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SCSL-03-01-T
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THE SPECIAL COURT FOR SIERRA LEONE

Trial Chamber II

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

Registrar: Ms. Binta Mansaray

Date: 10 January 2011

Case No.: SCSL-2003-01-T

THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

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URGENT AND PUBLIC

**DEFENCE MOTION FOR STAY OF PROCEEDINGS
PENDING RESOLUTION OF OUTSTANDING ISSUES**

Office of the Prosecutor:

Ms. Brenda J. Hollis

Counsel for Charles G. Taylor:

Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood
Ms. Logan Hambrick, Legal Assistant

I. INTRODUCTION AND BACKGROUND

1. The Defence files this motion (“Motion”) pursuant to Rule(s) 54 and 73(C) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“Rules”), requesting the Trial Chamber to order a stay of proceedings, including vacating the deadline for filing the parties’ final briefs, pending the resolution of outstanding issues in the trial. Alternatively, the Defence requests a one month extension for filing of the parties’ final briefs.
2. In the Scheduling Order of 22 October 2010, the Trial Chamber set the deadline for the submission of final trial briefs for 14 January 2010.¹ When Presiding Judge Justice Sebutinde orally issued this scheduling order, she emphasized that the Trial Chamber wanted to ensure that the parties had “adequate time to be able to prepare well reasoned, well researched and comprehensive final trial briefs”.² If the current schedule holds, the Defence will regrettably not be in a position to file a brief that is comprehensive and well reasoned on the 14th of January, given that the outcome of five substantive filings largely affecting the evidentiary record and underscoring arguments fundamental to the Defence case will still be outstanding.
3. Since the Scheduling Order was issued, there have been five significant intervening filings (two before the Appeals Chamber³ and three before the Trial Chamber⁴), none of which will be resolved in time for the parties to meaningfully incorporate any eventual decision into their final briefs.

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1105, Order Setting a Date for Closure of the Defence Case and Dates for Filing Final Trial Briefs and the Presentation of Closing Arguments, 22 October 2010 (“**Scheduling Order**”).

² *Prosecutor v. Taylor*, Transcript, 22 October 2010, p. 48360, ln. 15-16.

³ *Prosecutor v. Taylor*, SCSL-03-01-T-1134, Notice of Appeal and Submissions Regarding the Decision on the Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 10 December 2010 (“**Contempt Appeal**”) and *Prosecutor v. Taylor*, SCSL-03-01-T-1133, Notice of Appeal and Submissions Regarding the Decision on the Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma (“**JPK Appeal**”), 10 December 2010.

⁴ *Prosecutor v. Taylor*, SCSL-03-01-T-1142, Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses, 17 December 2010 (“**Recall Motion**”); *Prosecutor v. Taylor*, SCSL-03-01-T, Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry, Based Leaked USG Cables, 10 January 2011 (“**U.S. Government Sources Motion**”); and *Prosecutor v. Taylor*, SCSL-03-01-T, Defence Motion to Re-Open its Case in Order to Seek Admission of Documents Relating to the Relationship between the United States Government and the Prosecution of Charles Taylor, 10 January 2011 (“**Motion to Re-Open**”).

4. Due to these outstanding decisions, the Defence will not be able to include possible arguments relating to the following in its submissions in its final brief:
- a. The affidavit of DCT-032 regarding his non-role in the alleged death of Johnny Paul Koroma and his first-hand experience of Prosecution investigation tactics;⁵
 - b. Prosecution payments made to and an indemnity letter written to potential witness DCT-032;⁶
 - c. Two United States embassy classified cables regarding the selective prosecution of Mr. Taylor and United States Government contacts within the Trial Chamber, the Prosecution and the Registry;⁷
 - d. The apology of the United States Ambassador to Liberia to Liberian President Ellen Johnson Sirleaf regarding the leaked cables;⁸ and
 - e. Testimony from four Prosecution witnesses and the Chief of the Witnesses and Victims Section relating to the relocation of those witnesses; a matter which may impact their credibility.⁹
5. Furthermore, there are two outstanding Motions by the Defence requesting investigation into aspects central to the integrity of the prosecution's case against Mr. Taylor, which may impact the overall credibility, impartiality, independence of the prosecution's case, which therefore should be determined before the presentation of final arguments:
- a. Allegations of contemptuous conduct on the part of the Prosecution and its investigators in relation to its recruitment and payment of potential witnesses;¹⁰

⁵ Admission of this document is at issue in the JPK Appeal.

⁶ Admission of these documents are at issue in the JPK Appeal.

⁷ Permission for the Defence to re-open its case for the limited purpose of seeking admission of the Cables under Rule 92*bis* is at issue in the pending Motion to Re-Open.

⁸ Permission for the Defence to re-open its case for the limited purpose of seeking admission of the Apology under Rule 92*bis* is at issue in the pending Motion to Re-Open.

⁹ Permission for the Defence to re-call these four Prosecution witnesses for further cross-examination and for the Trial Chamber to hear evidence from the Chief of the Witnesses and Victims Section has been requested in the pending Recall Motion.

¹⁰ The request for investigation into alleged contemptuous conduct is at issue in the pending Contempt Appeal.

- b. The identity of United States Government source(s) within the Trial Chamber, the Prosecution and the Registry and their relationship to the same, including how that relationship potentially undermined the independence and impartiality of the parties concerned;¹¹ and
- c. The amount of and accounting for money donated directly to the Prosecution by the United States Government.¹²
6. The Defence submits that these outstanding evidentiary decisions and unresolved questions about the integrity of the prosecution's case against the Accused amount to good cause for the Trial Chamber to stay the proceedings and vacate the final brief deadline. Alternatively, due to the substantial amount of time necessarily invested by the Defence relating to these five filings, the Defence requests a one month extension of the deadline.
7. The Defence further submits that it would be unsatisfactory and would ultimately cause undue delay to deal with the substantive pending matters in a supplemental, piecemeal manner, as and when each issue is resolved after submission of the final trial briefs and/or closing arguments.
8. The Defence seeks urgent adjudication of this matter given the advanced stage of the proceedings and the current Scheduling Order.¹³

II. LEGAL PRINCIPLES

Fair Trial Rights

9. Article 17(4) of the Statute of the Special Court, which safeguards the Accused's fair trial rights provides that an Accused has the right:
- [...]

¹¹ The request for disclosure and/or an investigation is at issue in the pending U.S. Government Sources Motion.

¹² The request for information regarding the money given by the USG to the Prosecution is at issue in the pending U.S. Government Sources Motion.

¹³ *Prosecutor v. Taylor*, SCSL-03-01-T-1105, Order Setting a Date for the Closure of the Defence Case and Dates for Filing Final Trial Briefs and the Presentation of Closing Arguments, 22 October 2010.

(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;

[...]

(e) To examine or have examined the witnesses against him.

General Power to Give Orders

10. The Trial Chamber has the general power to make any order necessary for the conduct of the trial, pursuant to Rule 54.¹⁴

Stay of Proceedings

11. According to Rule 73(C), when the Trial and Appeals Chambers are seized of the same motion raising the same or similar issues, the Trial Chamber *shall* stay the proceedings on the said Motion before it until a final determination is made by the Appeals Chamber.

III. SUBMISSIONS

Similar Issues in Final Brief to Those on Appeal

12. Rule 73(C) clearly provides that whenever the Trial Chamber and the Appeals Chamber of the Court are seized of the same Motion raising the same or similar issue or issues, the Trial Chamber *shall* stay proceedings on the said Motion before it until a final determination of the said Motion by the Appeals Chamber.

13. While in this case, the Trial Chamber and the Appeals Chamber are not seized of the same legal issues *strictu sensu* (and especially given that the final brief is technically not a “motion” formally before the Trial Chamber), by parity of reasoning, the fact that the two issues pending before the Appeals Chamber have a direct bearing on the proceedings before the Trial Chamber, is sufficient to trigger the moratorium. The Trial Chamber could not possibly proceed to adjudicate the entirety of the case before entertaining certain crucial aspects of it are determined by the Appeals Chamber. Similarly, the parties can not be

¹⁴ Rule 54 states “At the request of either party or of its own motion, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial”.

expected to make comprehensive arguments on the case when those issues are not yet resolved.

14. Thus, given the two pending Appeals, the Defence submits that the Trial Chamber is under a mandatory obligation to stay the proceedings at least until those issues are resolved by the Appeals Chamber.
15. With respect to the JPK Appeal, if the requested evidence were to be admitted on appeal, this evidence would feed into arguments in the Defence's final brief relating to the alleged death of Johnny Paul Koroma, as well as the Prosecution's conduct during its investigations and recruitment of potential witnesses.
16. With respect to the Contempt Appeal, if the Appeals Chamber were to order an investigation, a report stemming from any such an investigation could lend credence to Defence contentions about the credibility of the Prosecution case as a whole, which is one of the strongest points the Defence wishes to make in its final brief.
17. The Defence submits that in order to ensure the fairness and expeditiousness of the proceedings, it is imperative that the Trial Chamber adheres to its mandatory obligation under Rule 73(C), to grant a stay of proceedings and vacate the deadline for filing the final trial briefs, pending resolution of these two Appeals.

Trial Chamber's Discretion to Stay Proceedings

18. Additionally/Alternatively to the Trial Chamber's obligation to stay the proceedings pursuant to Rule 73(C) as argued above, the Trial Chamber also has the inherent power to control the proceedings, pursuant to Rule 54. Rule 54 provides the Trial Chamber with the discretion to issue orders necessary for the conduct of the trial. This, it is submitted, must include the Trial Chamber's discretionary power to order a stay of proceedings and to vacate

the deadlines imposed for the filing of the parties' final trial briefs, including the subsequent responses and closing arguments.¹⁵

Need to Submit Comprehensive Final Briefs

19. At the time of the parties' oral submissions relating to scheduling, the intervening circumstances described could not have been taken into consideration. Moreover, as each set of circumstances pertains to the evidentiary record and matters of fundamental importance to the Defence case, the development of these issues is imperative and could not have been avoided.
20. It is clear that fundamental issues which remain unresolved impede the completeness of the evidentiary record and thus the Defence's final arguments. The Defence submits that it is contrary to the interests of justice to expect the Defence to submit its final arguments whilst issues of fundamental importance to the case remain undecided by the Trial and Appeals Chambers. Indeed, the Accused's Article 17 rights, in particular the Accused's right to adequate time for preparation of his defence, would be interfered with if he were to proceed to file a final brief setting out all the legal and factual arguments in his defence, while crucial issues relating to the case and which impact on that defence remain unresolved.
21. As stated by the Presiding Judge of the *Prlić et al.* Trial Chamber, Jean-Claude Antonetti, the final trial briefs are the final and "decisive phase of the trial",¹⁶ hence it is very important that the parties be accorded the best possible options for arguing their theories of the case, as may best suit their interests.¹⁷ The Defence would be denied that opportunity if it were forced to file its final brief while the issues raised herein remain pending before the Chambers.

¹⁵ At the ICTR, the Appeals Chamber found that it was a matter of the Trial Chamber's discretion as to whether to suspend proceedings pending a decision on an issue of fundamental legal importance. *Prosecutor v. Seromba*, ICTR-2001-66-A, Judgement, 12 March 2008, para. 21 (holding that it was in the Trial Chamber's discretion whether or not to stay proceedings pending a decision on a motion for disqualification).

¹⁶ *Prosecutor v. Prlić et al.*, IT-04-74 –T, Trial Chamber Order, Separate Opinion of Judge Jean-Claude Antonetti, 22 November 2010, p. 14.

¹⁷ *Prosecutor v. Prlić et al.*, IT-04-74 –T, Trial Chamber Order, Separate Opinion of Judge Jean-Claude Antonetti, 22 November 2010, p. 15.

22. A request for stay in these circumstances is not unusual in the practice of international tribunals. In the ICTY case *Prlić et al.*, cited above, the Trial Chamber granted the Defence's request to move back the date on which the parties were required to file their final trial briefs.¹⁸ In its decision, the Trial Chamber stated that the fact that certain requests were still pending before it was an aspect that the Chamber must take into consideration. As here, the requests pending in the *Prlić et al.* case included a request to re-open.¹⁹
23. Given the extent and significance of the outstanding decisions, the Defence submits that a piecemeal and supplemental approach to the final brief, as and when each issue is resolved, would be unsatisfactory, untidy, and would ultimately cause undue delay to the proceedings. The Defence emphasizes that the structure and substance of its entire brief is dependent on the outcome of the Motions, particularly those requesting investigations into alleged contemptuous conduct and the relationship of organs of the Court to the United States Government. A golden thread of the Defence case has been the alleged *mala fides* of the United States Government and its improper influence on the prosecution of Mr. Taylor by the Special Court. This has been emphasized since the Defence's opening statement in July 2009. Likewise, the Defence's concern regarding prosecution misconduct during investigations and the impact improper payments and inducements have on the credibility of prosecution witnesses has been highlighted throughout the Prosecution and Defence cases. These are pillars of the Defence case and underlie its entire final argument; thus it is impossible for the Defence to forcefully argue its position without knowing any potential results of the requested investigations.

Resources diverted away from the final brief

24. On a practical note, drafting the two Appeals, the Recall Motion, the U.S. Government Sources Motion, and the Motion to Re-Open, as well as drafting the upcoming respective

¹⁸ *Prosecutor v. Prlić et al.*, IT-04-74 –T, Trial Chamber Order, 22 November 2010, p. 10.

¹⁹ *Prosecutor v. Prlić et al.*, IT-04-74 –T, Trial Chamber Order, 22 November 2010, p. 7. The *Stojic* Defence submitted that the ongoing litigation was likely to extend almost until the deadline set by the Trial Chamber for the submission of final trial briefs and that apart from the fact that the Defence would need to invest a significant amount of time and human resources in these proceedings, the Defence might only have notice of the entire body of evidence a few days before the deadline for the submission of the final trial brief. *Prosecutor v. Prlić et al.*, IT-04-74–T, Bruno Stojic's Request for Modification of the Scheduling Order Issued on 1 November 2010, 5 November 2010, paras. 6 and 7.

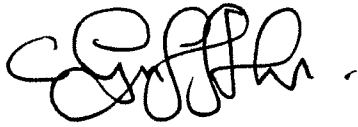
replies has and will consume time and resources which would otherwise have necessarily been dedicated to the final trial brief.

25. The parties should not be put in the exceptionally difficult position of completing outstanding pleadings while also drafting submissions for the final brief. The practical consequence of this scenario is that pending decisions, even if issued prior to the 14th of January, could affect the evidence on record at trial and require the parties to redraft and revise several parts of its brief within severely constrained time limits. The Defence submits this is an affront to the principle that the Accused must be given adequate time to prepare his case.
26. In the alternative, if the Trial Chamber is not minded to grant a stay of proceedings, the Defence requests the Trial Chamber to grant the Defence an extension of one month, pushing back all of the dates in the Scheduling Order by one month, as appropriate.

IV. CONCLUSION & RELIEF REQUESTED

27. For all of the foregoing reasons, it is in the interests of justice that the Trial Chamber grants a stay of proceedings, including vacating the deadline for filing the final trial brief, pending resolution of several substantive outstanding issues. Refusal by the Trial Chamber to stay the proceedings and to vacate the final brief deadline, in order to allow the Defence to file a comprehensive final trial brief, would be a clear violation of the Accused's right to a fair trial under Article 17 of the Statute. Alternatively, the Defence requests a one month extension to file its final brief.
28. Given that the current deadline for filing the parties' final trial briefs is 14 January 2011, the Defence requests that the Trial Chamber treats this Motion on an expedited basis.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 10th Day of January 2011
The Hague, The Netherlands

List of Authorities

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T, Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry, Based on Leaked USG Cables, 10 January 2011

Prosecutor v. Taylor, SCSL-03-01-T, Defence Motion to Re-Open its Case in Order to Seek Admission of Documents Relating to the Relationship between the United States Government and the Prosecution of Charles Taylor, 10 January 2011

Prosecutor v. Taylor, SCSL-03-01-T-1142, Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses, 17 December 2010

Prosecutor v. Taylor, SCSL-03-01-T-1134, Notice of Appeal and Submissions Regarding the Decision on the Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 10 December 2010

Prosecutor v. Taylor, SCSL-03-01-T-1133, Notice of Appeal and Submissions Regarding the Decision on the Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 10 December 2010

Prosecutor v. Taylor, SCSL-03-01-T-1105, Order Setting a Date for Closure of the Defence Case and Dates for Filing Final Trial Briefs and the Presentation of Closing Arguments, 22 October 2010

ICTR Jurisprudence

Prosecutor v. Seromba, ICTR-2001-66-A, Judgement, 12 March 2008
<http://www.ictrcaselaw.org/docs/20080312-jgt-0166-01-en.pdf>

ICTY Jurisprudence

Prosecutor v. Prlić et al., IT-04-74 –T, Trial Chamber Order, 22 November 2010
<http://www.icty.org/x/cases/prlic/tord/en/101122.pdf>

Prosecutor v. Prlić et al., IT-04-74 –T, Trial Chamber Order, Separate Opinion of Judge Jean-Claude Antonetti, 22 November 2010
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