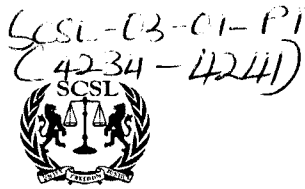


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THE SPECIAL COURT FOR SIERRA LEONE

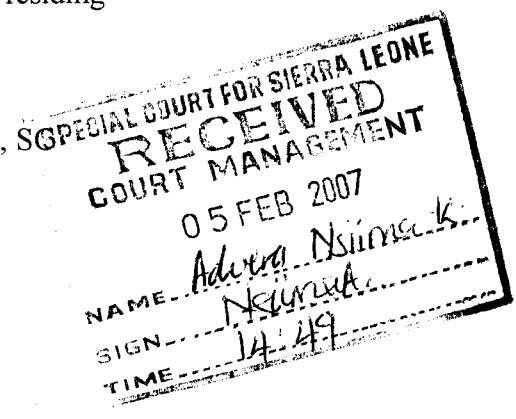
In Trial Chamber II

Before: Justice Julia Sebutinde, Presiding
 Justice Richard Lussick
 Justice Teresa Doherty

Registrar: Mr. Lovemore G. Munlo, SG

Date: 5 February 2007

Case No.: SCSL-2003-01-PT



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC AND URGENT

**URGENT DEFENCE MOTION TO VACATE DATE FOR
 FILING OF DEFENCE PRE-TRIAL BRIEF**

Office of the Prosecution

Mr. Stephen Rapp
 Mr. Christopher Staker
 Mr. Brenda Hollis
 Ms. Wendy van Tongeren
 Ms. Shyamala Alagendra
 Mr. Alain Werner
 Ms. Leigh Lawrie

Counsel for Charles Taylor

Mr. Karim A. A. Khan
 Mr. Roger Sahota

I. Introduction

1. Counsel for Mr. Charles Taylor (the “Defence”) request that the Trial Chamber (the “Chamber”) vacate its order that the Defence shall “on or before 26 April 2007 file a ... pre-trial brief addressing the factual and legal issues”.¹
2. The Defence respectfully submit that the Chamber has abused its discretion in ordering the Defence to file a Pre-Trial Brief by 26 April 2007, prior to hearing and giving due consideration to any submissions from the parties on that issue.
3. The Defence reserves its right to make submissions on a fair and appropriate date on which it can file its Pre-Trial Defence Brief subsequent to receipt of the Prosecution’s Pre-Trial Brief.

II. The Trial Chamber Should Not Use Its Discretion to Order the Defence to File a Pre-Trial Brief on 26 April 2007 Without First Hearing Parties’ Submissions

4. Rule 73bis(F) of the Rules of Procedure and Evidence for the Special Court for Sierra Leone (“the Rules”) gives Judges discretion on requiring the defence to file a pre-trial brief. It provides:

“Prior to the Pre-Trial Conference, the Trial Chamber or a Judge designated from among its members may order the defence to file a statement of admitted facts and law and a pre-trial brief addressing the factual and legal issues, within a time limit set by the Trial Chamber or the said Judge, and before the date set for trial [emphasis added]”.

5. That judicial decisions should ordinarily take into account submissions from the parties is a proposition requiring no authority, especially where the judicial decision in question (whether to order the Defence to file a Pre-Trial Brief, and if so its timing) is completely discretionary, to be decided on a case by case basis. Proper judicial

¹ *Prosecutor v. Taylor*, SCSL-03-01-PT-171, Scheduling Order for a Pre-Trial Conference Pursuant to Rule 73bis, 2 February 2007 (“the Order”).

determinations require “weight or sufficient weight to relevant considerations”.² No such consideration is possible, in an adversarial system, without parties’ submissions. The Defence, and indeed, the Prosecution, have not waived their right to make submissions in this instance. Without submissions from the parties on this issue, the order is defective and should be vacated.

6. The Defence submit that the arbitrariness of the Order is brought into yet starker relief when viewed in the context that the Trial Chamber had ample opportunity to invite submissions on this matter at the 26 January 2007 Status Conference³. The Chamber’s unconsidered decision comes just days after a status conference held primarily to discuss pre-trial scheduling. In sharp contrast to the lack of parties’ submissions on the judicial deadline for the Defence Pre-Trial brief, the Chamber had the benefit of multiple submissions, and understandably gave due consideration to parties’ submissions, on the scheduled date for the Prosecutor’s Pre-Trial Brief.⁴ Although the Defence maintain that the Chamber’s conclusion, based on mistakenly making the Pre-Trial brief “partly dependent” on the Defence filing an agreed statement of fact, was erroneous and without legal foundation, it was made subsequent to hearing parties’ submissions on the issue.⁵

III. The Defence Reserves the Right to Make Submissions on the Appropriate Scheduling Date for the Defence Pre-Trial Brief

7. The Defence submit that it premature to make submissions on a fair and appropriate scheduling date for the Defence Pre-Trial Brief prior to receipt and analysis of the

² *Prosecutor v. Bizimungu et al.*, ICTR Case No. ICTR-99-50-AR50, Decision on Prosecutor’s Interlocutory Appeal Against Trial Chamber II Decision of 6 October 2003 Denying Leave to File Amended Indictment, 12 February 2004, para. 11.

³ *Prosecutor v. Charles Taylor*, SCSL-03-01-PT, Third Status Conference, Transcript, 26 January 2007 (“Third Status Conference”). The Defence note that the issue of agreed facts was discussed at length at the Third Status Conference, but never was the issue of a Defence Pre-Trial Brief discussed. In regard to agreed facts, Mr. Khan assured Justice Doherty that “once he is in a position to do so, consistent with [his] professional responsibilities” he will start to agree facts. *Id.*, pg. 23, lns. 3-5. The submission of agreed facts is not in dispute in this Motion.

⁴ *Prosecutor v. Charles Taylor*, SCSL-03-01-PT, Second Status Conference, 22 September 2006 (“Second Status Conference”), pp. 59 – 60; Third Status Conference, pgs. 30 – 40.

⁵ Third Status Conference, pg. 37 (Judge Doherty: “Their obligation, in turn, are partly dependent on certain matters that you have to fulfill”).

Prosecution's Pre-Trial Brief, scheduled for 4 April 2007. Facially, a three week deadline to respond to the Prosecution's Pre-Trial Brief, five years in the making, is unfair and prejudicial to Mr. Taylor's right to a fair trial. Such prejudice is particularly acute given the lack of timely disclosure of witness statements and exhibits, and expert reports, which till date have only been piecemeal and partially disclosed to the Defence. Also, until the Prosecution files its Pre-Trial Brief, the Defence will not, in the absence of any judicial order, be given the names of expert witnesses, the identities of core and back-up witnesses, the nature and substance of exhibits, and the general prosecution theory.⁶

8. Furthermore, the time given in this instance is grossly disproportionate and unfair relative to the time allocated in other Special Court trials. In the CDF case, the Defence had two and a half months between the filing of the Prosecution and the Defence Pre-Trial Briefs.⁷ In the RUF case, the Defence were granted between three and a half to four months between the filing of the Prosecution Pre-Trial Brief and the Defence filing – rather than the three weeks ordered in the present case.⁸ In the AFRC

⁶ Second Status Conference, pg. 39, ln. 19 – pg. 40, ln. 5.

⁷ The Prosecution filed its Pre-Trial Brief on 2 March 2004. See *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-PT-24, Prosecution's Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (Under Rules 54 and 73bis) of 13 February 2004, 2 March 2004. But the Trial Chamber subsequently gave the Defence additional time to file their Pre-Trial Briefs, noting that "the Trial Chamber, and indeed opposing counsel, will be more greatly assisted by a well-prepared, detailed pre-trial brief rather than a pre-trial brief drafted without the benefit of extensive disclosure and sufficient pre-trial preparation," and ordering that the accused be given until two weeks before the start of trial to submit a pre-trial brief. *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-PT-62, Kondewa – Additional Revised Order for Filing of Defence Pre-Trial Brief, 22 April 2004, pg. 2. Accordingly, the accused in the CDF case did not file their Pre-Trial Briefs until the end of May 2004. See *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-PT-86, Allieu Kondewa – Supplemental Pre-Trial Brief Pursuant to an Order of the Trial Chamber Dated the 22nd April 2004, 18 May 2004; *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-PT-110, Moinina Fofana Defence Pre-Trial Brief, 28 May 2004; and *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-PT-111, Defence Pre-Trial Brief Pursuant to Revised Order for the Filing of Defence Pre-Trial Briefs (Under Rules 54 and 73bis) of 22nd March 2004, 31 May 2004.

⁸ The Prosecution filed its Pre-Trial Brief on 1 March 2004. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-PT-39, Prosecution's Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (Under Rules 54 and 73bis) of 13 February 2004, 1 March 2004. On 12 March 2004, a revised scheduling order gave the Defence until two weeks prior to trial to submit their respective Pre Trial Briefs. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-PT-57, Revised Order for the Filing of Defence Pre-Trial Briefs, 12 March 2004. Subsequently, Sesay filed on 18 June 2004, Kallon filed on 1 July 2004, and Gbao filed on 6 July 2004. See *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-PT-168, Issa Sesay Pre-Trial Brief, 18 June 2004; *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-PT-177, Morris Kallon – Defence Pre-Trial Brief, 1 July 2004; *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-PT-181, Revised Defence Pre-Trial Brief on Behalf of Augustine Bao, 6 July 2004.

case, this Chamber effectively granted eleven months between the filing of the Supplemental Prosecution Pre-Trial Brief and the Defence Pre-Trial Brief.⁹

9. The Defence reiterate that both the right to a fair trial, and the need for an expeditious trial, require adequate preparation – through adequate time and resources being allocated to the Defence. Administrative haste without due consideration does disservice to the Special Court.¹⁰ Important lessons have been learnt from the Milosevic¹¹ and other well known trials, in which poor preparation led to prolonged and unjust or otherwise unsatisfactory proceedings.¹² It would be a tragic waste if the lessons from these cases are not taken on board by the Trial Chamber or otherwise rejected. A further high profile trial, with substantial failings, could provide a significant blow to what is, still, a nascent system of international criminal justice. It is simply wrong, in the respectfully submission of the Defence, for that date to have been fixed without counsel being invited to address the issue.

⁹ The Prosecution filed its Pre-Trial Brief on 5 March 2004. *Prosecution v. Brima, Kamara, Kanu*, SCSL-04-16-PT-29, Prosecution's Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (Under Rules 54 and 73bis) of 13 February 2004, 5 March 2004. After a result of various motions, a second scheduling order was handed down requiring a Supplemental Prosecution Pre Trial Brief be submitted by 22 April 2004; the Defence were ordered to file their respective Pre Trial Briefs two weeks before the trial commenced. *Prosecution v. Brima, Kamara, Kanu*, SCSL-04-16-PT-50, Order to the Prosecution to File a Supplemental Pre-Trial Brief and Revised Scheduling Order for Filing of Defence Pre-Trial Briefs, 1 April 2004. Subsequently, Brima filed on 17 February 2005 and Kamara filed on 21 February 2005. See *Prosecution v. Brima, Kamara, Kanu*, SCSL-04-16-PT-145, Defence Pre-Trial Brief for Tamba Alex Brima, 17 February 2005; *Prosecution v. Brima, Kamara, Kanu*, SCSL-04-16-PT-148, Kamara – Defence Pre-Trial Brief, 21 February 2005.

¹⁰ See Antonio Cassese, Independent Expert Report on the Special Court for Sierra Leone, 12 December 2006, para. 234 (“case may be better prepared and presented if the timeline were less strict and the trial proceedings started a bit later. A delay of a few months or more would, on one view, be unfortunate; however, much of this delay could perhaps be recouped by the benefits of a smoother trial process.”)

¹¹ See Human Rights Watch, “ICTY: Milosevic Trial Exposed Belgrade's Role in Wars,” 14 December 2006, available online at <http://hrw.org/english/docs/2006/12/14/yugosl114800.htm> (stressing that the assurance of an adequate pre-trial period in order to narrow the issues and allow all parties to fully prepare was one of the most important ways to ensure a more expeditious trial.)

¹² See Second Status Conference, pg. 32, Ins. 26-29 (Mr. Khan said, “And, Your Honour, if one works to rule, one gets a Milosevic-type hearing. If the Defence insisted that everything be proved, which is their right, which cannot be complained of, we would get a four-year trial”). The Defence is desperately trying to avoid a similar miscarriage of justice and that is why it is demanding an adequate pre-trial period in which to prepare its case.

III. Conclusion

10. The Defence hereby respectfully request that the Trial Chamber:

- (i) Vacate the third prong of the 2 February 2007 Order which requires the Defence to file a Pre-Trial Brief addressing factual and legal issues on 26 April 2007, without first hearing submissions from the parties;
- (ii) Schedule a Fourth Status Conference, in The Hague, in front of the full bench, to be held as soon as practicable after the filing of the Prosecution Pre-Trial Brief on 4 April 2007.

Respectfully Submitted,



Karim A. A. Khan
Counsel for Mr. Charles Ghankay Taylor

Done in Freetown this 5th Day of February 2007.

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1. *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-PT-24, Prosecution's Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (Under Rules 54 and 73bis) of 13 February 2004, 2 March 2004.
2. *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-PT-62, Kondewa – Additional Revised Order for Filing of Defence Pre-Trial Brief, 22 April 2004.
3. *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-PT-86, Allieu Kondewa – Supplemental Pre-Trial Brief Pursuant to an Order of the Trial Chamber Dated the 22nd April 2004, 18 May 2004.
4. *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-PT-110, Moinina Fofana Defence Pre-Trial Brief, 28 May 2004.
5. *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-PT-111, Defence Pre-Trial Brief Pursuant to Revised Order for the Filing of Defence Pre-Trial Briefs (Under Rules 54 and 73bis) of 22 March 2004, 31 May 2004.
6. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-PT-39, Prosecution's Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (Under Rules 54 and 73bis) of 13 February 2004, 1 March 2004.
7. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-PT-57, Revised Order for the Filing of Defence Pre-Trial Briefs, 12 March 2004.
8. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-PT-168, Issa Sesay Pre-Trial Brief, 18 June 2004.
9. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-PT-177, Morris Kallon – Defence Pre-Trial Brief, 1 July 2004.
10. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-PT-181, Revised Defence Pre-Trial Brief on Behalf of Augustine Bao, 6 July 2004.
11. *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-PT-29, Prosecution's Pre-Trial Brief Pursuant to Order for Filing Pre-Trial Briefs (Under Rules 54 and 73bis) of 13 February 2004, 5 March 2004.
12. *Prosecution v. Brima, Kamara, Kanu*, SCSL-04-16-PT-50, Order to the Prosecution to File a Supplemental Pre-Trial Brief and Revised Scheduling Order for Filing of Defence Pre-Trial Briefs, 1 April 2004.

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13. *Prosecution v. Brima, Kamara, Kanu*, SCSL-04-16-PT-145, Defence Pre-Trial Brief for Tamba Alex Brima, 17 February 2005.
14. *Prosecution v. Brima, Kamara, Kanu*, SCSL-04-16-PT-148, Kamara – Defence Pre-Trial Brief, 21 February 2005.
15. *Prosecutor v. Charles Taylor*, SCSL-03-01-PT, Second Status Conference, Transcript, 22 September 2006.
16. *Prosecutor v. Charles Taylor*, SCSL-03-01-PT, Third Status Conference, Transcript, 26 January 2007.
17. *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-171, Scheduling Order for a Pre-Trial Conference Pursuant to Rule 73bis, 2 February 2007.

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18. *Prosecutor v. Bizimungu et al.*, ICTR Case No. ICTR-99-50-AR50, Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber II Decision of 6 October 2003 Denying Leave to File Amended Indictment, 12 February 2004. Online: <http://69.94.11.53/default.htm>.

Other

19. Human Rights Watch, "ICTY: Milosevic Trial Exposed Belgrade's Role in Wars," 14 December 2006. Online: <http://hrw.org/english/docs/2006/12/14/yugos114800.htm>.
20. Antonio Cassese, Report on the Special Court for Sierra Leone, 12 December 2006.