert witnesses. For example, 034, in the summary, supposedly
3 will tell your Honours the witness's opinion regarding the ethnic
4 nature of the conflict and what appears would be other opinion
09:38:31 5 evidence.

6 052 is a geologist who purportedly will comment on the
7 report of Ian Smillie, who appeared as a Prosecution expert
8 witness. And witness 082 is a mortician who purportedly will
9 comment on the cause of death of Sam Bockarie.

09:38:53 10 Now, such evidence, we would suggest, is expert testimony
11 and we ask that your Honours order the Defence to comply with
12 Rule 94 bis regarding these three witnesses and that they provide
13 the Prosecution with the names of these witnesses who it appears
14 will be called to give expert evidence.

09:39:19 15 PRESIDING JUDGE: I just point this out: I appreciate what
16 you say, Ms Hollis, but if the Defence says that these are not
17 expert witnesses but witnesses of fact, then surely they will be
18 bound by that. If any of those witnesses attempts to give
19 opinion evidence, we simply won't allow it.

09:39:40 20 MS HOLLIS: That is correct. That is an option. It would
21 appear, however, we would suggest, that another option that may
22 be more fair to the Defence's presentation of evidence is that
23 they be allowed to call these witnesses to testify as they wish
24 them to but that the character of the testimony be properly
09:39:59 25 characterised. Now, of course should they choose not to treat
26 them as experts we would object to whatever portions of their
27 evidence appear to be expert testimony. We won't want then to
28 have a delay while they then try to present them as experts. So
29 those are two options. We do appreciate the option your Honour

1 has suggested.

2 Now, another matter that we had raised before was a request
3 that the Defence provide the Prosecution with a list of the
4 witnesses the Defence reasonably expected to testify in a given
09:40:40 5 month one month in advance. It's important for the Prosecution
6 to have such a list because it enables us to organise our work
7 and to assign tasks. And it's consistent with the assistance
8 that was given by the Prosecution to the Defence during the
9 Prosecution case in chief.

09:41:00 10 The Defence has declined to provide such a list, indicating
11 that as they give us names of witnesses 21 days before they
12 testify we will have a good idea of who they are likely to call
13 and that they will be calling their evidence in roughly
14 chronological order and that should assist us to narrow down the
09:41:24 15 field.

16 Now, we suggest that having a good idea or narrowing down
17 the field is not the kind of assistance that is helpful and we
18 would again ask the Trial Chamber to request the Defence to
19 provide us with a list of witnesses the Defence anticipates it
09:41:40 20 will call each month one month in advance. We don't believe
21 that's onerous. We believe the Defence must have a good idea of
22 who they will be calling in a given month and it would greatly
23 assist the Prosecution in organising its work.

24 Now, a matter that has arisen relates to the two week
09:42:02 25 notice that was provided by the Defence. At our last status
26 conference, on 8 June, the Defence indicated that it would
27 endeavour to ensure that the Prosecution had a comprehensive list
28 of the exhibits the Defence would be introducing through the
29 accused in good time before the start of his testimony. Now, we

1 have all recently received the notice for the week of 13 July and
2 a copy of exhibits and we've received only exhibits that will be
3 used for that week, so we have not received a comprehensive list.

09:42:51 4 Certainly the practice during the Prosecution case was that
5 a comprehensive list of the exhibits that would be used with the
6 witness was provided, even if it appeared a witness might carry
7 over into the next week. There was no parcelling out of exhibits
8 by week.

09:43:10 9 We would ask that the Defence be requested to provide the
10 exhibits - not just the list, but the copies of exhibits - that
11 they will be using with each witness at the two week point. That
12 would include amending what they have provided so far for the
13 accused.

09:43:36 14 In terms of the time that a witness would take, again it
15 has been the practice to provide the entire time for direct
16 examination but again we find that in their notice the Defence
17 has parcelled that out for the week of 13 July only. For
18 planning purposes it is helpful to have the estimated time for
19 the entire direct examination.

09:43:56 20 We had also asked that the Defence provide us with copies
21 of exhibits, or websites for publicly available exhibits of the
22 exhibits that they anticipated they would use in a given month
23 and that they provide that to us when they provide the list of
24 witnesses they anticipate will be called in a month. This gives
09:44:20 25 us the time we would need to research those exhibits so that we
26 can be prepared during direct examination to determine whether
27 there are valid objections to be made and also for our purposes
28 during cross-examination.

29 We would ask that the Trial Chamber request the Defence to

1 provide us with copies of exhibits they reasonably anticipate
2 they will use each month a month in advance.

3 Again, the Prosecution is very aware that this would be
4 what they anticipate they would use and it may arise that other
09:44:59 5 exhibits are used, just as it may arise that other witnesses are
6 called. We understand that and we understand that flexibility,
7 but we don't believe that it undermines our basic request or the
8 assistance that such information would provide to the
9 Prosecution.

09:45:24 10 Now, when we met the last time on 8 June the issue also
11 arose, and we had raised the matter, about the accused's contact
12 with the Defence witnesses. At that point in time the
13 Prosecution had indicated that that was within the discretion of
14 the Trial Chamber to allow, and had also indicated that the
09:45:46 15 Defence had ongoing investigations and thus we had stated that we
16 had no objection to that procedure.

17 However, the Prosecution can no longer take that position.
18 The Prosecution has information that in fact the accused has
19 apparently abused privileged access lines to talk with persons
09:46:11 20 not entitled to privileged communication with the accused.
21 Therefore, the Prosecution has concerns about the ability to
22 protect the integrity of the proceedings should the accused be
23 allowed contact with witnesses and we are no longer in a position
24 to be able to support such contact.

09:46:33 25 Should your Honours be nonetheless mindful to allow such
26 contact, then the Prosecution requests that your Honours direct
27 that such contact be monitored conversations only so that there
28 is some way to ensure the integrity of the proceedings when these
29 contacts occur. In this regard the Prosecution is mindful that

1 this accused is not representing himself but, rather, has many
2 counsel available to assist him and to present the case.
3 Therefore, he has no kind of inferred privilege that would attach
4 to an attorney representing him.

09:47:18 5 So, your Honours, these are issues that we once again raise
6 and we would ask that your Honours would act on these issues as
7 we have requested. Thank you.

8 PRESIDING JUDGE: Thank you, Ms Hollis. Do you wish to
9 reply, Mr Griffiths?

09:47:38 10 MR GRIFFITHS: Yes, please, Mr President. We have
11 attempted throughout, within the limitations of the resources
12 available to us, to be as helpful as we possibly can to the
13 Prosecution.

14 Now, dealing seriatim with the matters raised by Ms Hollis,
09:48:03 15 first of all witness numbers. Yes, we are aware that the list of
16 witness summaries served by us do approach the figure of 250.
17 However, it is important to note, from statistics provided to me
18 by my case manager, that the total disclosure for the Prosecution
19 was some 332 witnesses, of whom some 200 were listed as being
09:48:38 20 core witnesses and back-up witnesses, and eventually some 91 were
21 called.

22 Now, that being so, it seems to us that the number of
23 summaries served by us in the circumstances cannot be regarded as
24 excessive. Furthermore, we did indicate on previous occasions
09:49:02 25 that our investigations are ongoing and so consequently we are
26 unable to complete the sifting process, which I indicated to your
27 Honours on an earlier occasion was an important aspect of the
28 preparations we were conducting.

29 I have further indicated that not all of the witnesses

1 named by us in that schedule will be called. So consequently,
2 whereas we hear the concerns being expressed by Ms Hollis
3 regarding the length of the case, I for one certainly have no
4 intention of being here for another four years.

09:49:47 5 Now, so far as the provision of a list of core and back-up
6 witnesses are concerned, we see no provision in any rule or
7 procedure which requires us to provide that. And, in any event,
8 given that our investigations are ongoing, it would be extremely
9 difficult for us to provide such a list to the Prosecution
09:50:20 10 because for us to attempt to do so might well fall foul of the
11 inadequacies and errors which my learned friend has already
12 pointed out in the list of 250 witnesses or so we've called. And
13 so, consequently, rather than open ourselves up to further
14 criticism, it seems best in the circumstances, to my mind, that
09:50:45 15 we restrict ourselves to the orders made by your Honours on a
16 previous occasion. That is, disclosure some three weeks in
17 advance, or is it two weeks, of the names of our witnesses and we
18 will abide by that.

19 The third point, experts. We have indicated clearly that
09:51:06 20 the three particular witnesses, the numbers of which have been
21 provided by Ms Hollis, are not experts. There is perfectly
22 adequate provision within the rules of evidence, and no doubt the
23 Prosecution will be quick to interrupt and comment if we were to
24 elicit from those witnesses opinion evidence which falls foul of
09:51:36 25 the rule against the provision of such evidence by non-experts.
26 So we feel that there is adequate protection for the Prosecution
27 in that regard, and so consequently we do not see that this Court
28 needs to make any further orders in that respect.

29 So far as monthly lists of witnesses are concerned, I wish

1 we were in the happy position of having sufficient resources to
2 be able to research all matters carefully enough to be able to
3 provide such information that far in advance. Unfortunately, we
4 are not in that position and consequently we will not be in a
09:52:29 5 position to provide that. And the same goes for a list of
6 exhibits a month in advance.

7 Now, the final matter I want to deal with is the change of
8 position by the Prosecution so far as access to the accused. It
9 will be recalled that on the occasion when this matter was
09:52:58 10 discussed it was the Prosecution who raised this issue and
11 helpfully provided the Court with a copy of an authority from the
12 ICTY dealing with the matter. We are somewhat concerned that
13 they have now used the pretext of certain suspicions raised
14 regarding contact between the accused and certain individuals, a
09:53:24 15 matter which has not been thoroughly investigated by those who
16 have direct responsibility for those matters, that they should
17 have used that to now seek to have this complete about-face in
18 their position.

19 Now, when my learned friend asks that any contact should be
09:53:47 20 monitored, I am unclear. Does that include any contact between
21 Mr Taylor's lawyers and him, or what are we talking about? Are
22 we talking about the monitoring of telephone conversations? That
23 happens at the moment, in any event. Because the very matter
24 raised by Ms Hollis came about because his calls are monitored
09:54:17 25 and because transcripts were available of those conversations.
26 So what in addition is being asked for in terms of protective
27 measures, if I might style it such, in order to ensure that
28 Mr Taylor's every word is monitored by a third party?

29 In our submission, there is no need for any additional

1 measures in this regard. Additionally, we submit that there
2 should be no change in the position adopted and ordered by this
3 Court on a previous occasion that we can indeed have access to
4 Mr Taylor during the giving of his evidence. I have said our
09:55:01 5 investigations are ongoing. We will need access to him in order
6 to ensure that those are efficiently and adequately carried out
7 and the last thing I would accept is any suggestion that any such
8 contact between us and Mr Taylor is monitored. I am not willing
9 to accept that at all.

09:55:38 10 JUDGE SEBUTINDE: Mr Griffiths, could you address us on the
11 Prosecution request for you to provide the actual exhibits two
12 weeks before each batch of witnesses. If I get that correctly,
13 Ms Hollis, yes.

14 MR GRIFFITHS: Well, I think that is the current position,
09:55:58 15 your Honour, and as far as I'm concerned it's a provision with
16 which we've complied. Two weeks in advance disclosure of the
17 exhibits to be used during that week of trial, and we've complied
18 with that. I see my case manager nodding in agreement and she is
19 an expert on these matters.

09:56:29 20 Can I also make this point: If we are talking about the
21 monitoring of conversations involving Mr Taylor, then it seems to
22 us that any calls from him to a potential witness cannot be the
23 subject of such monitoring but should be clothed in the same
24 legal professional privilege which obtains when he speaks to his
09:57:00 25 lawyers.

26 MS HOLLIS: Mr President, may I clarify two matters?

27 PRESIDING JUDGE: Yes.

28 MS HOLLIS: The first matter has to do with what the
29 Prosecution provided. First of all I point out that indeed the

1 Prosecution did provide its witness list as core and back-up.
2 The number of core witnesses was 139 and the number of back-up
3 was 65, but we did make that distinction, and it was 204 total.

09:57:37 4 Secondly, the Prosecution has no change of position in
5 relation to the counsels' ability to speak with the accused and
6 that is not what we talked about when I made the point. It was
7 the accused's contact with witnesses. That was the point I
8 raised, so we don't want to conflate those.

09:57:59 9 If the accused has the same privilege as his attorneys then
10 we have no protection in the system for any kind of integrity of
11 the proceedings. He is not bound by any professional code of
12 conduct and he's not unrepresented. The privilege has to do with
13 counsel talking with the accused, not with the accused talking
14 with potential witnesses. So we wanted to clarify those two
09:58:20 15 points. Thank you.

16 PRESIDING JUDGE: Thank you. What we are going to do is
17 just dispose of a few other matters that the Bench would like to
18 raise and then we are going to have a very brief adjournment and
19 consider the issues raised by the parties.

09:59:18 20 One thing, Mr Griffiths, I wanted to draw to your attention
21 is that there has been an order for protective measures made in
22 regard to two categories of witnesses and we note that pseudonyms
23 have been given by the Defence to some witnesses who don't appear
24 to fall within either of those categories. For instance, the
09:59:54 25 alleged diamond traders, that is DCT-004, 119, 121, 145, 204,
26 216, 225 and 176. So it's something for you to consider. It may
27 well be that you are under the impression that these witnesses
28 are protected under existing protective measures orders when in
29 fact they may not be.

1 MR GRIFFITHS: We will certainly review the situation, your
2 Honour.

3 PRESIDING JUDGE: We will just have a very brief
4 adjournment and we'll be back. We will let the Court Attendant
10:01:00 5 know when we are ready to come back.

6 [Break taken at 10.00 a.m.]

7 [Upon resuming at 11.05 a.m.]

8 PRESIDING JUDGE: A number of issues have been raised by
9 the Prosecution regarding the conduct of the case and we've
11:06:33 10 considered what the Prosecution has to say and also the Defence
11 response.

12 Dealing first with the Prosecution request for the Defence
13 to provide a list of core and back-up witnesses, the Trial
14 Chamber appreciates that investigations are ongoing and we accept
11:07:02 15 what the Defence says that they are not in a position as yet to
16 make up the two lists, that is a core list and a back-up list.
17 This is a matter that the Trial Chamber thinks is appropriate to
18 revisit closer to the end of the testimony of the accused and we
19 intend to do that.

11:07:31 20 Moving on to Ms Hollis's comments regarding the provision
21 of adequate witness summaries, we note those comments and those
22 comments are part of the record and do not call for any specific
23 order.

24 As for the Prosecution application that certain witnesses
11:08:07 25 be classified as expert witnesses, we note that the Defence says
26 that they are not expert witnesses. The Prosecution in that
27 regard is protected by the rules of evidence and in our view no
28 order is necessary.

29 The Prosecution has also applied for an order that the

1 Defence provide a list of witnesses one month in advance of their
2 evidence. We note that the Defence says that it doesn't have the
3 resources at present to provide such information one month in
4 advance.

11:09:10 5 The Trial Chamber is of the view that the situation for the
6 Defence may be a little clearer should the ongoing investigations
7 prove fruitful. This is another matter, therefore, that the
8 Trial Chamber considers appropriate to revisit closer to the end
9 of the accused's testimony.

11:09:39 10 As regards the Prosecution's application for an order that
11 copies of exhibits be provided by the Defence one month in
12 advance of the evidence given by the specific witnesses, we note
13 that there is an existing order that the actual exhibits are to
14 be produced two weeks in advance of the witness's testimony. We
11:10:14 15 do not see any reason to vary this order. However, the
16 Prosecution can always apply for relief if it can demonstrate
17 specific prejudice.

18 The last matter raised by the Prosecution involves the
19 question of the contact by the accused with certain witnesses, or
11:10:48 20 potential witnesses, and the Prosecution claims that the accused
21 has apparently abused privileged access lines to talk with
22 persons not entitled to privileged communications with the
23 accused and, accordingly, the Prosecution ask for an order that
24 such contact be in the form of monitored conversations only so
11:11:24 25 that there is some way to ensure the integrity of the proceedings
26 when these contacts occur.

27 The Trial Chamber notes that specifically the integrity of
28 the proceedings is a matter of concern to the Prosecution and we
29 therefore hold that if the Prosecution wants to pursue this

1 application then a formal motion should be filed in order to
2 enable the Trial Chamber to consider all of the circumstances
3 pertaining to the issues.

4 There are just two more matters that the Trial Chamber
11:12:19 5 would like to mention. The first one is to point out to the
6 Defence the provisions of Rule 73 ter (D) which enable the Trial
7 Chamber to reduce the number of witnesses if an excessive number
8 are being called to prove the same facts.

9 We simply mention that at this stage, Mr Griffiths, not
11:12:49 10 because we are contemplating orders at this stage but simply to
11 make you aware of the fact that it is something the Trial Chamber
12 can consider.

13 The other thing we would mention is simply to reiterate
14 that this case will open for the commencement of the Defence case
11:13:18 15 next Monday, that is 13 July. On that day the opening statement
16 will be made by the Defence and evidence in the Defence case will
17 commence the following day.

18 Thank you. We will adjourn now until next Monday.

19 [Whereupon the hearing adjourned at 11.14 a.m.,
11:13:50 20 to be reconvened on Monday, 13 July 2009 at
21 9.30 a.m.]

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