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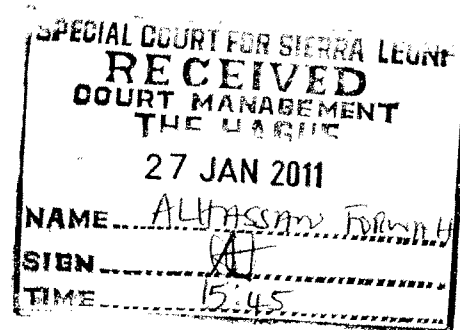
**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR**

TRIAL CHAMBER II

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

Registrar: Ms. Binta Mansaray

Date filed: 27 January 2011



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

**PROSECUTION RESPONSE TO "PUBLIC, WITH ANNEX A DEFENCE MOTION
SEEKING LEAVE TO APPEAL THE DECISION ON DEFENCE REQUEST FOR A STATUS
CONFERENCE PURSUANT TO RULE 65BIS AND DEFENCE MOTION FOR
STAY OF PROCEEDINGS PENDING RESOLUTION OF OUTSTANDING ISSUES"**

Office of the Prosecutor:

Ms. Brenda J. Hollis
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Counsel for the Accused:

Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood

I. INTRODUCTION

1. The “Public, with Annex A Defence Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference Pursuant to Rule 65bis and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues”¹ should be dismissed. The Motion fails to satisfy the conjunctive test required for leave to appeal. Moreover, the additional request for a stay pending resolution of the Motion and/or any resulting appeal should be denied as unwarranted, contrary to the interests of justice and an improper attempt to invalidate the decisions of 12 and 20 January 2011.²
2. Additionally, in dismissing the Motion, this Chamber should take into consideration the implied threats and allegations of judicial impropriety and bias made in the Defence submissions.³ The *Prlić, et al.* Trial Chamber characterised similar submissions as “not only baseless, but impertinent.”⁴ In the present case, the Defence submissions amount to an attempt to usurp the authority vested in the Trial Chamber to control proceedings. In effect, the Defence is asserting that it is free to ignore orders and deadlines set by the Trial Chamber. It also implies that any rulings against the Defence demonstrate a lack of impartiality and independence on the part of the judges.

II. PROCEDURAL HISTORY

3. “Cognisant of the resources [it has],” the Defence suggested 14 January 2011 as a realistic

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1155, Public, with Annex A Defence Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference Pursuant to Rule 65bis and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 14 January 2011 (“**Motion**”).

² *Prosecutor v. Taylor*, SCSL-03-01-T-1154, Decision on Defence Request for a Status Conference pursuant to Rule 65bis and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 12 January 2011 (“**Decision**”) and *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 20 January 2011 (“**Status Conference Decision**”).

³ e.g. Motion, para. 2 & Fn 2 (declaring that the Trial Chamber made a “swift and conclusory” denial of the Defence requests to the “exclusion of Justice Sebutinde” gives “short shrift....”), paras. 12-14 (for the first time indicating that the “Judges themselves” could be the “US government source” in Chambers); para. 13 (“The only sign of how seriously some members of this Court have taken the matter is through the personal response by Justice Sebutinde...”); para. 18 (wherein the Defence alleges that the impugned Decision “amounts to an interference with the proper administration of justice – language akin to that which prefaces Rule 77 contempt); *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 20 January 2011, p. 49125 (Defence Counsel declared he would have to discuss with Taylor whether he should continue as his attorney if the Chamber ruled against his client. Justice Lussick characterized this as an implied threat).

⁴ *Prosecutor v. Prlić*, IT-04-74-T, Decision on Prlić Defence Request for Certification to Appeal Decision of 24 November 2010, 13 December 2010, pp. 6-7: in rejecting certification of a decision denying a request for a stay, the Trial Chamber took into consideration allegations of bias noting “that the incriminating language towards the Trial Chamber disregards the requirements of propriety and standards of legal argument.”

and reasonable timetable for filing “a proper closing brief,” given the size of the task, the number of exhibits and the fact that the Defence could work over the recess.⁵ This Chamber adopted the Defence suggestion in its Scheduling Order of 22 October.⁶ At this time, the Contempt Motion⁷ was pending. On 12 November 2010, the Defence closed its case; the day after the JPK and Contempt Decisions were issued.⁸

4. Between 24 September 2010⁹ and 17 December 2010, nine motions, certification requests, and appeals were filed by the Defence.¹⁰ However, at no time did the Defence request a stay of proceedings or an extension of the deadline for the Parties to file a final trial brief. On the contrary, in the Contempt Reply of 11 October 2010, the Defence assured the Chamber that it did not intend to ask for an extension of time arising from the motion and that “[s]hould the **Trial Chamber order an investigation**, the Defence would consider its options at the

⁵ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 22 October 2010, p. 48346.

⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-1105, Order Setting a Date for the Closure of the Defence Case and Dates for Filing of Final Trial Briefs and the Presentation of Closing Arguments, 22 October 2010 (“**Scheduling Order**”).

⁷ *Prosecutor v. Taylor*, SCSL-03-01-T-1089, Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 24 September 2010 (“**Contempt Motion**”).

⁸ *Prosecutor v. Taylor*, SCSL-03-01-T-1119, Decision on Public with Confidential Annexes A-D Defence Motion for Admission of Documents and Drawing an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 11 November 2010 (“**JPK Decision**”); *Prosecutor v. Taylor*, SCSL-03-01-T-1118, Decision on Public with Confidential Annexes A-J and Public Annexes K-O Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 11 November 2010 (“**Contempt Decision**”).

⁹ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 13 September 2010, p. 48323.

¹⁰ The following Motions were filed on 24 September 2010: *Prosecutor v. Taylor*, SCSL-03-01-T-1086, Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone, 24 September 2009; *Prosecutor v. Taylor*, SCSL-03-01-T-1087, Defence Motion for Admission of Documents Pursuant to Rule 92bis – Newspaper Article, 24 September 2010; *Prosecutor v. Taylor*, SCSL-03-01-T-1088, Defence Motion for Disclosure of Exculpatory Information Relating to DCT-032, 24 September 2010; and the Contempt Motion. The following appeals have been filed: *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**”); *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 (“**JPK Appeal**”). Since the closure of the Defence case, the following motions have been filed: *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-1143, 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 (“**US Government Sources Motion**”); *Prosecutor v. Taylor*, SCSL-03-01-T-1146, Urgent and Public with Annexes A-C 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 (“**Re-open Motion**”).

appropriate time, **depending on the outcome.**¹¹ Nevertheless, four days before the final brief deadline, the Defence indeed requested a stay or extension, in part based on issues which could potentially arise from the Contempt Motion.¹²

5. On 14 January 2011, having been denied a stay of proceedings or extension of time, the Accused chose not to file his final brief. This waiver was made in light of “outstanding decisions”¹³ which the Accused, through his counsel, alone deemed essential to his brief.¹⁴ Instead, the Defence filed the Motion. The Defence was given a further opportunity to explain its failure to file a final trial brief on 20 January 2011.¹⁵ Following submissions from the Defence, the majority of the Chamber determined that there was no change in circumstances justifying a stay or extension and affirmed the impugned Decision.¹⁶ Since 20 January 2011, decisions have been rendered on four¹⁷ of the Pending Filings,¹⁸ the hallmark of which have been either the complete dismissal of the underlying Motions or minimal impact on the issues before this Court.

III. ARGUMENT

6. A large part of the Motion erroneously focuses on the merits of an appeal and should be

¹¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1102, Public with Confidential Annex One Defence Reply to Prosecution Response to Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 11 October 2010, para. 14 (emphasis added) (“**Contempt Reply**”).

¹² *Prosecutor v. Taylor*, SCSL-03-01-T-1144, Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 10 January 2011 (“**Original Motion**”).

¹³ Original Motion, para. 4: Referring to the decisions not issued on the *then* pending Contempt Appeal, JPK Appeal, Recall Motion, US Government Sources Motion and Re-Open Motion.

¹⁴ The Chamber took the contrary view and envisaged that supplemental submissions and ancillary motions were sufficient to address any issues with might arise therefrom. Decision, p. 2.

¹⁵ *Prosecutor v. Taylor*, SCSL-03-1-T-1162, Scheduling Order for Status Conference on 20 January 2011, 18 January 2011.

¹⁶ Status Conference Decision, pp. 49133-4.

¹⁷ *Prosecutor v. Taylor*, SCSL-03-01-T-1168, Decision on Defence Appeal 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, 25 January 2011 (“**JPK Appeal Decision**”); *Prosecutor v. Taylor*, SCSL-03-01-T-1166, Decision on Public Defence 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 Investigations, 21 January 2011 (“**Contempt Appeal Decision**”); *Prosecutor v. Taylor*, SCSL-03-01-T-1167, Decision on Public with Annexes A-H and Confidential Annexes I-J Defence Motion to Recall Four Prosecution Witnesses and to hear Evidence from the Chief of WVS Regarding Relocations of Prosecution Witnesses, 24 January 2011, p. 5 (“**Recall Decision**”); and *Prosecutor v. Taylor*, SCSL-03-01-T-1171, Decision on the Urgent and Public with Annexes A-C Defence Motion to Re-open its case in order to Seek Admission of Documents relating to the Relationship between United States Government and the Prosecution of Charles Taylor, 27 January 2011 (“**Re-Open Decision**”).

¹⁸ For purposes of this motion the filings referred to collectively as the “**Pending Filings**” include all those still pending at the time the Motion was filed. i.e. Contempt Appeal; JPK Appeal; Recall Motion; US Government Sources Motion; Re-open Motion.

ignored.¹⁹ Such discussion does not assist in determining whether the impugned Decision gives rise to “exceptional circumstances” *and* “irreparable prejudice” as required by Rule 73(B).²⁰ The practice of re-litigating an impugned decision at the certification stage has been condemned by this Court.²¹

Exceptional Circumstances

7. The Defence initially and erroneously argues in paragraph 2 that the Trial Chamber’s “swift and conclusory” denial of the Defence request amounts to exceptional circumstances. The Defence, however, filed the Original Motion to vacate the 14 January deadline as “Urgent.” Given that the briefs were due within four days, it was in the interests of justice and fairness to the parties, particularly the party requesting the extension, for the Trial Chamber to respond expeditiously. Rule 7bis permits the Trial Chamber to dispose of a motion for an extension of time without giving the other party the opportunity to respond if it is of the opinion that no prejudice will be caused to the other party. Clearly the fact that the Trial Chamber gave a swift response to an urgent request for a time extension is laudable and cannot amount to exceptional circumstances.
8. Indeed, discretionary trial management decisions generally do not give rise to exceptional circumstances justifying certification. In *Popović, et al.*, the discretionary denial of a request for an extension of time to file final briefs was held not of sufficient fundamental importance to affect “the fairness or expeditious conduct of the proceedings or outcome of the trial.”²² In denying certification, the Trial Chamber dismissed Defence arguments that, first, insufficient preparation time impacted the fairness of the proceedings; second, an appeal could result in a retrial threatening the expeditious conduct of the proceedings; and third, an inadequate brief would significantly affect the outcome of the trial.²³ In the instant Motion, the relevant²⁴

¹⁹ Motion, paras. 3-4.

²⁰ The Prosecution emphasizes that even where the Defence does meet the conjunctive test required for certification, certification remains a discretionary trial chamber decision. See *Prosecutor v. Popović, et al.*, IT-05-88-T, Decision on Gvero Motion Seeking Certification to Appeal the Decision on the Extension of Time for Filing the Final Trial Brief, 15 July 2009, p. 3 (“**Popović Certification Decision**”).

²¹ *Prosecutor v. Sesay, et al.*, SCSL-04-15-T-357, Decision on Defence Applications for Leave to Appeal Ruling of the 3rd February 2005 on the Exclusion of Statements of Witness TF1-141, 28 April 2005, para. 15.

²² *Popović Certification Decision*, p. 3. The Prosecution acknowledges that the language in ICTY Rule 73(B) and SCSL Rule 73(B) is not identical.

²³ *Popović Certification Decision*, p. 3.

Defence arguments for exceptional circumstances mirror those rejected in *Popović, et al.*,²⁵ and so should be dismissed. This general criticism aside, each of the specific arguments regarding exceptional circumstances should, alone or taken together, also be dismissed, as discussed below.

9. Erroneously, the Defence claims “exceptional circumstances” arise out of the Pending Filings.²⁶ However, the Defence must prove that the *impugned Decision*, an exercise of judicial discretion, and not the Pending Filings, raises an issue of fundamental legal importance giving rise to exceptional circumstances. Additionally, any Defence assertion as to the fundamental importance of the issues arising from the Recall Motion and Contempt Appeal is contradicted by the dismissal of both motions.²⁷
10. In arguing that fundamental issues do arise out of the impugned Decision, the Defence addresses only two of the Pending Filings - the Contempt Appeal and US Government Sources Motion. The Defence fails to substantiate its claim that those Pending Filings concern matters that cannot be sufficiently dealt with in supplementary submissions or ancillary motions,²⁸ remedies the majority of the Trial Chamber noted in the impugned Decision.²⁹ The Defence itself has indicated that the issues arising out of the Contempt Appeal, one of the filings pending at the time the Defence filed this Motion, “[could] be dealt with at the appropriate time, depending on the outcome.”³⁰
11. Further, contrary to the Defence argument mentioned in paragraphs 16 and 18, speculation

²⁴ Those arguments made at paragraphs 3-4 of the Motion are irrelevant as they address the merits (see paragraph 6, *supra*). Moreover, the arguments made at paragraphs 10-15 of the Motion regarding exceptional circumstances are irrelevant, as they argue the fundamental importance of issues arising from the Pending Filings, rather than the impugned Decision (see paragraph 9, *infra*).

²⁵ Motion, paras. 16-17 and discussed further at paragraph 10, *infra*. (insufficient time to prepare affecting the fairness of the proceedings); Motion paras. 16, 18 and discussed further at paragraph 11, *infra*. (potential mistrial and/or permanent stay would affect the expeditious conduct of the proceedings); and Motion, para. 18 and discussed further at paragraph 11, *infra*. (inability to file a less than comprehensive brief affects the outcome of the trial).

²⁶ More than half of its argument in relation to exceptional circumstances is devoted to this misplaced assertion. See Motion, paras. 10-15 and 17.

²⁷ Recall Decision; Contempt Appeal Decision.

²⁸ Motion, paras. 16-17.

²⁹ Decision, p. 2.

³⁰ The Defence, claiming that the Contempt Motion was not a dilatory strategy, declared it did not intend to ask for an extension and was committed to proceeding with the case as agreed at the 27 September Status Conference. The Defence stated that, should an investigation be ordered, it would consider options at the appropriate time, depending on the outcome. Contempt Reply, para. 14.

regarding a permanent stay or mistrial, as in *Popović, et al.*,³¹ cannot elevate issues arising from a Chamber's discretionary decision to issues of fundamental legal importance. In this context, certification of a discretionary decision relating to the filing of the final trial brief is likely to impede the proceedings.³²

12. The Defence argues that the Decision interferes with the proper administration of justice as it requires a final brief to be filed before resolution of matters the Defence style as affecting the "integrity of the proceedings."³³ This argument is also fatally flawed. First, the proper administration of justice in relation to the scheduling of final briefs is a matter of trial management within the inherent discretion of the Chamber. Second, matters of credibility and contempt³⁴ are collateral and ancillary to the proceedings³⁵ and do not give rise to exceptional circumstances. Third, to the extent that the Pending Filings relate to Defence theories which have been employed and pursued throughout the trial,³⁶ there is no reason the Defence could not argue the weight of the evidence regarding these issues in its "upcoming closings, if it so chooses."³⁷ Finally, the Defence argument infers that the Trial Chamber would not afford proper consideration to additional pleadings.³⁸ That argument is impertinent. For all these reasons, the Defence claim that the Decision "amounts to an interference with the proper administration of justice" is unsound.
13. Finally, the Defence wrongly compares the instant scenario to that faced by this Chamber when granting leave to appeal the decision on the start date of the Defence case.³⁹ The Defence cannot demonstrate any parity of reasoning as the underlying facts are incomparable. Neither logistical issues facing a party working away from the seat of the

³¹ Popović Certification Decision, pp. 2-3: in denying the Defence certification request of the Chamber's denial of a final trial brief deadline extension, the Chamber ignored the Defence submission that waiting until the final appeal stage would result in a re-trial.

³² Popović Certification Decision, p. 3.

³³ Motion, para. 18.

³⁴ Original Motion, paras. 4-5, 15-16.

³⁵ Contempt Appeal Decision, paras. 42, 46; *Prosecutor v. Beqaj*, IT-03-66-R77, Decision on Defence's Motion to Reconsider the Order Suspending the Provisional Release of the Accused, 25 April 2005, p. 3 ("**Beqaj Decision**"); *Prosecutor v. Župljanin*, IT-08-91-T, Decision Denying Mićo Stanišić's Motion for Certification to Appeal the Oral Decision Accepting Christian Nielsen as an Expert and Request for Stay of Proceedings, 20 October 2009, para. 9 ("**Stanišić Stay Decision**").

³⁶ The Defence characterized a related theory as a "golden thread" throughout its case. Original Motion, para. 23.

³⁷ Contempt Appeal Decision, para. 47.

³⁸ Stanišić Stay Decision, paras. 9-10.

³⁹ Motion, para. 19.

court, nor a recent decision on an issue vital to the case⁴⁰ are alleged in the Motion. Moreover, unlike the start date decision and as set out above, none of the Defence arguments regarding exceptional circumstances, singly or conjunctively, have merit. Therefore, the combined effect of all these arguments⁴¹ cannot establish exceptional circumstances.

Irreparable Prejudice

14. In seeking to prove irreparable prejudice, the Defence erroneously speculates that it cannot adequately address allegedly fundamental matters in ancillary motions and supplemental submissions.⁴² This argument fails for several reasons. First, any speculative prejudice was caused by the Accused's own instructions⁴³ and the Defence's discretionary diversion of resources away from the final brief.⁴⁴ Trial Chamber I, considering a certification request, determined that a party "must demonstrate that its conduct did not contribute to occasioning or causing irreparable prejudice."⁴⁵ Second, the motions and appeals concern issues of credibility and contempt. As discussed above, such matters are not fundamental; rather they are collateral and ancillary and logically can be dealt with in supplemental and ancillary submissions.⁴⁶ Finally, speculation as to the outcome of the Pending Filings cannot prove irreparable prejudice.⁴⁷

⁴⁰ The Chamber relied in part on the fact that its JCE decision, affecting a mode of responsibility charged in the indictment, had issued only a matter of weeks before it was ordered to begin its case. All issues arising from the Decision and Pending Filings are ancillary and collateral. They are not vital in the sense that joint criminal enterprise was vital.

⁴¹ Which this Chamber did in finding exceptional circumstances when certifying the Defence start date decision. See Motion, para. 19.

⁴² Motion, paras. 21-23.

⁴³ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript 20 January 2011 p. 49126.

⁴⁴ Original Motion, paras. 24-26.

⁴⁵ *Prosecutor v. Norman, et al.*, SCSL-04-14-T-170, Majority Decision on the Prosecution's Application for Leave to File an Interlocutory Appeal Against the Decision on the Prosecution's Request for Leave to Amend the Indictment Against Samuel Hinga Norman, Moinina Fofana and Allieu Kondewa, 2 August 2004, para. 35.

⁴⁶ Contempt Appeal Decision, paras. 42, 46; Beqaj Decision, p. 3; Stanišić Stay Decision.

⁴⁷ *Prosecutor v. Taylor*, SCSL-03-01-T-799, Decision on 'Defence Notice of Appeal and Submissions Regarding the 4 May 2009 Oral Decision Requiring the Defence to Commence its Case on 29 June 2009,' 23 June 2009, para. 19 (**"Defence Start Date Appeals Decision"**). See also *Prosecutor v. Krajišnik*, ICTY-00-39-A, Appeal Judgement, 17 March 2009, para. 80; *Prosecutor v. Karadžić*, IT-95-5/18-PT, Decision on Accused's Application for Certification to Appeal Decision on Motions for Extension of Time: Rule 92bis and Response Schedule, 8 July 2009, paras. 12 & 14; *Prosecutor v. Taylor*, SCSL-03-01-T-799, Separate Concurring Opinion of Justice Emmanuel Ayoola on the Decision on 'Defence Notice of Appeal and Submissions regarding the 4 May 2009 Oral Decision Requiring the Defence to Commence its Case on 29 June 2009,' 23 June 2009, para. 15. See also *Prosecutor v. Milutinović*, IT-05-87-PT, Decision on Ojdanić Motion for Stay of Proceedings, 9 June 2006, paras. 4-6: a stay based on speculation, without any factual basis or real indication, is unjustified.

15. The Defence argument that there is no remedy on final appeal is also untenable.⁴⁸ The Defence has made no showing it could not challenge the “correctness” of the impugned Decision on final appeal. In addition, remedies are available on final appeal when, as here, an interlocutory decision is “not otherwise susceptible to interlocutory appeal in accordance with the Rules.”⁴⁹ Finally, as the Chamber found in *Popovic, et al.*, certification of final brief deadlines impede, rather than advance, the proceedings.⁵⁰ But perhaps most importantly, the impugned Decision does not preclude the Accused, through counsel, from responding to the Prosecution brief or making final argument to the Trial Chamber on the scheduled dates.⁵¹

Request for a Stay of Proceedings is Unwarranted and Contrary to the Interests of Justice.

16. The Defence request for a stay of proceedings⁵² is an attempt to invalidate both the Decision and Status Conference Decision already ignored by the Defence on instructions from the Accused.⁵³ It is merely a further dilatory tactic aimed at avoiding an adverse ruling and securing the denied relief.⁵⁴ Thus, the request necessarily fails as the Defence did not satisfy the conjunctive standard for leave to appeal. As set out above, this Chamber and the Appeals Chamber have both determined that ancillary motions or subsequent submissions are sufficient in addressing matters which might arise out of the Pending Filings.⁵⁵ Moreover, a stay of proceedings is an extreme remedy appropriately employed at a Chamber’s discretion when issues before Appeals and Trial Chambers are inter-dependant.⁵⁶ There are no inter-dependant filings before the Chambers. Further, allowing the Accused to ignore court orders,

⁴⁸ Motion, paras. 24-25. The Prosecution assumes that the Defence meant “post the *trial* brief” vice “post the appeal brief” in paragraph 24.

⁴⁹ *Prosecutor v. Norman, et al.*, SCSL-04-14-T-319, Decision on Prosecution Appeal Against the Trial Chamber’s Decision of 2 August 2004 Refusing Leave to File an Interlocutory Appeal, 17 January 2005, para. 29.

⁵⁰ Popović Certification Decision, p. 3.

⁵¹ According to Rule 86, the Defence *may* present a closing argument and file a final trial brief. Scheduling Order, p. 3.

⁵² Motion, paras. 5, 26.

⁵³ By not filing by the deadline set, the Defence, upon instructions of the Accused, waived its right to file the brief. See *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 20 January 2011, p. 49121: the Presiding Judge noted that, under Rule 86, the Defence is not required to file a brief or present closing arguments.

⁵⁴ An example of another delay tactic employed by the Defence is the fact that the Chamber considered it could have filed the Recall Motion, with due diligence, prior to the 24 September deadline for filing motion, or at least before closure of its case on 12 November. Recall Decision, p. 5.

⁵⁵ Decision, p. 2; Contempt Appeal Decision, paras. 42, 46 (noting that contempt is an ancillary matter).

⁵⁶ *Prosecutor v. Norman, et al.*, SCSL-03-09-PT-064, Decision on the Applications for a Stay of Proceedings and Denial of Right to Appeal, 4 November 2003, paras. 30-31. Additionally, the Defence argument that Rule 73(C) required the Chamber to grant a stay (Motion, para. 3(h)), although an attempt at re-litigating the merits of the Decision, are also mistaken as Rule 73(C) only applies where the Chambers are seized of the same motions.

while the Prosecution abided by a court-determined schedule, would reward the Accused for his wilful disregard of court orders. The Defence would have the benefit of additional time to refine its final trial brief, time denied the Prosecution. This would create an inequity contrary to the interests of justice and expeditious conduct of the proceedings. Indeed, the majority noted in its Status Conference Decision the Trial Chamber's duty to ensure that proceedings are fair to all parties.⁵⁷ Accordingly, ordering a stay of proceedings at this juncture is unwarranted and contrary to the interests of justice.

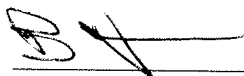
IV. CONCLUSION

17. Consequently, the Motion should be dismissed. The Defence failed to satisfy either prong of the leave to appeal standard. Moreover, its additional request for a stay of proceedings is unwarranted and contrary to the interests of justice.

Filed in The Hague,

27 January 2011,

For the Prosecution,



Brenda J. Hollis
The Prosecutor

⁵⁷ Status Conference Decision, p. 49133.

INDEX OF AUTHORITIES

SCSL

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Prosecutor v. Taylor, SCSL-03-01-T-1088, Defence Motion for Disclosure of Exculpatory Information Relating to DCT-032, 24 September 2010

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