

THE TRIAL CHAMBER ("TRIAL CHAMBER") of the Special Court for Sierra Leone ("Special Court") composed of Judge Benjamin Mutanga Itoe, Presiding Judge, Judge Bankole Thompson, and Judge Pierre Boutet;

MINDFUL of the letter dated 3rd June, 2004 written by the 1st Accused, Samuel Hinga Norman and addressed to the Principal Defender indicating his intention to defend himself from that day hence forth;

MINDFUL of the provisions of Article 17(4)(b), 17(4)(c) and 17(4)(d) of the Statute of the Special Court;

MINDFUL of the International Human Rights Norms which guarantee both a right of self-representation and a right of legal assistance;

MINDFUL in this regard, of the provisions of Article 14 of the International Covenant on Civil and Political Rights;

MINDFUL of Rule 26 bis of the Rules of Procedure and Evidence of the Special Court;




MINDFUL of the provisions of The Directive for the Assignment of Counsel for the Special Court promulgated by the Registrar on the 3rd of October, 2003;

MINDFUL OF THE OVERALL AND OVERRIDING INTERESTS OF JUSTICE;

THIS IS OUR UNANIMOUS DECISION

THE BASIC FACTS

1. By a decision dated 28th January, 2004, the Trial Chamber ordered a consolidation of the indictment and a joint trial of the 3 CDF group of indictees, namely, Samuel Hinga Norman, Moinina Fofana, and Allieu Kondewa.
2. On the 11 of May, 2004, we issued a Scheduling Order, indicating the 3rd of June, 2004, as the date for the commencement of the trial of the case against the said CDF group of indictees of which Samuel Hinga Norman is the 1st Accused, with Moinina Fofana, and Allieu Kondewa, as co-accused.


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3. On this date, after the opening statement of the Prosecutor pursuant to the provisions of Rule 84 of the Rules, the Court rose to resume at 2.30 pm on that same date.

4. The 1st Accused, Samuel Hinga Norman, in the interval, addressed a letter in manuscript to the Principal Defender. The letter is dated 3rd June, 2004. In this letter now labeled as Exhibit 1, which was received by the Chief of the Special Court Detention Facility at 1.30 pm on that day and handed over to the Judges in Chambers soon thereafter, the 1st Accused had this to say, and We quote:

“The Principal Defender
SCSL
Freetown
Sierra Leone

Dear Sir/Mdm,

SELF DEFENCE

This is to inform you that I have as indicated this morning before the start of the Trial in the case against me, finally decided to:



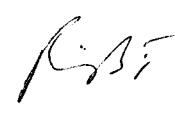
- APPEAR FOR MYSELF
- REPRESENT MYSELF
- DEFEND MYSELF

effective today (3/6/04) and to state further, that any representation by any Counsel on my behalf does not repeat not carry my consent nor have it.

Regards,

Chief Samuel Hinga Norman
3/6/04”

5. Whilst the Chamber, the Prosecution, Counsel, and everybody was poised to commence the trial on the 3rd of June, 2004, after the opening statement of the Prosecution, the 1st Accused informed the Court through Exhibit 1, that he was dispensing with all his Counsel who we note, have been acting for him since his

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incarceration in Bonthe Island in March, 2003, and more precisely, in Court since the 17th of March, 2003, during his initial appearance.

THE APPLICABLE LAW

6. The representation of Suspects and Accused persons by Counsel is guaranteed by Article 17 of the Statute which spells out the rights of the accused. Article 17(4) on this issue stipulates as follows:

“In the determination of any charge against the accused pursuant to the present statute, he or she shall be entitled to the following minimum guarantees in full equality:

(b) To have adequate time and facilities for the preparation of his or her defence and to communicate with Counsel of his or her own choosing;

(d) To be tried in his or her presence, and to defend himself or herself in person or through legal assistance of his or her choice; to be informed, if he or she does not have legal assistance, of this right; and to have legal assistance assigned to him or her, in any case where the interests of justice so require and without payment by him or her in any such case if he or she does not have sufficient means to pay for it.”

7. Article 26 bis of the Rules of Procedure and Evidence provides as follows:

“The Trial Chamber and the Appeals Chamber shall ensure that a trial is fair and expeditious and that proceedings before the Special Court are conducted in accordance with the Agreement, the Statute and the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses.”

8. Clearly, as a matter of statutory construction, Article 17(4)(d) does guarantee to an accused person, first and foremost, the right to self-representation. This is clear from the plain and literal meaning of that provision. But the critical question to focus on is whether this guaranteed right of self-representation is absolute having regard to the statutory purport and intendment of Article 17(4)(d). In the judgment of this Trial

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Chamber, the answer is that the said right is not absolute but rather, a qualified right. This interpretation of the statutory provision is amply corroborated by the qualifying clause of Article 17(4)(d), which provides as follows:

“and to have legal assistance assigned to him or her, in any case where the interests of justice so require.”

9. In the light of these provisions, it is clear and The Chamber so holds, that the right to self representation by an accused person is a qualified and not an absolute right and particularly so because Article 17(4)(d) provides that legal assistance could be assigned to him or her in “any case where the interests of justice so require.”

10. The interests of justice, we observe, is a multi faceted legal concept which is all encompassing and a vital component of the principle of the Rule of law. In this case for instance, where the 1st Accused, Hinga Norman, has been in detention since the month of March 2003, the interests of justice require, as is provided for in Article 17(4)(c) of the Statute, that he be tried “without undue delay”.

11. This, as provided for under Rule 26 bis of the Rules of Procedure and Evidence, connotes the necessity and the obligation imposed on the Chamber to ensure that a trial is fair and expeditious and that even though this right is conditioned on a “full respect of the rights of the accused”, we consider and so hold, that these rights would not include an absolute right of self-representation.

12. The question to put here is whether the attendant consequences that would flow from our granting the request in Exhibit 1 would, in the overall interests of justice, be consistent with the statutory guarantees to a fair and expeditious trial to be reserved by the Court to the accused particularly where, as in this case, his detention has been as long as over one year. In answering this question, a number of issues need to be addressed.

A JOINT TRIAL

13. The 1st Accused is jointly indicted with 2 others who our records show, neither understand nor speak the English language. For this reason, they require a permanent

translator from English to Mende and vice versa of course, for the Chamber. Each of these 2 accused persons has a legal team to represent them. If the application in Exhibit 1 were granted, this would have the potential to negatively impact on the fairness and expeditiousness of the trial of these co-accused persons given the complexities and intricacies of the judicial process and considering the gravity of the alleged crimes.

14. We are of the opinion and do state here that the 1st Accused cannot, and indeed, should not be allowed to exercise this qualified right to self-representation, to the detriment of the rights of his two co-accused to a fair and expeditious trial.

15. Besides, even if he were credited with the capability of conducting his defence, it would require long adjournments to enable him to make any meaning out of the numerous and intricate documents, some of them redacted, arising from disclosures and elsewhere, which have hitherto been handled in a professional manner by Counsel, whose services he has, through Exhibit 1, terminated.

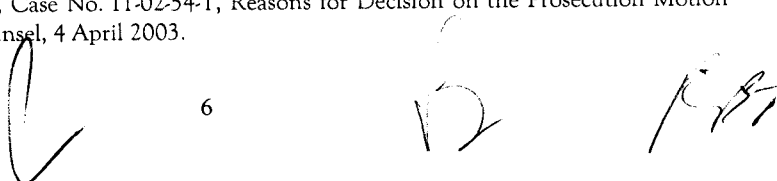
16. In the same vein, we find that any new Counsel for the 1st Accused, whoever he may be, will likely suffer from the same handicap and would of course and of necessity, seek adjournments for preparation; a sure and certain contingency that would unavoidably occasion a delay of the proceedings which we as a Chamber, have a duty to prevent because of the limited time span of this Court.

REVIEW OF THE RELEVANT JURISPRUDENCE

17. In deliberating on this issue, the Chamber has addressed this same issue that was at stake in the case of the *Prosecutor v. Slobodan Milosevic*,¹ in the International Criminal Tribunal for former Yugoslavia (ICTY). In this case, Milosevic asserted the right to self representation from the outset. Samuel Hinga Norman, the 1st Accused, on the contrary, is asserting this same right as lately as on the first day of his trial after over a year in pre-trial detention during which time he has been defended by a legal team composed of Learned Lead Counsel, Mr. Jenkins Johnston, and subsequently, Mr. Sulaiman Tejan-Sie, who, at his request, has represented him from the 17th of March

¹ *Prosecutor v. Slobodan Milosevic*, Case No. IT-02-54-T, Reasons for Decision on the Prosecution Motion Concerning Assignment of Counsel, 4 April 2003.

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2003, in Bonthe Island up to the 3rd of June, 2004 when Exhibit 1 surfaced in the proceedings.

18. In fact, the Trial Chamber of the ICTY stated that it was satisfied that Milosevic, who had clearly and unequivocally informed the Chamber from the outset that he did not want to be represented by Defence Counsel, was competent to exercise the right to defend himself in person even though The Chamber held that the right is not absolute.

19. The key distinctions, between these two cases for our purposes, are that whilst Milosevic is being tried alone, Hinga Norman is being tried with 2 co-accused persons. In addition to this, whilst Milosevic indicated his option for self-representation from the outset as soon as he was transferred to the custody of ICTY, Hinga Norman did this only on the 3rd of June, 2004, the very date which had, with his approbation, been fixed for the commencement of his trial, to invoke and exercise this same statutory right.

20. The task therefore, of properly assuming the mantle of conducting his defence could turn out to be difficult, onerous and exacting if not impossible and would necessarily result in unnecessarily prolonging the proceedings. In the Milosevic case, the Chamber, in addition to holding that the right to self-representation is not absolute, also held that there may be circumstances where it is in the interests of justice, as is, in our opinion the case here, to appoint Counsel. The Court then proceeded to appoint 3 amici curiae to cater for Milosevic's interests and his procedural links with the Tribunal.

21. In the case of the *Prosecutor v. Vojislav Seselj*,² the Accused, a Professor of Law at the University of Belgrade, surrendered himself to the ICTY. When legal assistance was offered him, he turned it down and stated from the outset that he would defend himself. The Prosecution filed a Motion requesting an Order from the Trial Chamber that Defence Counsel be assigned to him. The Chamber dismissed the Motion, recognized the accused's right to self-representation, but at the same time, decided to appoint a "stand-by counsel" to cater for his eventual legal needs and to coordinate

² *Prosecutor v. Vojislav Seselj*, Case No. IT-03-67-PT, Decision on Prosecution's Motion for Order Appointing Counsel to Assist Vojislav Seselj with his Defence, 9 May 2003.

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these needs with the institutional obligation of the Court to ensure that the overall interests of justice prevail, thereby confirming once again, the thesis that the statutory right of self representation is not absolute.

22. In that context, it is useful to consider the established procedure adopted in the United States of appointing stand-by counsel, by the Court. The Supreme Court in this regard, approved the appointment of Stand-by Counsel and discussed the role of such Counsel in its Decision in *McKaskle v. Wiggins*³ where the accused was permitted to proceed pro se, but the trial court appointed a stand-by counsel to assist him. The Supreme Court had this to say:

“Accordingly, we make explicit today what is already explicit in *Feretta*: A defendant’s Sixth Amendment rights [to self-representation] are not violated when a trial judge appoints a stand-by counsel – even over the defendant’s objection – to relieve the judge the need to explain and enforce basic rules of courtroom protocol or to assist the defendant in overcoming routine obstacles that stand in the way of the defendant’s achievement of his own clearly indicated goals. Participation by counsel to steer a defendant through the basic procedures of trial is permissible even in the unlikely event that it somewhat undermines the pro se defendant’s appearance of control over his own defence.”

THE INSTITUTIONAL ROLE OF DEFENCE COUNSEL IN THE JUDICIAL PROCESS

23. The role of the Defence Counsel, it has been stated, is institutional and is meant to serve, not only the interests of his client, but also those of the Court and the overall interests of justice. This is why we are strongly of the opinion that the action by the Accused to relieve his Counsel of their judicial duty of defending him and on the date of his trial and certainly on the grounds of a right which he enjoys under Statute, should be viewed or endorsed with a lot of caution.

³ *McKaskle v. Wiggins*, 465 US 168 (1984).

24. In the case of the *Prosecutor v. Barayagwiza*,⁴ the Trial Chamber of the ICTR held that Counsel is assigned not appointed and in the view of the Chamber, this does not only entail obligations towards the client but also implies that he represents the interests of the Tribunal to ensure that the Accused receives a fair trial.

25. In arriving at this conclusion, we are guided by the opinion of Hon. Judge Reinhardt's in the case of *Farhad v. United States*,⁵ where The Learned Judge said that the permitting of self representation regardless of the consequences, threatens to divert criminal trials from their clearly defined purpose of providing a fair and reliable determination of guilt or innocence. He observed that a defendant could not waive his right to a fair trial and that this right implicates not only the interests of the accused but also the institutional interests of the judicial system.

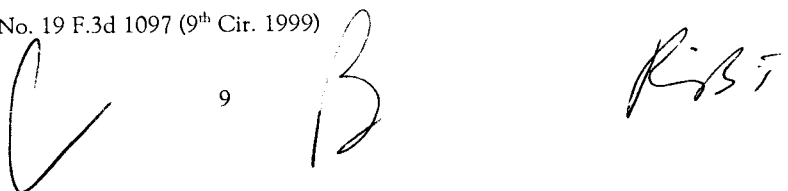
FACTORS TO BE CONSIDERED IN THE DETERMINATION OF THIS ISSUE

26. The philosophy of the Chamber on this crucial issue compels us to factor into the equation, certain critical issues namely: (i) that the right of counsel which is statutorily guaranteed by Article 17(4)(d) of our Statute is predicated upon the notion that representation by Counsel is an essential and necessary component of a fair trial. (ii) The right to counsel relieves trial Judges of the burden to explain and enforce basic rules of courtroom protocol and to assist the accused in overcoming routine and regular legal obstacles which the accused may encounter if he represents himself, for, the Court, to our mind, is supposed, in the adversarial context, to remain the arbiter and not a pro-active participant in the proceedings. (iii) Given the complexity of the trial in the present case, it cannot be denied that a joint trial of such magnitude, having regard to the gravity of the offences charged, and considering the number of witnesses to be called by the Prosecution and the Defence, make for a trial fraught with a high potential of complexities and intricacies typical of evolving international criminal law. (iv) There is also the public interest, national and international, in the expeditious completion of the trial. (v) Furthermore, there is the high potential for further disruption to the Court's timetable and calendar which we are already witnessing in

⁴ *Prosecutor v. Barayagwiza*, Case No. ICTR-97-19-T, Decision on Defence Counsel Motion to Withdraw, 2 November 2000.

⁵ *Farhad v. United States*, Case No. 19 F.3d 1097 (9th Cir. 1999)

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this case. In fact, 2 Prosecution witnesses who the Chamber insisted should testify on the 3rd of June, after the opening statements and ceremonies, were taken back without achieving this objective. Given the time limited mandate of the Court, this creates a serious cause for concern. (vi) The tension between giving effect to the 1st Accused's right to self representation and that of his co-accused, to a fair and expeditious trial as required by law.

27. When all these factors are taken into consideration and weighed individually and cumulatively for purposes of determining the present application, the Chamber is of the opinion, and without in any way seeking to contest the existence of the said right of self-representation which to us is qualified and not absolute, that this is certainly not a proper case where the accused person's request to exercise this right to self-representation should be granted without qualifications or preconditions. We take this stand because we foresee that granting the request in Exhibit 1 unconditionally could lead to certain procedural difficulties in the conduct of his trial which could occasion an injustice.

28. In this regard, we would like to affirm here that The Trial Chamber cannot allow the integrity of its proceedings to be tarnished or to be conducted in a manner that is not in conformity with the aspirations, of the norms of the judicial process. As a matter of law, it is our duty as a Chamber at all times, to protect the integrity of the proceedings before us and to ensure that the administration of justice is not brought into disrepute. This we can achieve by ensuring, amongst other measures, that persons who are accused and indicted for serious offences such as these, are properly represented by Counsel because this safeguard is very vital in ensuring that the overall interests of justice are served and of the Rule of Law, upheld.

29. On this institutional judicial policy consideration, The European Court of Human Rights, in the case of *Croissant v. Germany*,⁶ whose judgment was rendered on the 25th of September, 1992, had this to say:



⁶ *Croissant v. Germany*, European Court of Human Rights, Case No. 62/1001/314/385, Judgment, 25 September 1992.



“It is for the Courts to decide whether the interests of justice require that the accused be defended by Counsel appointed by them. When appointing Counsel, the national courts must certainly have regard to the defendants wishes - However, they can override those wishes when there are relevant and sufficient grounds for holding that this is necessary in the interest of justice”

30. We hold that the 1st Accused has a right to self-representation, but that such a right, being qualified and not absolute, could, in the light of certain circumstances, be derogated should the interests of justice so dictate.

31. To this end, and having regard to all the preceding factors articulated for the purposes of determining this application, We rule and Order as follows:

32. **THAT** the right to self-representation solicited in this case by the 1st Accused, Samuel Hinga Norman, can only be exercised with the assistance of Counsel to be assigned to the trial and in whatever capacity they are assigned or designated, stand-by or otherwise, without prejudice to the Registrar’s discretion to designate, if the 1st Accused so expresses this desire, Members of his former Defence Team, and this, in accordance with the provisions of Article 17(4)(d) of the Statute of the Special Court The Rules of Procedure and Evidence, and of the provisions of the Directive for the Assignment of Counsel promulgated by the Registrar of the Special Court on the 3rd of October, 2003.

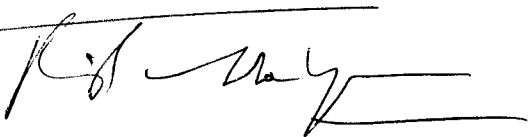
33. **THAT THIS MATTER STANDS ADJOURNED TO THURSDAY, THE 10TH OF JUNE, 2004, AT 10.00 AM FOR HEARING.**

34. **THAT THESE ORDERS BE CARRIED OUT.**

Done at Freetown this 8th day June, 2004


Judge Pierre Boutet


Judge Benjamin Mwangi Itoe


Judge Bankole Thompson

