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SCSL-03-01-T
(34714-34774)

34714

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR

APPEALS CHAMBER

Before: Justice Jon M. Kamanda, President
Justice Emmanuel Ayoola
Justice George Gelaga King
Justice Renate Winter
Justice Shireen Avis Fisher

Registrar: Ms. Binta Mansaray

Date filed: 21 February 2011

THE PROSECUTOR **Against** **Charles Ghankay Taylor**

Case No. SCSL-03-01-T

PUBLIC WITH ANNEXES A-G
PROSECUTION RESPONSE TO PUBLIC DEFENCE NOTICE OF APPEAL AND SUBMISSIONS REGARDING THE DECISION ON LATE FILING OF DEFENCE FINAL TRIAL BRIEF

Office of the Prosecutor:
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I. INTRODUCTION

1. The "Public Notice of Appeal and Submissions Regarding the Decision on Late Filing of Defence Final Trial Brief"[1] should be dismissed as without merit. Consequently, the relief requested should be denied. The Impugned Decision falls squarely within the legitimate ambit of the Trial Chamber's broad discretion to control its own proceedings over the course of the trial. The Accused elected not to avail himself of the opportunity to file a final brief on the date requested by his counsel and set and confirmed by the Trial Chamber. In accepting that election, the majority of the Trial Chamber ("**Majority**") in the Impugned Decision[2] did not err in fact, law, and/or procedure, and/or abuse their discretion in refusing to accept the willfully late filing of the Defence Final Brief.[3]

2. In summary and as further developed below, several fundamental principles underlie this Appeal. First, trial judges have broad discretion to manage the trial.[4] Second, Court orders are binding. Third, a party's knowing and willful election not to carry out optional actions on the date(s) ordered by the Trial Chamber result in a knowing and willful waiver. Together these fundamental principles entitle trial judges, through their broad and discretionary trial management powers and by way of binding orders, to accept and give effect to knowing and willful elections by a party not to carry out optional actions on the date(s) ordered, and absent a showing of good cause, to reject willfully untimely submissions.[5] The exercise of its discretion to enforce such basic principles ensures the fair, orderly and expeditious conduct of formal, criminal proceedings. In the instant case, the Accused through

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[1] *Prosecutor v. Taylor*, SCSL-03-01-T-1209, Public Notice of Appeal and Submissions Regarding the Decision on Late Filing of Defence Final Trial Brief, 17 February 2011 **("Appeal")**.
[2] *Prosecutor v. Taylor*, SCSL-03-01-T-1191, Decision on Late Filing of Defence Final Brief, 7 February 2011 **("Impugned Decision")**.
[3] *Prosecutor v.* Taylor, SCSL-03-01-T-1186, Confidential With Annexes A-C Defence Final Brief, 3 February 2011 **("Defence Final Brief")**.
[4] *Prosecutor v. Prlić et al.*, IT-04-74-T, Decision on Adoption of New Measures to Bring the Trial to an End within a Reasonable Time, 13 November 2006 **("*Prlić* Decision")**, para. 14 citing to *Prosecutor v. Milošević*, IT-02-54-AR73, Reasons for Refusal of Leave to Appeal from Decision to Impose Time Limit, 16 May 2002 **("Milošević Appeals Decision")**, paras. 10 & 13.
[5] See *Milošević* Appeals Decision, para. 13. See also *Prosecutor v. Ndindiliyimana, et al.*, ICTR-2000-56-T, Decision on Augustin Bizimungu's Request to vary his Witness List, 24 October 2007, para. 25 (in the face of a violation of a court order by the Defence, the ICTR held that "the paramount duty of the Defence is to the Chamber").

his Counsel took a calculated and deliberate series of steps in which he elected not to file a final brief. This was a wholesale rejection of the Stay Decision confirming the filing deadline for final briefs and the relief offered in order to address any Outstanding Matters.[6] The majority did not err when it exercised its broad discretion to accept these self-imposed refusals.

3. Finally, only the decision concerning the admission of the Defence Final Brief[7] is properly before the Appeals Chamber. Accordingly, the Defence attempt to introduce "ancillary issues with respect to oral submissions and inclusion of annexes"[8] is improper and any disposition should be adverse to the Accused.

II. PROCEDURAL BACKGROUND

4. Although the scope of the Appeal is limited to the Majority's refusal to accept the late filing of the Defence Final Brief,[9] it can only be properly understood when considered in the context of the procedural history of this case relevant to the issuance of the Scheduling Order.[10] The Defence has misstated and/or mischaracterized the facts.[11] Below, the Prosecution seeks to address, give context

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[6] For purposes of this response, **"Outstanding Matters"** refers collectively to those issues underpinning the filings the Defence claimed prevented timely filing of its brief. i.e. *Prosecutor* v. *Taylor,* SCSL-03-0 1-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-03-0 1-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")**; *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-0301-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 **("Wikileaks Motion")**, *Prosecutor v. Taylor*, SCSL-03-01-T-1142, 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 Relocation of Prosecution Witnesses, 17 December 2010 **("Recall Motion").**

[7] Impugned Decision.

[8] Appeal, p. 26.

[9] See Part III (Scope of the Appeal).

[10] *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")**.

[11] The Defence similarly misstated and mischaracterized the evidence in its leave to appeal the Impugned Decision. See *Prosecutor v. Taylor,* SCSL-03-01-T-1202, Decision on Defence Motion Seeking Leave to Appeal the Decision on Late Filing of Defence Final Brief, 11 February 2011, Separate Opinion of Justice

to, and correct the Defence revisionist history.

5. On 13 September, the Trial Chamber ordered that all Defence motions be filed by 24 September.[12] Then, on 22 October 2010, "[c]ognisant of the resources [it has]," the Defence suggested 14 January 2011 as a realistic 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.[13] The Trial Chamber adopted the Defence suggestion in its Scheduling Order.[14] That same day, the Chamber also scheduled a judicial recess commencing upon close of business on 17 December and ending upon the opening of business on 10 January.[15] On 22 October, the Contempt Motion[16] was pending. On 12 November 2010, the day after the JPK and Contempt Decisions were issued, the Defence closed its case.[17]

6. Between 24 September and 17 December 2010, the last duty day before the judicial recess, twelve motions and appeals were filed by the Defence,[18] four requesting the

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Doherty **("Justice Doherty Opinion")**, paras. 2-3 (filing a separate opinion "for the sake of clarity and objectivity" to "highlight that the Defence has omitted some important facts"); Dissenting Opinion of Justice R. B. Lussick **("Justice Lussick Dissent")**, paras. 24-26 (correcting a "quite unjustified accusation against the majority ... and myself in particular" and referring to a "Defence submission which, to say the least, is inaccurate").

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

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

[14] *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")**.

[15] *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 22 October 2010, p. 48361.

[16] *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")**.

[17] *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")**.

[18] *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 2010; *Prosecutor v. Taylor*, SCSL-03-01-T-1087, Defence Motion for Admission of Documents Pursuant to Rule 92*bis* – 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; *Prosecutor v. Taylor*, SCSL-03-01-T-1108, Public with Confidential Annexes A-D Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 27 October 2011; *Prosecutor v. Taylor*, SCSL-03-01-T-1117, Public with Confidential Annexes A and B Defence Motion for Admission of Documents pursuant to Rule 92*bis* – Prince Taylor and Stephen Moriba, 11 November 2010; *Prosecutor v. Taylor*, SCSL-03-01-T-1121, Public Defence Motion Seeking Leave to Appeal the Decision on the Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 15 November 2010; *Prosecutor v. Taylor*, SCSL-03-01-T-

admission of additional evidence and one requesting the calling and recalling of witnesses. On 10 January 2011, the first duty day post-judicial recess and four days prior to the final trial brief due date, four additional motions were filed by the Defence,[19] one of which requested the admission of additional evidence. Moreover, eleven of these sixteen motions and appeals were filed after the closure of the Defence case on 12 November. None of the sixteen filings requested an expedited filing schedule. Further, at no point between 24 September and 17 December did the Defence request a stay of proceedings or an extension of the deadline for the Parties to file a final trial brief, even considering that three of the Outstanding Matters could result in the admission of new evidence and/or a resumption of testimony.[20] For example, no such request was filed separately or contained in the motion seeking to call and recall witnesses filed on the 17 December 2010. Further, in the Contempt Reply of 11 October 2010, prior to requesting a 14 January 2011 deadline for filing final briefs, 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 appropriate time, depending on the outcome**."[21]

7. Additionally, between 8 September 2010, when Defence witness DCT-008 finished testifying,[22] and 12 November 2010, when the Defence closed its case, one additional Defence witness was called resulting in only six days of testimony.[23] The

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1122, Public Defence Motion Seeking Leave to Appeal the Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 15 November 2010; *Prosecutor v. Taylor*, SCSL-03-01-T-1123, Public with Annex Defence Motion for Reconsideration of Decision on Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecutor and its Investigators, 15 November 2010; Recall Motion; Contempt Motion; JPK Appeal; Contempt Appeal.

[19] US Government Sources Motion; Wikileaks Motion; *Prosecutor v. Taylor*, SCSL-03-01-T-1144, Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 10 January 2011 **("Stay Motion")**; *Prosecutor v. Taylor*, SCSL-03-01-T-1145, Urgent and Public – Defence Request for a Status Conference Pursuant to Rule 65*bis*, 10 January 2011.

[20] JPK Appeal; Recall Motion; Wikileaks Motion.

[21] *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")**.

[22] *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 3 September 2010 page 47864 (Justice Sebutinde noted that the Defence sent an email to the Trial Chamber indicating that DCT-008 would likely be the last Defence witness). It was not until 1 November 2010 that the Defence called one additional witness, after delaying the proceedings for some 53 days.

[23] DCT-102 testified for six days between 1-9 November 2010.

Prosecution presented no rebuttal evidence.

8. Nevertheless, four days before the final brief deadline, the Defence urgently requested a stay or extension, in part based on issues which could potentially arise from the Contempt Motion.[24] Two days later, "given the urgency of the request," the Chamber dismissed both the Stay Motion and Status Conference Motion, affirming the 14 January deadline for filing of final briefs.[25] Justice Sebutinde was then absent.[26] The Majority considered that any "outstanding issues" could, upon resolution, be the subject of "additional submissions after the filing of the final trial briefs" and accordingly, there was no prejudice to the Accused's fair trial rights.[27]

9. Willfully and knowingly, on 14 January, the Accused chose not to file a final brief. Lead Defence Counsel informed the Chamber by email that "in the best interests of our client, the Defence does not intend to file a Final Brief today."[28] In a separate pleading, the Defence asserted the choice was made in light of "outstanding decisions"[29] which the Accused, through his Defence Counsel, alone deemed essential to his brief.[30] On 14 January, instead of filing its final written submissions, the Defence urgently requested leave to appeal the Stay Decision.[31] Despite its supposedly urgent nature, the Defence did not request an expedited filing schedule.

10. On 17 January, Lead Defence Counsel informed the Registrar that the Defence would not be accepting service of the timely filed Prosecution Final Brief[32] "until

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[24] Stay Motion. The Defence also requested a status conference. See 10 January Status Conference Request.
[25] *Prosecutor v. Taylor*, SCSL-03-01-T-1154, Decision on Defence Request for a Status Conference Pursuant to Rule 65*bis* and Defence Motion for Stay of Proceedings, 14 January 2011, pp. 2, 4 **("Stay Decision")**.
[26] Impugned Decision, p. 2.
[27] Stay Decision, p. 3. The Defence mischaracterized this Decision at paragraph 11 of the Appeal wherein it claimed the Chamber referred to the outstanding matters as ancillary in its Stay Decision. The Chamber referred only to "outstanding issues," never characterizing the issues as ancillary.
[28] Letter from Mr. Courtenay Griffiths to Mr. Simon Meisenberg and Ms. Brenda J. Hollis, dated 14 January 2011 **("14 January Letter")**. See **Annex A**.
[29] Stay Motion, para. 4: Referring to the decisions not issued on the *then* pending Contempt Appeal, JPK Appeal, Recall Motion, US Government Sources Motion and Wikileaks Motion.
[30] The Chamber took the contrary view and envisaged that supplemental submissions and ancillary motions were sufficient to address any issues which might arise therefrom. Stay Decision, p. 2.
[31] *Prosecutor v. Taylor*, SCSL-03-01-T-1155, Defence Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference Pursuant to Rule 65*bis* and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 14 January 2011 **("Stay Leave Motion")**.
[32] *Prosecutor v. Taylor*, SCSL-03-01-T-1156, Confidential Prosecution Final Trial Brief, 14 January 2011 **("Prosecution Final Brief")**.

such time as we file our own final brief."[33] Implicit in this language is that the Accused may file his brief as and when he chooses.

11. "[I]n order to explain its conduct before the Trial Chamber and respond to any ensuing concerns," the Defence then filed another application for a status conference on 18 January 2011. The Defence again referred to the "outstanding matters" as the justification for not filing its brief[34] and emphasized that the decision not to file a final brief on 14 January was an endeavor to protect the Accused's interests and was made in accordance with "its lay client's instructions."[35] The request for a status conference was granted and the Defence was given another opportunity to explain its refusal to file a final trial brief.[36]

12. At paragraph 13 of the Appeal, the Defence makes clear that, before 14 January 2011, the Accused had relayed his instructions to the Defence that he was of the view it was not in his best interest to file a final brief on 14 January 2011. Indeed, at the 20 January Status Conference, lead Defence Counsel stated he had received the Accused's "clear, written instructions ... he has made it quite clear that he's not prepared to instruct us to file a final brief until such time as all outstanding decisions have been made. Those are [his] instructions. [Lead Defence Counsel] can't go behind them."[37] After hearing the Defence explanation as to why the Accused had not filed a final brief on 14 January, the Majority determined that there was no change in circumstances justifying a stay or extension and affirmed its Stay Decision.[38] On 31 January 2011, the date scheduled for responses from the parties, the Accused through his Defence Counsel declined to file a response to the Prosecution Final Brief. Thereafter, on 2 February, a unanimous Chamber denied

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[33] Letter from Mr. Courtenay Griffiths to the Registrar, dated 17 January 2011 **("17 January Letter")**. See **Annex B**. See also the "Court Service – Form 3 – Proof of Service in The Hague" provided at **Annex C**.
[34] *Prosecutor v. Taylor*, SCSL-03-01-T-1160, Urgent and Public with Annexes A and B Defence Request for a Status Conference Pursuant to Rule 65*bis*, 18 January 2011, para. 3 **("18 January Request")**. The 14 January and 17 January Letters were attached to the 18 January Request as Annexes A and B.
[35] 18 January Request, para. 4.
[36] *Prosecutor* v. *Taylor*, SCSL-03-01-T-1162, Scheduling Order for Status Conference on 20 January 2011, 18 January 2011.
[37] *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, p. 49126 **("20 January Status Conference Decision")**.
[38] Ibid, pp. 49133-4.

leave to appeal the Stay Decision.[39]

13. In the meantime, the JPK Appeal Decision and Wikileaks Decision, two of the decisions relating to Outstanding Matters,[40] were issued. Both decisions resulted in the admission of documents which had minimal impact on the case and related to Defence case theories already developed throughout the trial.[41] Moreover, in its Recall Decision, a unanimous Chamber dismissed the Recall Motion considering that the Defence had "ample opportunity" to raise issues of credibility during cross-examination of the witnesses it wished to recall and found that the Defence could have brought the underlying requests to the attention of the Trial Chamber prior to 24 September and definitely prior to closure of the Defence case.[42]

14. On 3 February 2011 two matters - leave to appeal requests relating to the Recall Decision and the USG Sources Decision - were still outstanding.[43] Indeed, favorable resolution of the Outstanding Matters underlying the Recall Leave

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[39] *Prosecutor v. Taylor*, SCSL-03-01-T-1182, Decision on Public with Annex A Defence Motion Seeking Leave to Appeal the Decision on Defence Request for a Status Conference Pursuant to Rule 65*bis* and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 2 February 2011 **("Stay Leave Decision")**.

[40] *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 **("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 **("Wikileaks Decision")**; *Prosecutor v. Taylor,* SCSL-03-01-T-1174, Decision on Urgent and Public with Annexes A-N Defence Motion for Disclosure and/or Investigation of United States Government Sources within the Trial Chamber, the Prosecution and the Registry based on Leaked Cables, 28 January 2011 **("USG Sources Decision")**.

[41] First, the JPK Appeal resulted in the admission of documents relating to a person not ever listed or called as a Prosecution witness and whom the Defence apparently determined not to be worthy of belief as it did not call him either. Second, the Wikileaks Decision resulted in the admission of a document proving the independence of the Court, contrary to any Defence theory regarding a puppet court.

[42] Recall Decision, p. 5-6.

[43] *Prosecutor v. Taylor*, SCSL-03-01-T-1173, Public Defence Motion Seeking Leave to Appeal the Decision on Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses, 27 January 2011 **("Recall Leave Motion")**; *Prosecutor v. Taylor*, SCSL-03-01-T-1178, Public Defence Motion Seeking Leave to Appeal the Decision on Urgent and Public with Annexes A-N 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, 31 January 2011 **("USG Sources Leave Motion")**.

Motion may have resulted in the calling and/or recalling of witnesses. Nonetheless, on 3 February at 1659 hours, 20 days after the scheduled date for filing final briefs, the Accused, through his Defence Counsel, filed a brief 228 pages over the 600-page limit, falsely claiming that it was now able to do so as all Outstanding Matters had been resolved.[44]

15. After receiving service of the Defence Final Brief, the Prosecution filed its Motion to Substitute.[45] The requests therein were conditional upon acceptance of the willfully untimely and oversized brief. The Prosecution characterized the late and excessive filing as a "deliberate disregard of court orders" and an "attempt to hijack these proceedings." It noted that "it is this Trial Chamber's discretionary decision whether or not to accept the Defence's final trial brief notwithstanding that it is 20 days late and 228 pages in excess of the page limit."[46]

16. On 7 February 2011, the next duty day after being served the Defence Final Brief,[47] the Trial Chamber rendered its decision on the willfully late filing. Considering that the Defence provided no new grounds justifying the late filing, the Majority properly exercised its discretion in declining to accept the Defence Final Brief.[48] Also on 7 February, both the Recall Leave Motion and USG Sources Leave Motion were dismissed.[49] Only then were all Outstanding Matters resolved.

17. Next, on 8 February, after the Presiding Judge ordered Lead Defence Counsel not to

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[44] Defence Final Brief, para. 4. The "CMS7- Notice of Deficient Filing Form" also states that "all the outstanding decisions have since been rendered" in the Defence "reasons" for its deficient filing.

[45] *Prosecutor v. Taylor*, SCSL-03-01-T-1189, Public with Confidential Annex Motion to Substitute Prosecution Final Trial Brief, 4 February 2011 **("Motion to Substitute")**.

[46] Motion to Substitute, para. 2. Thus the Defence assertions throughout the Appeal, including at para. 20 in its Summary of the Proceedings and paras. 27 and 38, are disingenuous and deceitful. The Prosecution position was not unopposed to acceptance of the brief, rather it was *conditional* upon acceptance of the brief and need not be considered otherwise.

[47] The Prosecution has the understanding that the Defence Final Brief was provided to the Trial Chamber at some 1455 hours on Friday, 4 February 2011.

[48] *Prosecutor v. Taylor*, SCSL-03-01-T-1191, Decision on Late Filing of Defence Final Brief, 7 February 2011 **("Late Filing Decision")**.

[49] *Prosecutor v. Taylor*, SCSL-03-01-T-1188, Decision on Defence Motion Seeking Leave to Appeal the Decision on Defence Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses, 4 February 2011 **("Recall Leave Decision")**; *Prosecutor v. Taylor*, SCSL-03-01-T-1193, Decision on Defence Motion Seeking Leave to Appeal the Decision on Urgent and Public with Annexes A-N 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, 7 February 2011 **("USG Sources Leave Decision")**. The Prosecution notes that the USG Sources Leave Decision was a majority decision as Justice Sebutinde withdrew from deliberations in relation to the USG Sources. See US Government Sources Decision, Declaration of Justice Julia Sebutinde.

leave,[50] he withdrew from the courtroom, gesturing to the Accused to also depart. The Accused did not appear in court after the mid-morning break.[51] On the same day, acknowledging that the "Majority of the Trial Chamber (Justice Julia Sebutinde dissenting) has refused to accept the late filing of the Defence Final Brief," the Defence filed a "corrected copy of its Final Brief."[52]

III. SCOPE OF APPEAL

18. The Impugned Decision concerns the Majority's decision to refuse the late filing of the Defence Final Brief *simpliciter*. Leave to Appeal was thus sought[53] and granted on this limited point.[54] Accordingly, this Appeal is not concerned with the refusal of the Accused through his Defence counsel to (i) file a written response to the Prosecution's Final Trial Brief; (ii) make closing oral arguments; and/or (iii) present oral arguments in rebuttal in accordance with the Scheduling Order.[55] None of these opportunities was contingent on the admission of the Defence Final Brief. Rather, the Accused through his Counsel deliberately waived his right to avail himself of these opportunities. In this regard, it is to be noted that the Defence willfully refused to accept service of the Prosecution's Final Trial Brief (available since 17 January 2011),[56] thus deliberately rendering itself unable to comply with the written response to the opposing party's brief, as set out in the Scheduling Order.[57] The Accused and his lead Defence counsel also walked out of, and effectively boycotted, the oral stage of closing arguments.[58]

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[50] *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 8 February 2011, p. 49145.
[51] *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 8 February 2011, pp. 49187-8.
[52] *Prosecutor v. Taylor*, SCSL-03-01-T-1194, Public with Annex A and Confidential Annex B Corrigendum to Defence Final Brief as Filed on 3 February 2011, 8 February 2011, para. 2.
[53] *Prosecutor v. Taylor*, SCSL-03-01-T-1195, Urgent and Public Defence Motion Seeking Leave to Appeal the Decision on Late Filing of Defence Final Brief, 8 February 2010, para. 23.
[54] *Prosecutor v. Taylor*, SCSL-03-01-T-1202, Decision on Defence Motion Seeking Leave to Appeal the Decision on Late Filing of Defence Final Brief, 11 February 2010 **("FTB Leave Decision")**.
[55] Scheduling Order, Orders 6, 9 & 10.
[56] Prosecution Final Brief, as corrected by the decision allowing the Prosecution's corrigendum (see *Prosecutor v. Taylor*, SCSL-03-01-T-1183, Decision on Prosecution Corrigendum and Motion for Leave to Substitute Pages of the Prosecution Final Trial Brief, 3 February 2011). Also, see **Annex C**.
[57] Justice Lussick Dissent, para. 8.
[58] *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 8 February 2011, p. 49145 (Defence Counsel bid the Court "Good Morning" twice and then left the Court despite the direction of the Presiding Judge to sit

IV. STANDARD OF REVIEW ON APPEAL

19. This is an issue of the trial judges' exercise of their sound discretion. It is well established jurisprudence that Trial Chambers exercise discretion in relation to the conduct of proceedings before them.[59] In particular, "it is within the discretion of the Judge or Chamber to decide whether or not to accept a document despite its late filing."[60] Therefore, as a discretionary decision, an Appeals Chamber will accord deference to the decision of the Trial Chamber.[61] This deference is based on an Appellate Chamber's recognition of a Trial Chamber's familiarity with the day-to-day conduct of the parties and practical demands of the case.[62] A Trial Chamber's exercise of discretion will only be reversed by an Appeals Chamber if it is demonstrated that the Trial Chamber made a "discernable error" because its decision was made on an incorrect interpretation of governing law, was based on a patently incorrect conclusion of fact, or was so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion.[63] None of these grounds apply in this instance. In reviewing the exercise of a discretionary power, an appellate tribunal does not have to agree with the Trial Chamber's decision as long as that Chamber's discretion was properly exercised in accordance with the relevant law.[64] In simple terms, the question is whether the exercise of the discretion was

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down); 9 February 2011, p. 49289 (Presiding Judge noted: "Yesterday, Mr Griffiths indicated in his submissions to the Court that he and his client would be leaving the Court, and Mr Taylor absented himself following the first break in the proceedings. As I've already noted there has not been any documentation to support an indication that he is unable to come for reasons of illness or other pertinent issues, and therefore, in our view, there is no evidence to support any view that he may be unable to come through sickness or otherwise. And in the circumstances, the ruling that I've made that we proceed pursuant to Rule 60 will stand").

[59] *Prosecutor v. Ndayambaje, et al.*, Decision on Joseph Kanyabashi's Appeal against the Decision of Trial Chamber II of 21 March 2007 concerning the Dismissal of Motions to Vary his Witness List, 21 August 2007 **("Ndayambaje Appeal")**, para. 10. See also *Prlić* Decision, para. 14 citing to *Milošević* Appeals Decision, paras. 10 & 13.

[60] *Prosecutor v. Sesay et al.*, SCSL-03-01-T-244, Decision on Appeal Against the Decision of the Trial Chamber Refusing the Application for Bail by Morris Kallon, 17 September 2004 **("Sesay Appeal Decision")**, para. 13.

[61] Ndayambaje Appeal, para. 10.

[62] *Ibid.*

[63] *Ibid.* See also *Prosecutor v. Ngirabatware*, ICTR-99-54-A, Decision on Augustin Ngirabatware's Appeal of Decision Denying Motions to Vary Trial Date, 12 May 2009, para 8.

[64] *Prosecutor v Norman, et al.*, SCSL-04-14-T-688, Decision on Interlocutory Appeals against Trial Chamber Decision Refusing to Subpoena the President of Sierra Leone, 11 September 2006, para. 5.

"reasonably open" to the Trial Chamber,[65] or whether conversely, the Trial Chamber "abused its discretion."[66]

V. GROUNDS AND SUBMISSIONS IN RESPONSE TO THE APPEAL

FIRST GROUND – IMPROPER FOCUS ON CMS DEFICIENT FILING FORM

20. The Defence argument that the Majority erred on a point of law and/or procedure by basing the Impugned Decision on the CMS deficient filing form and not the Defence application for leave to file out of time does not withstand scrutiny.[67] Indeed, a party "who files a document outside the time limits … does so at his peril."[68] On 3 February 2011, the Scheduling Order was still in effect and was *the* binding order to which the parties to these proceedings were subject in relation to the filing of final trial briefs. It had not been "suspended, reversed or amended by the Appeals Chamber," nor had its "legal effects [been] otherwise modified by an appropriate decision of a relevant Chamber."[69] Therefore, the Defence filed its Final Brief in breach of the Scheduling Order. Indeed, as the Presiding Judge noted on 20 January 2011, "the Defence … are not mandated by Rule 86 to present any closing arguments or file a final submission."[70] But, if the Defence wished to do so, it was required to follow the Scheduling Order. Accordingly, the Trial Chamber properly considered the late filing of the Defence Final Brief in relation to the applicable order then still in effect.

21. Additionally, the Defence submission that the Trial Chamber should have considered paragraphs 2 to 5 of the untimely filed Defence Final Brief as a "new application"[71] is unsupported in law and/or fact and is completely without merit. First, the CMS deficient filing form simply repeats the main arguments made

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[65] *Prosecutor v Delalić, et al.*, IT-96-21-A, Judgment, 20 February 2001, para. 274.
[66] *Ibid.*, para. 533.
[67] Appeal, paras. 26, 36 & 37.
[68] Sesay Appeals Decision, para. 13.
[69] *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-OA-18, Judgment on the Appeal of the Prosecutor against the Decision of Trial Chamber I of 8 July 2010 entitled "Decision on the Prosecution's Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with the VWU," 8 October 2010 **("Lubanga Decision")**, para. 48.
[70] *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 20 January 2011, p. 49121.
[71] Appeal, para. 37.

improperly in paragraphs 2 to 5 including the "interests of justice" argument. This explanation, under proper pleading practice, should have been included in a motion for leave to file an out of time brief, with the brief provided in an annex, not the body of the motion. Second, there is nothing "new." The arguments contained in the CMS form and paragraphs 2 to 5 of the Defence Final Brief merely repeat those made by the Defence in previous submissions before the Chamber.[72] Indeed, the Defence does not even indicate therein that paragraphs 2 to 5 were intended as a new application as it now claims. Finally, there is no basis to assume the Majority did not review or have their legal officers review and report on these improperly placed and repetitious paragraphs.

22. Further, reliance on the CMS form would have been in compliance with Article 12 of the Practice Direction on Filing Documents. Article 12 requires a party to "indicate the reason for the delay on the relevant Court Management Section form." **Based on the reason given on this CMS form**, "the Judge or Chamber before which such document is filed shall decide whether to accept the document despite its late filing." Accordingly, the judges would have properly relied on the arguments contained on the CMS form. Such reliance consistent with the Practice Direction certainly does not indicate any "pre-determined position of the Majority."[73]

23. The Trial Chamber did not err factually, procedurally or legally in its consideration of the CMS Deficient Filing Form.

SECOND GROUND OF APPEAL – FAILURE TO CONSIDER PROSECUTION POSITION

24. The Defence erroneously argues at paragraphs 27 and 38 of the Appeal that the Majority erred by failing to consider the Prosecution's Motion to Substitute. The Majority was not required to take the Prosecution's *separate* and *conditional* motion into consideration. In any event, the Prosecution position was contrary to the Defence arguments as set out in its final brief.

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[72] For example, see the Stay Decision; 20 January Status Conference Decision.
[73] Appeal, para. 36. See also the section entitled "Additional Submissions Regarding the Unfounded Allegations of Bias Against the Trial Chamber Underlying All Grounds," paras. 46-48, *infra*.

25. Contrary to Defence assertions, particularly its disingenuous characterization of the Prosecution's *per se* lack of opposition,[74] the Prosecution argued in its Motion to Substitute that the Defence arguments for acceptance of its brief were without merit, "it is not in the interests of justice that this Accused's willful and knowing violation of the Trial Chamber be rewarded," and "it is this Trial Chamber's discretionary decision whether or not to accept the Defence's final trial brief."[75] Thereafter, the Prosecution suggested courses of action to the Chamber to fairly and expeditiously deal with any scenario whereby the Trial Chamber accepted the late filed Defence Final Brief.[76] All suggestions, submissions and requests were made conditionally: the Motion to Substitute and the submissions therein need only be considered and/or implemented "*if* the Trial Chamber exercises its discretion to accept this flagrantly late filing."[77] Despite its misleading and disingenuous language in the body of its appeal, the Defence admits as much at paragraph 38 and footnote 60 of the Appeal.

THIRD GROUND OF APPEAL – THE DEFENCE WAS NOT IN FLAGRANT BREACH OF THE COURT'S SCHEDULING ORDER

26. The Defence argument under its third ground of appeal is disingenuous and must fail as it seeks to subordinate the Trial Chamber's authority to that of the Defence.[78]
27. The extensive and often erroneous Defence recitation of the procedural history under this ground does not detract from the plain fact that "[o]nce a judicial order is made, those subject to it are obliged to comply with its terms."[79] Further, ignoring

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[74] Appeal, para. 38.
[75] Motion to Substitute, para. 2.
[76] *Ibid*, paras. 3, 11, 12 & 15.
[77] *Ibid*., para. 2. Emphasis added. See also para. 2 ("*if* the Defence Final Brief is accepted"); para. 3 ("*if* the Trial Chamber exercises its discretion and accepts the untimely filed Defence Final Brief"); para. 8 ("it is the Trial Chamber's discretionary decision whether or not to accept the Defence's final trial brief...*if* the Trial Chamber accepts this late filed brief"); para. 9 ("*if* the Defence Final Brief is accepted"); para. 11 ("*if* the Defence Final Brief is accepted"); para. 13 ("*should the Trial Chamber accept* the Defence Final Brief); para. 14 ("the late and oversized filing of the Defence Final Brief, *if accepted*;" "*If* the Defence Final Brief is accepted"); para. 15 ("the Prosecution requests that, *if* the untimely filed Defence Final Brief is accepted...") (emphasis added).
[78] Appeal, paras. 28, 40-46.
[79] Lubanga Decision, para. 53.

an order does not render it "obsolete."[80] Indeed, the basis of the Impugned Decision is firmly rooted in law and procedure, as the Majority was simply giving effect to a Trial Chamber's authority over proceedings as specifically provided for in the Rules.[81] When there is a perceived conflict between a party's duties and the orders of a Trial Chamber, the Trial Chamber's orders must prevail.[82] The Accused through his Defence Counsel cannot elevate his view of the issue above that of the Trial Chamber.

28. Accordingly, the Defence argument at paragraphs 44 and 45 of the Appeal must fail as it is predicated on the erroneous notion that an Accused's decision trumps that of the Trial Chamber. In the absence of an order suspending, amending or reversing the Scheduling Order, the parties to these proceedings were bound by its terms. It was not for the Accused through his Counsel to unilaterally determine when an order was rendered obsolete. The Accused's instructions only to file the Defence Final Brief once all Outstanding Matters were determined sought to place conditions on the Accused's participation in these proceedings. Such conditions are not permissible.[83]

29. Moreover, the Defence presents its arguments under this ground as if the stay request was the only means by which the Accused's position could be protected. This is patently not the case. In the Stay Decision, the Trial Chamber was plainly cognizant of the outstanding motions and offered appropriate alternative forms of relief to deal with the situation. These forms of relief recognized that there was no current issue of a piecemeal approach, as there was at that point no additional evidence to take into consideration. Moreover, the available forms of relief were consistent with the dual mandate of the trial chamber – to manage the trial both fairly and expeditiously – by affording both an efficient and expeditious way

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[80] Appeal, paras. 43 & 46.
[81] "According to [Rule 26*bis*], the Trial Chamber, subject only to the powers of the Appeals Chamber, is the ultimate guardian of a fair and expeditious trial." Lubanga Decision, para. 47.
[82] Lubanga Decision, para. 48. See also SCSL Code of Professional Conduct for Counsel with the Right of Audience before the Special Court for Sierra Leone, as amended on 13 May 2006, Article 15(A): "Where a conflict arises between the duty of Defence Counsel to act in the best interests of the client and the interests of justice, the latter shall prevail."
[83] *Prosecutor v. Akayesu*, ICTR-96-4-T, Issuance of Warning against Defence Counsels, 19 March 1998, paras. 5 & 7.

forward rather than delay the proceedings based on speculation as to the outcome of the Outstanding Matters. The Accused through his Counsel, however, chose to reject the Trial Chamber's alternative remedies and sought instead to force through his own plan of action. It was the Accused's way or no way.

30. As further proof that the Accused through counsel was simply seeking to exercise his control over the proceedings, the Defence filed its final trial brief before the supposed critical conditions were met, *id est* before resolution of all the Outstanding Matters.[84] As noted in paragraph 14 above, two matters remained unresolved as of 3 February, including one matter that could have resulted in the calling and recalling of witnesses.[85] In truth, the Accused through his Defence counsel was indeed able to file a final trial brief absent resolution of the Outstanding Matters, and did in fact recognize that the relief offered by the Majority was a fair means to address future decisions. In any event, reliance on decisions which could at best only allow supplemental evidence consistent with existing Defence theories pursued throughout the trial, could not materially affect the Defence ability to adequately and persuasively argue the Accused's case in a 600-page brief. In both theory and the instant scenario, "it is not at the end of the trial that one must ask oneself what arguments one will ultimately present."[86]

31. Further, had the Defence truly deemed it necessary for the Outstanding Matters to be resolved before the 14 January brief deadline, one would have expected a request for an expedited filing schedule. None of the filings relating to the Outstanding Matters included such a request. An expedited schedule was not necessary,

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[84] At footnote 64 of the Appeal, the Defence claims that the Prosecution argued that its prioritization of important filings should excuse an otherwise untimely filing. However, the AFRC Contempt Motion was not untimely as the matter was brought, first and promptly, to the attention of the President of the Court and then to the attention of the Trial Chamber. It also demonstrates the Prosecution's commitment to the Scheduling Order, in stark contrast to the Defence disregard for the same order. *Prosecutor v. Brima et al*, SCSL-04-16-ES-684, Public with Confidential Annexes Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone, 31 January 2011, paras. 13-14.

[85] Recall Leave Motion; USG Sources Leave Motion.

[86] *Prosecutor v. Prlić et al*, IT-04-74-T, Amended Scheduling Order (Final Trial Briefs, Closing Arguments for the Prosecution and the Defence), Separate Opinion of the Presiding Judge in the Chamber Judge Jean-Claude Antonetti, 22 November 2010, p.15 (**"Judge Antonetti Opinion"**). Erroneously relied upon in the Appeal at para. 59 and fn. 84. Note also that the Defence told the Court it had been working for months on the closing submissions. See *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 8 February 2011, p. 49139.

however, as the Accused and a well-resourced Defence team[87] had more than adequate time to prepare its brief. Except for six days of testimony in November 2010, the testimony of all witnesses was completed on 8 September 2010,[88] over four months before the date chosen by the Defence and adopted by the Trial Chamber for final briefs to be filed.

32. The mischievous Defence claim at paragraph 43 – that if it had abided by the Court's order, then a potential appeal arising from its Stay Leave Motion would have been rendered merely "academic" – must also be rejected. It is for the Accused and his counsel to abide by court orders. Indeed, refusal to obey an order in an effort to maintain an appeal is frivolous and constitutes an abuse of process. If, after the rejection of his request for a stay or extension of time, the Accused through his counsel had filed his final brief on 14 January – which it clearly could have, but for the Accused's decision not to do so – it would have been open for the Accused to raise this matter on final appeal. Additionally, if the Stay Leave Motion had been granted, the Appeals Chamber could also have provided relief.

33. The Defence also impertinently and falsely claims that its "plausible explanation" was manifested in its "contrite conduct throughout the entire episode."[89] Lead Defence Counsel's impertinent and disrespectful comments to the Court[90] and

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[87] "Former Liberian President Boycotts War Crimes Trial for Second Day," *The New York Times*, 9 February 2011: "Mr. Griffiths has said that the defense team he leads is 'one of the best resourced teams there's ever been in an international tribunal.'" See **Annex D**.

[88] The last Defence witness, DCT-008, finished testifying on 8 September 2010. See *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 3 September 2010, p. 47864 (where Justice Sebutinde indicates that the Chamber received an email from the Defence specifying that DCT-008 would be the last Defence witness). It was not until 1 November 2010 that the Defence called one additional witness, DCT-102, after delaying the proceedings for some 53 days. The Prosecution presented no rebuttal evidence.

[89] Appeal, para. 40. See also para. 54 where the Defence cites to Justice Sebutinde's FTB Leave Decision Concurrence wherein the Defence request was described as humble.

[90] See for example, 14 January Letter, provided at **Annex A** ("The Defence had wished to sort out such contingency issues during a Status Conference as requested by us, but we were denied the opportunity to do so"); *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 65*bis* and Defence Motion for Stay of Proceedings Pending Resolution of Outstanding Issues, 14 January 2011, 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, 8 February 2011, p. 49145 (Presiding

media,[91] however, indicate that the Defence has been anything but contrite, instead trying to pressure the Chamber to bow to the Accused's will.

34. This third ground of appeal must clearly fail. The Majority's discretionary decision to reject the willfully untimely filed Defence Final Brief cannot be regarded either as unreasonable or unfair so as to constitute an abuse of its discretion. On several occasions,[92] the Majority considered the redundant justification offered in support of the Defence request for a stay of proceedings or extension of time to file. It found this justification insufficient to warrant an untimely filing. The justification – that filing on 14 January was not in the best interests of the Accused – distinguishes this case from those cited by the Defence at paragraphs 53 and 54. In those cases, the failure to file was through inadvertence or despite best efforts to meet the court imposed deadline.[93] Here, there is no failure through inability or error, but rather a willful, knowing choice not to comply. In addition, the Majority offered an effective and efficient remedy should any Outstanding Matters result in the introduction of new evidence. The Accused through Lead Defence Counsel disdainfully disregarded this remedy, choosing instead to waive his options.

Judge: Please sit down while I hear from the Prosecution, Mr. Griffiths: Well, I'll give that indulgence to the Court ... Presiding Judge: Mr. Griffiths, please sit down and remain as directed by the Court. If you continue to remain on your feet, and prevent counsel for the Prosecution speaking by doing, then I will be obliged to consider that you are coming and verging on a contempt. Please sit down, Mr. Griffiths; Mr. Griffiths: Your Honour, I am leaving, so I won't be standing on my feet").

[91] All articles hereinafter referred to are contained at **Annex E**. "Taylor snubs war crimes trial for second day," Reuters, 9 February 2011 ("'What we were trying to do is ensure we get some semblance of justice out of this and it's turned into this personalized attack on us,' Griffiths told reporters ... 'I find it completely despicable'"); "Not Going to Offer War Crimes Court a Fig Leaf, Says Taylor's Lawyer," RFI English, 8 February 2011, p. 2 ("Frankly, I am not prepared to provide a fig leaf to this court while they ride roughshod over my client's rights"); SCSL Press Clippings, 11 February 2011, p. 13, BBC World Service Trust ("if the judges are not prepared to listen to, or see our closing submission, it means then that they've totally rejected the Defence case...My presence there now serves no purpose, because they've already rejected our case"). See also **Annex D**: "Former Liberian President Boycotts War Crimes Trial for Second Day," *The New York Times*, 9 February 2011, p. 2 ("After leaving the courtroom, Mr. Griffiths told reporters that the trial was 'a complete farce'").

[92] Stay Decision; 20 January Status Conference Decision; *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 8 February 2011, pp. 49137-45; Impugned Decision.

[93] *Prosecutor v. Bizimungu, et al*, ICTR-99-50-T, Decision on Casimir Bizimungu's Motion for Permission to Convey Protected Information to Defence Experts, 11 September 2006; *Ngirumpatse v. The Prosecutor*, ICTR-98-44-AR73.3, Decision on Prosecutor's Urgent Motion for Extension of Time Limit, 10 June 2004; *Prosecutor v. Brima, et al.*, SCSL-04-16-T-581, Decision on Urgent Defence Request under Rule 54 with Respect to Filing of Motion for Acquittal, 19 January 2006.

FOURTH GROUND OF APPEAL – REFUSAL TO ACCEPT DEFENCE FINAL BRIEF IS DISPROPORTIONATE TO BREACH

35. The fourth ground of appeal must also fail. The Majority exercised its discretion in view of several factors. First, the Stay Decision provided a remedy to handle any Outstanding Matters resolved after filing of the briefs. Second, due consideration was given to the Accused's several and redundant explanations through his Defence Counsel in support of demands for a stay or extension. Third, the Accused made willful, knowing, and strategic choices not to file his final brief on the date chosen by his counsel, ordered by the Trial Chamber and affirmed by the Majority. Fourth, a trial chamber has a broad and inherent discretion in matters of trial management. Fifth, orders, including the Scheduling Order, are binding on the parties unless and until revoked or amended. Sixth, the Accused had remaining opportunities to argue his case to the judges. Finally, judges have an independent duty to apply the law to the evidence, determine reasonable conclusions and inferences therefrom, and thus determine if the evidence proves the Accused's guilt beyond a reasonable doubt. In the context of all of the foregoing considerations, the Majority's refusal to accept the Defence Final Brief is proportionate and within its discretion.[94]

36. It is underlined that the Impugned Decision was at its core a discretionary decision of the Trial Chamber. In challenging the exercise of a Trial Chamber's discretion, the challenge does not amount to "a hearing *de novo*."[95] That one of the judges exercised her discretion in a different way does not render the Majority's exercise of discretion erroneous. Similarly, "the issue is not whether the Appeals Chamber agrees with the decision of the Trial Chamber but whether the Trial Chamber has abused its discretion in reaching that decision."[96] The range of decisions which have been reached regarding the acceptance or rejection of late-submitted briefs[97] emphasizes a discretionary nature in relation to such final submissions. In fact, the considerations taken into account in each discretionary decision of a Trial Chamber

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[94] Appeal, para 47.
[95] *Prosecutor v. Halilović*, IT-0148, "Decision on Interlocutory Appeal Concerning Admission of Record of Interview of the Accused from the Bar table," 19 August 2005, para. 5.
[96] *Ibid.*
[97] Note the fifth ground of appeal at paras. 52 to 55.

regarding the adequacy of final submission options should only be weighed against the circumstances of that specific case. Indeed, a Trial Chamber may not even be able to "draw helpful comparisons with other trials in light of differing parameters."[98] Thus, acceptance or rejection are both legitimate conclusions provided such conclusion was reasonably open to the relevant Chamber based on the circumstances of that case and that Accused.[99]

37. The Impugned Decision was reasonably open to the Majority. The Accused knowingly and willfully waived his right to file a final brief when he availed himself of other "legal channels."[100] The Accused was not denied the opportunity to file a final brief, rather he was rightly denied the authority to substitute his decisions on timing for that of the judges. The Impugned Decision was the consequence of the Accused's willful and knowing election not to file his optional final brief on the date ordered by the Trial Chamber and affirmed by the Majority. Rejection of the willfully late brief was, in effect, a refusal to override the Accused's knowing, informed, calculated, deliberate and strategic waiver. Further, the Accused is an educated, well counseled, and intelligent former head of state who made his waiver decision with the benefit of a full complement of experienced counsel and legal assistants. In other circumstances, the Trial Chamber might have felt the need to protect the Accused from his willful and knowing choices in the interests of justice; however, in the present circumstances, no such need manifested itself.

38. The Defence reliance on the Lubanga Decision is also misplaced.[101] In *Lubanga*, the court was faced with what it considered a Prosecution failure to carry out a mandatory duty, not with a willful election to waive an optional opportunity to summarize its case. Moreover, the ICC Appeals Chamber in *Lubanga* found that a stay brought proceedings to a complete halt.[102] Such is not the case here. The judges

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[98] E.g. Judge Antonetti Opinion, p. 14. Erroneously relied upon in the Appeal at para. 59 and FN. 84.
[99] For example in *Prosecutor v. Kayishema, et al*, ICTR-95-1-A, Judgment, 1 June 2001, para. 48, the ICTR Appeals Chamber ruled that the Prosecution's Appeal brief was inadmissible in its entirety after it was filed late. Whereas, in *Prosecutor v. Milošević*, IT-02-54-A-R77.4, Decision on Prosecution Application to Strike Out Appellant's Brief in the Appeal of the Decision on Contempt of the Tribunal Kosta Bulatović, 23 June 2005, the late filed appellant's brief was accepted.
[100] Appeal, para. 44.
[101] Appeal, para. 49.
[102] Lubanga Decision, para. 55.

are bound to impartially examine the evidence and determine if the Prosecution has met its burden whether or not any final submissions are made. In addition, the effect of the Impugned Decision was limited to the first written stage of closing submissions. Subsequent stages of final submissions were not contingent upon filing of a final brief.[103] Thus, the Impugned Decision did not prevent the Accused through his Defence Counsel from making further submissions, and, therefore, cannot be described as excessive.

39. Mistakenly, the Defence relied on the Judge Antonetti Opinion.[104] This opinion, however, affirmed broad judicial discretion in relation to the scheduling of final submissions. Judge Antonetti explained that a judge is not required to revise a scheduling order relating to final submissions, but in the circumstances of that particular case and Accused, concurred with the Chamber's revisions.[105] Therefore, this opinion merely supports the Majority's repeated affirmation of its scheduling order in the circumstances of *this* particular case and Accused. Judge Antonetti also further confirmed that a Trial Chamber need only provide *both* parties with the "best *possible* options" for the presentation of evidence already on the record.[106] Judge Antonetti did not say that the Defence alone should be accorded the "best possible options," nor does he say that the Defence itself may decide what constitutes the "best possible options."

40. Moreover, Rule 86 indicates that, while closing submissions from the party bearing the burden of proof are required, the Accused's right to final submissions can be waived. The Rules thus purposely left open the opportunity for the Accused to strategically, as in the instant scenario,[107] waive his right to final submissions. This

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[103] See Procedural History, *supra*, and the discussion regarding the ancillary issues, *infra*.
[104] Appeal, para. 59, fn. 84.
[105] Judge Antonetti filed his opinion in concurrence with a decision regarding Defence and Prosecution requests for reconsideration and modification of a final submissions scheduling order. The Chamber partially granted these requests, which were made well in advance of the deadlines for final submissions. Judge Antonetti explained that a Chamber, taking into account the specific circumstances of the case and Accused, reflects upon scheduling of a case and sufficiency of final submission options before requests by the parties are even made, sometimes even beginning with the pre-trail phase. Judge Antonetti also noted that throughout the trial the Chamber also has the assistance of the pre-trial briefs. A pre-trial brief "has the key advantage of informing the judges on the [party's] line of argument." Judge Antonetti Opinion, pp. 14-17. The Defence erroneously relied on the Judge Antonetti Opinion at Appeal, para. 59, fn. 84.
[106] Judge Antonetti Opinion, p. 15.
[107] Appeal, para. 44.

right to waiver is consistent with the rights of the Accused throughout the trial phase, as well as with his ability to waive his rights to testify, cross-examine Prosecution witnesses, and even present a defence. Therefore, the judges may, in the exercise of their sound discretion, refuse to allow an Accused to reverse a previous knowing, educated, informed, and willful election not to file a final brief on the date ordered, and instead, to file such a brief when and as he chooses. In any event, the judges always have an independent duty to assess the evidence and determine whether the Prosecution has met its burden of proof.[108]

41. The final argument under this head made at paragraph 50 of the Appeal is also flawed as it takes a self-serving and unduly narrow view of the interests at stake in international criminal proceedings. An accused cannot claim an infringement of his right to a fair trial where, as here, he knowingly and deliberately elects not to file optional submissions on the date ordered by the court, but rather seeks to impose his deadline on the court. In this regard, the following factors must be considered. First, very obviously, the Accused's refusal to file his brief in accordance with the Scheduling Order was willful and for calculated strategic reasons, not because of actual inability to do so. Second, the Defence failure to comply with Court orders has impacted on the Chamber's duty "to ensure that a trial is expeditious and does not consume, unduly, too much in the way of international resources and time."[109] Thirdly, any reliance placed by the Defence on Rule 86 is without merit. The Trial Chamber order as to timing of filing is binding, not the general rule in 86(B) as to timing. Also, the Defence selectively forgets its own argument on 22 October 2010 that there should be two weeks between filing the final written submissions and oral argument so that the parties could "digest each other's final briefs and be in a position to then follow it with oral argument."[110] Further, Rule 86(B) can only be considered fair to all parties where the 200-page limit stated in Article 6(B) of the Practice Direction applies.[111] Where such a limit has been purposefully increased threefold, in this case at the behest of both parties, it stands to reason that the time

[108] Justice Lussick Dissent, para. 20.
[109] *Prlić* Decision, para. 16.
[110] *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 22 October 2010, pp. 48353-4.
[111] Practice Direction on Dealing with Documents in The Hague – Sub-Office.

limit under Rule 86(B) also needed to be increased commensurately. Finally, Rule 86(A) makes final submissions, for the Defence, optional. The Accused therefore, having waived this *option*, cannot hold the case open by refusing to argue.

42. The Impugned Decision gave effect to **all** relevant considerations. This decision was reasonably open to the Majority and cannot now be successfully challenged as an abuse of the discretion.

FIFTH GROUND OF APPEAL – TRIAL CHAMBER'S DECISION IS NOT IN THE INTERESTS OF JUSTICE

43. This ground of appeal effectively repeats or expands upon the first four grounds. The Prosecution adopts by reference all the arguments made above to address and respond to this final ground of appeal. Also, the interests of justice support the Impugned Decision. It is in the interests of justice to enforce judicially mandated filing dates where those dates were set at the instance of the Defence and where the Accused chose for strategic reasons to willfully and knowingly refuse to file on those dates in willful disregard of orders of the court.

44. Finally, the *Milošević* decision[112] is not comparable to the situation at hand. The Accused in that case was unrepresented whereas the Accused in the present case is represented by a full complement of experienced Counsel and legal assistants. In fact, Lead Defence Counsel described the Accused's Defence team as "one of the best resourced teams there's ever been in an international tribunal."[113] Further, in *Milošević*, there was an attempt to file the brief in question just hours after the deadline, and it was ultimately filed just three days late. The Chamber also emphasized the novelty of the issues presented by the contempt proceedings. No comparable novelty arises herein.[114]

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[112] *Prosecutor v. Milošević*, IT-99-37-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002. Relied upon by the Defence at para. 52 of the Appeal.
[113] "Former Liberian President Boycotts War Crimes Trial for Second Day," *The New York Times*, 9 February 2011, p. 3. See **Annex D**.
[114] *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Decision on Motion to Seek Leave to Respond to the Prosecution's Final Brief, 28 September 2004.

ADDITIONAL SUBMISSION REGARDING THE UNFOUNDED ALLEGATIONS OF BIAS AGAINST THE TRIAL CHAMBER UNDERLYING ALL GROUNDS

45. The Defence allegations woven throughout this Appeal suggesting a Majority bias are unfounded and impertinent.[115] Such allegations imply an unsustainable, self-serving underlying premise that decisions unfavorable to the Accused automatically indicate violation of the "offending" judge's judicial mandate to act fairly and impartially. The instant scenario does not indicate a biased Majority, rather it demonstrates the Accused's attempts to control the proceedings and force the Trial Chamber to bend to his will, and his knowing and willful waiver of optional actions. A party may disagree with a decision of a Trial Chamber, but this is no ground upon which to insinuate bias or predetermination. It hardly needs stating that "the fact that [a Judge] may have expressed an opinion which is unfavorable to the Defence is not a sufficient ground for bias,"[116] and none of the Defence submissions support the suggestion that in not accepting the brief "the Judges were animated by any concern other than the relevant legal issues."[117]

46. Indeed and as discussed previously, both Justice Doherty and Justice Lussick have highlighted the fact that in previous decisions they found Defence explanations and

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[115] E.g. Appeal, para. 36 (the Majority of the Chamber adopted a "pre-determined position not to have anything to do with the final trial brief"); para. 38 ("it can only be reasonably inferred that the Majority deliberately elected to hand down their impugned decision first before determining the Prosecution's motion"); paras. 9, 23, FN. 26 (attacking Justice Lussick's "attitude" and deeming it "unduly harsh and prejudiced" submitting that this "is reflected in the learned Justice's entire determination of the matter on appeal"). See also **Annex F**: "As Charles Taylor boycotts trial, Sierra Leone's war-battered residents hope for justice," Concord Times, 11 February 2011("this is about ego, not justice ... this kind of personalized politics [does not have] any part to play in a court of law"). See also para. 33, *supra*, regarding Defence Counsel's disrespectful behavior, including allegations of judicial predetermination and bias.

[116] *Prosecutor v. Norman*, SCSL-2004-14-112, Decision on the Motion to Recuse Judge Winter from the Deliberation in the Preliminary Motion on the Recruitment of Child Soldiers, 28 May 2004, para. 31; See also *Prosecutor v. Šešelj*, IT-03-67-R77.2-A, Decision on Motion for Disqualification of Judges Fausto Pocar and Theodor Meron from the Appeals Proceedings, 2 December 2009, paras. 13, 15; *Prosecutor v. Blagojevic et al*, IT-02-60, Decision on Blagojevic's Application Pursuant to Rule 15 (B), 19 March 2003, para. 14. See also, *Prosecutor v. Seromba*, ICTR-2001-66-T, Decision on Motion for Disqualification of Judges, 25 April 2006, para. 12 ("the rulings are, or would reasonably be perceived as, attributable to a pre-disposition against the applicant, and not genuinely related to the application of law (on which there may be more than one possible interpretation) or to the assessment of the relevant facts"); *Prosecutor v. Karemera*, ICTR-98-44-T, Decision on Motion by Karemera for Disqualification of Trial Judges, 17 May 2004, para. 13.

[117] *Prosecutor v. Seromba*, ICTR-2001-66-T, Decision on Motion for Disqualification of Judges, 25 April 2006, para. 20.

justifications insufficient for a stay or extension.[118] Moreover, the Chamber clearly took into account the Accused's fair trial rights, *inter alia*, by offering reassurance that the Accused will have adequate avenues of redress available to him.[119]

VI. ANCILLARY ISSUE REGARDING ORAL SUBMISSIONS

47. The Defence request seeking an order to reschedule its date for closing arguments[120] is beyond the scope of the Appeal and should be rejected.[121] Further, it is an improper attempt to revive an opportunity that has been waived by the Accused's willful, knowing and conscious choices and refusals to participate in oral argument on the dates set by order of the Court.

48. The Defence strives mightily to link two independent and distinct opportunities – the filing of final written submissions and the presentation of closing oral arguments. However, the filing and acceptance of a final brief is entirely independent of the Accused's opportunity to present a closing argument, and both are optional.[122] The Defence assertion that it would be "inappropriate" for the Trial Chamber to hear closing submissions before its Final Brief was accepted ignores the fact that professional judges preside over this Court with an independent duty to determine if the Prosecution has met its burden.

49. The Defence claim that it would have been impossible to argue key points of its case without referring back to related sections of its brief is similarly without merit.[123] The Defence is a well-resourced team with experienced counsel and legal

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[118] Stay Decision; 20 January Status Conference Decision; *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 8 February 2011, pp. 49137-45; Impugned Decision.
[119] Justice Doherty Opinion, paras. 3-5; Justice Lussick Disssent, paras. 7, 10.
[120] Appeal, para. 61.
[121] *Prosecutor v. Taylor*, SCSL-03-01-T-1195, Urgent and Public Defence Motion Seeking Leave to Appeal the Decision on Late Filing of Defence Final Trial Brief **("FTB Leave Motion")**, 8 February 2010. The only relief sought and certified in the FTB Leave Decision was leave to appeal the Impugned Decision on the late filing of the brief.
[122] As noted by the Presiding Judge on 20 January 2011, "the Defence … are not mandated by Rule 86 to present any closing arguments or file a final submissions" (*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 20 January 2011, p. 49121). Yet, the Defence Request for Ancillary Relief conflates the issue of the resolution of the admission of the Final Brief with the right to present a closing argument. *Prosecutor v. Taylor*, SCSL-03-01-T-1197, Urgent and Public Request for Ancillary Relief in Conjunction with the Defence Motion Seeking Leave to Appeal the Decision on Late Filing of Defence Final Trial Brief, 9 February 2011.
[123] Appeal, para. 64.

assistants who have been on this case for over three years.[124] It beggars belief that such counsel would have been unable to make key arguments without referring the Court to specific paragraph numbers or sections from the Final Brief. Further, no limitations were put on the content of the oral submissions by the Trial Chamber—the only "handicaps" as to the arguments the Defence could present are of its own making.[125] Nothing would have prevented the Defence from reading key points from its final brief without identifying them as such during its oral argument. Finally, a "mere six hours" would have afforded the Defence ample opportunity to present its strongest arguments.[126]

50. The Defence has suffered no double prejudice as a result of the Majority decision. Rather, through its own deliberate choices in an effort to force the Chamber's hand, the Defence curtailed its own opportunity to make submissions before the Judges, answer questions from the Judges, and respond to the Prosecution brief.[127] The Defence had two opportunities to make oral submissions but made it clear it would not avail itself of those opportunities.[128] As Lead Defence Counsel told the press: "We have *decided not to participate in these closing arguments* because as far as we are concerned it is a complete farce."[129]

51. The Defence argument regarding inadequate time to prepare Taylor's defence under

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[124] See "Former Liberian President Boycotts War Crimes Trial for Second Day," *The New York Times*, 9 February 2011: "Mr. Griffiths has said that the defense team he leads is 'one of the best resourced teams there's ever been in an international tribunal.'" See **Annex D**.

[125] Appeal, para. 64.

[126] *Ibid.*

[127] *Ibid.*, para. 66. The Defence boycott of the proceedings at the time scheduled for oral argument was clearly a concerted action between Lead Defence Counsel and the Accused. As Griffiths told the Trial Chamber: "...it is our intention, both myself and Mr. Taylor, to leave court at this point." *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 8 February 2011, p. 49138.

[128] *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 8 February 2011, pp. 49137-38. See the Scheduling Order, which provided 9 February as the day for Defence oral closing arguments and two hours on 11 February for oral arguments in rebuttal.

[129] See "Charles Taylor's lawyer storms out of court," *The Atomic*, 8 February 2011 (emphasis added). See **Annex G**. This statement was made after Mr. Griffiths walked out of the courtroom in direct violation of an order of the Presiding Judge (*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 8 February 2011, p. 49145). Later that day, in the Defence FTB Leave Motion (para. 2), the Accused through Counsel stated his decision not to make oral submissions in accordance with the scheduling order of the Court. It is important to note that neither before exiting the courtroom, nor in its FTB Leave Motion did Defence Counsel make any request to make closing arguments at a later time in light of the events. In fact, no such request was made until almost one half hour after the time scheduled for the Defence closing arguments ended. Only then did the Defence submit its Request for Ancillary Relief requesting preservation of the right to present closing arguments.

Article 17(4)(b) is specious.[130] It is contradicted by the Defence's own admission that it had prepared its oral submissions[131] and had "...laboured for several months to prepare and analyse thousands of pages of evidence."[132] The argument also ignores the reality that the Prosecution, which had to respond to all Defence pleadings as well as prepare its own Final Brief, met all filing deadlines.[133] Nothing prevented the well-resourced Defence team from presenting closing arguments other than the Accused's own conscious and knowing choice not to comply with the deadlines.

52. The Defence request to direct the Trial Chamber to accept the three annexes to its Final Brief should also be denied.[134] The Accused seeks to impose substantive annexes which in the aggregate bring the length of the brief to over 800 pages, violating the 600-page limit. These annexes contain Defence-prepared summaries of Prosecution evidence which constitute legal and substantive factual argument[135] as opposed to "merely additional information."[136] Should the Appeals Chamber

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[130] Appeal, para. 66.
[131] *Ibid.*, para. 64.
[132] See Justice Lussick's remarks (*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 8 February 2011, p. 49139). Note also, the Defence had four months to prepare both written and oral submissions and was on formal notice since the Scheduling Order of 22 October 2010 to prepare closing arguments for 9 February 2011.
[133] As discussed previously, the Defence team was well equipped to make any adaptations to its prepared submissions in light of the Trial Chamber's refusal to accept the Final Brief but chose instead to adopt the strategy of not participating at all.
[134] Appeal, paras. 67-68.
[135] Confidential Annex A, "OTP Allegations with Responses by Charles Taylor," which is 164 pages long, contains legal and factual arguments. This annex juxtaposes a witness's argument with a paraphrasing of the Accused's response thereto. Placing these submissions in a table does not detract from the factual nature of the arguments presented therein. The same can be said for Confidential Annex B, "Support to RUF from Governments other than Liberia," which is 8 pages long. Confidential Annex C, 109 pages long, contains information relevant to the Defence argument concerning crimes allegedly falling outside the scope of the indictment. Again the tabular format of this annex does not disguise the fact that such information should not be contained in an annex.
[136] See *Prosecutor v. Taylor*, SCSL-03-01-T-209, Decision on Defence Motion to Lift the Redactions of Identifying Information of Fifteen Core Witnesses, 21 March 2007, paras. 9-10 and *Prosecutor v. Sesay et al.*, SCSL-04-15-T-965, Order Relating to Kallon Motion Challenging Defects in the Form of the Indictment and Annexes A, B and C, 31 January 2008. In addition, ICTR jurisprudence clearly articulates the approach which has been followed in this Court, namely, that an appendix may not contain legal or factual arguments, only references, source materials, items from the record, exhibits and other relevant, non-argumentative material. See *Prosecutor v. Nshogoza*, ICTR-2007-91-A, Judgement, 15 March 2010, para. 10: the Appeals Chamber disregarded an appendix containing "legal or factual arguments" as these rendered the appendix "invalid"; *Prosecutor v. Šainović et al*, IT-05-87-A, Decision on the Prosecution's Motion for an Order requiring Sreten Lukić to file his Appellant's Brief in accordance with the Appeals Chamber Decisions, 29 September 2009, pp. 3-4: the Appeals Chamber ordered two annexes which were

determine the Majority abused its discretion and so order admission of the Defence Final Trial Brief, the Prosecution requests it to direct the Trial Chamber to order the Defence to strictly adhere to the 600-page limit.[137] As stated in *Nchamihigo*, the quality and effectiveness of a brief does not depend on the length but on the clarity and cogency of the presented arguments. Therefore, excessively long briefs do not necessarily serve the cause of efficient administration of justice.[138]

VII. CONCLUSION

53. Accordingly, the Majority did not err in fact or in law, or abuse its discretion in refusing to accept the late filing of the Defence Final Brief. The Appeal, including all requests for relief, should be denied. As set out throughout this response, the Impugned Decision was based on several fundamental principles: first, the trial judges broad discretion to manage the trial; second, the binding nature of Court orders; and third, willful and knowing waiver by a party through willful and knowing election not to carry out optional actions. Giving into the Accused's attempt to hijack control of the proceedings – through his knowing and willful refusal to avail himself of opportunities on the dates scheduled by the court – does not promote a fair or expeditious trial.

54. Alternatively, should the Appeals Chamber determine that the Majority abused its discretion, then the Prosecution adopts the position set out in its Motion to Substitute and requests that (i) the Prosecution's revised and refined final trial brief be substituted for that filed on 14 January 2011; and/or (ii) the Appeals Chamber order that the Defence Final Brief be limited to 600 pages total.

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directly comparable to those at issue in this case to be re-filed. Confidential Annex B comprised an assessment of testimony adduced at trial and Annex D included commentary on the trial transcript with respect to the alleged bias of the Trial Chamber. See also the ICTR Practice Direction on Length and Timing of Closing Briefs and Closing Arguments, 3 May 2010, Part 1.4(ii).

[137] Such an approach is supported by the ICTR jurisprudence listed referred to above. This does not prejudice the fair trial rights of the Accused because under *Prosecutor v. Lukić and Lukić*, IT-98-32/1-T, Decision on Prosecution Motion to Exceed Word Limit For Final Brief, 4 May 2009, p.2: a limit on the length of a final trial brief "exists for the purposes of judicial economy."

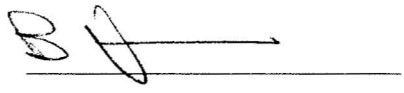
[138] *Prosecutor v. Nchamihigo*, ICTR-2001-63-A, Decision on Defence Motion for Leave to Exceed the Word Limit, 12 May 2009, p. 2.

55. Further and as argued above, the requested ancillary relief relating to oral arguments should also be dismissed. It is outside the scope of the Appeal, and in any event, is without merit.

Filed in The Hague,

21 February 2011

For the Prosecution,



Brenda J. Hollis
The Prosecutor

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Prosecutor v. Karemera, ICTR-98-44-T, Decision on Motion by Karemera for Disqualification of trial Judges, 17 May 2004

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Ngirumpatse v. the Prosecutor, ICTR-98-44-AR73.3, Decision on Prosecutor's Urgent Motion for Extension of Time Limit, 10 June 2004

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ICC

Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06-OA 18, Judgment on the Appeal of the Prosecutor against the Decision of Trial Chamber I of 8 July 2010 entitled "Decision on the Prosecution's Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay Proceedings Pending Further Consultations with the VWU, 8 October 2010

http://www.icc-cpi.int/iccdocs/doc/doc947768.pdf

ANNEX A

34754

SPECIAL COURT FOR SIERRA LEONE
DEFENCE FOR CHARLES TAYLOR
The Hague Sub-Office, P. O. Box 19536
2500 CM The Hague, The Netherlands
Telephone: +31 70 515 9744; Facsimile: +31 70 322 2711
E-mail: Courtenay Griffiths, Q.C. (Lead Counsel): cgxqc@btinternet.com;
Salla Moilanen (Case Manager) moilanens@un.org

14 January 2011

By Email

Dear Simon, Dear Brenda,

We hereby inform you that in the best interests of our client, the Defence does not intend to file a Final Brief today. As such, the Defence does not wish to have sight of any final brief filed by the Prosecution and requests that it not be circulated to them.

The Defence had wished to sort out such contingency issues during a Status Conference as requested by us, but we were denied the opportunity to do so.

Kind Regards,

Courtenay Griffiths, Q.C.
Lead Counsel for Charles Taylor

CC: Binta Mansaray, Registrar
Claire Carlton-Hanciles, Principal Defender
Elaine Bola-Clarkson, Chief of CMS

ANNEX B

34756

SPECIAL COURT FOR SIERRA LEONE
DEFENCE FOR CHARLES TAYLOR
The Hague Sub-Office, P. O. Box 19536
2500 CM The Hague, The Netherlands
Telephone: +31 70 515 9744; Facsimile: +31 70 322 2711
E-mail: Courtenay Griffiths, Q.C. (Lead Counsel): cgxqc@btinternet.com;
Salla Moilanen (Case Manager) moilanens@un.org

17 January 2011

Registrar
Special Court for Sierra Leone
Freetown

Dear Ms. Mansaray,

RE: Service of Prosecution Final Trial Brief

We have received both your letters of 14 and 17 January 2011.

Court Management Service has attempted to serve the Defence with hard copies of the Prosecution Final Trial Brief, but we have refused service until such time as we file our own Final Brief. We have also instructed all members of the Defence Team to delete any electronic copy of the Prosecution Final Brief served on them.

Kind Regards,

Courtenay Griffiths, QC

Lead Counsel for Charles G. Taylor

CC: Simon Meisenberg, Trial Chamber II
Brenda Hollis, Prosecutor
Claire Carlton-Hanciles, Principal Defender
Elaine Bola-Clarkson, Chief of CMS

ANNEX C

34758

SPECIAL COURT FOR SIERRA LEONE

DOKTER VAN DER STAMSTRAAT 1 • 2265 BC LEIDSCHENDAM • THE NETHERLANDS
PHONE: +31 70 515 9701 or +31 70 515 (+Ext)

COURT SERVICE – FORM 3 – PROOF OF SERVICE IN THE HAGUE

Date: **14/01/2011**	Case Names: The Prosecutor V Charles Ghankay Taylor Case No. **SCSL – 03-01-T-1156**

To:
A:

☐ **TRIAL CHAMBER II** ☐ **APPEALS CHAMBER**

_10__ copies received by: 13:10
Gina Bussey 17 January 2011
(signature)

____ copies received by:
(signature)

For onward transmission to:
☐ Judge Richard Lussick
☐ Judge Teresa Doherty
☐ Judge Julia Sebutinde, Presiding
☐ Judge El Hadji Malick Sow, Alternate
☐ Legal Officer
☐ By Fax: See CS Form 3F

For onward transmission to:
☐ Judge R. WINTER
☐ Judge J. KAMANDA, President
Judge G. KING
☐ Judge E. AYOOLA
☐ Judge A.A. FISHER
☐ By Fax: See CS Form 3F

OFFICE OF THE PROSECUTOR
Trial Attorney in charge of case: _____, received by _____ 1310 hrs 17/1/2011

☐ **DEFENSE**
☐ Accused: See CS 2 Form
☐ Defence Office: _____ ☐ For onward transmission to counsel
☐ Counsel:

The Defence has refused service of the Prosecutions final trial brief at this time, and references the Registrars letter of 14 Jan 2011.

1. ☐ In The Hague _____ ☐ _____ ☐ _____
17/1/2011 13:05

4. ☐ In The Hague _____ 5 ☐ _____ 6 ☐ _____
All Decisions & Imp. Public Docs: ☐ Press & Public Affairs ☐ Court Library

From: ☐ Listing Officer ☐ Court Officer ☐ Courtroom Assistant ☐ Deputy Registrar ☐ Registrar

CC: ☐ Registrar ☐ Deputy Registrar ☐ Chief WVSS ☐ Chief of Security

Subject: Kindly find attached the following documents:

Document's Title Date filed: **14/01/2011** Pages: 31544 - 32141

CONFIDENTIAL PROSECUTION FINAL BRIEF

ANNEX D

34760

February 9, 2011

Former Liberian President Boycotts War Crimes Trial for Second Day

By MARLISE SIMONS

PARIS — Expectations that an important war crimes trial would conclude this week were dampened further on Wednesday when Charles G. Taylor, the former president of Liberia, and his defense lawyers boycotted the final stage of the proceedings for the second day in a row, contending that the court was unfair and driven by politics.

The presiding judge immediately adjourned the proceedings until Friday.

The reason for the boycott was the rejection by the judges of a 600-page trial summary by Mr. Taylor's team that, despite frequent warnings, had missed a deadline.

The walkout on Tuesday came at a point of high media attention, as the trial drew to a close and prosecutors were about to present their closing arguments. Mr. Taylor and his team had used the same strategy, staging a boycott, when prosecutors opened the trial, now more than three and a half years ago.

Since then, international judges of the Special Court for Sierra Leone, seated in The Hague, have heard testimony from 115 witnesses about the civil war in Sierra Leone in the 1990s. Many testified about horrifying crimes committed by rebels whom Mr. Taylor is accused of commanding. They spoke, too, about slave labor in captured diamond mines, episodes of cannibalism, of rape, of severed heads displayed on stakes and of captured villagers lining up, waiting to have their hands hacked off.

Mr. Taylor, who took the stand in his own defense for seven months, presented himself as a man striving for peace and his accusers as liars.

Over the course of the trial, which has now lasted more than twice as long as planned, Mr. Taylor's lawyers have frequently insisted on getting more time and have missed deadlines set by the judges, who have tried hard to appear fair to the defense.

But in recent weeks a confrontation began to develop, as defense lawyers said they wanted extra time to prepare their closing arguments and the judges insisted that they abide by the deadline, Jan. 14. On Monday, with no sign of the summary, the judges ruled that Mr. Taylor had defied court orders and that his written summary was no longer admissible.

Tempers rose Tuesday morning as Courtenay Griffiths, Mr. Taylor's lead defense lawyer, said he was no longer participating in the trial. The judges ordered him to sit down. Visibly angry, Judge Richard Lussick said Mr. Taylor could not make or

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disobey orders at will. "You are not running the court, you know," he said.

Prosecutors, who have often accused Mr. Taylor of trying to manipulate the court, weighed in. "The accused is not attending a social event," said Brenda Hollis, the lead prosecutor. "He may not R.S.V.P. at the last minute. He is the accused at a criminal proceeding."

After leaving the courtroom, Mr. Griffiths told reporters that the trial was "a complete farce" and said that he was refusing to "lend legitimacy to the proceedings."

Lawyers at the court expect that the trial, scheduled to end on Friday, is now likely to go on for an unforeseeable time.

The prosecution summarized its case, arguing that the court should hold Mr. Taylor criminally responsible for the deaths and mutilation of thousands of people, because, as Nicholas Koumjian, a prosecutor, put it, he had financed, armed, supplied and controlled rebels in Sierra Leone for "power and profit."

Mr. Taylor's defense was scheduled to present closing arguments on Wednesday, even without filing a written document, and both sides were scheduled to wrap up on Friday. But Mr. Griffiths has said he will stay away and file an appeal to have his documents accepted and his closing arguments rescheduled.

Mr. Griffiths said he wanted more time because he had only recently discovered two secret diplomatic cables from 2009, part of the cache revealed by WikiLeaks, in which American diplomats wrote about Mr. Taylor. He has presented them as evidence, including one cable, dated March 2009, in which the United States ambassador to Liberia is quoted as saying that "the best we can do for Liberia is to see that Charles Taylor is put away for a long time."

The ambassador, Linda Thomas-Greenfield, wrote that "should Taylor be acquitted in The Hague or given a light sentence," other options should be considered, like building a case against Mr. Taylor in the United States on charges that might include financial crimes, using child soldiers or even terrorism, to ensure "that Taylor cannot return to destabilize Liberia."

Mr. Griffiths argued that the cable and a second cable discussing what he called "sensitive details" about the trial, raised doubts about the impartiality and independence of the court.

While the judges admitted the two cables into evidence, they have asserted that their impartiality was in no way compromised. They have thrown out a request by the defense to investigate the relations between the court and the United States government and to investigate which officers of the court have leaked to American diplomats information about the Taylor trial, its timing and the financing it required.

Because of the long delays, the special court, which is financed by donor countries including the United States, has faced regular budget shortages, requiring diplomats to request additional contributions to finance the court, as well as Mr. Taylor's defense.

Prosecutors have said Mr. Taylor amassed a fortune during the war, but he has said that he cannot afford an adequate defense. The court pays more than $100,000 per month for his team of lawyers and researchers.

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Mr. Griffiths has said that the defense team he leads is "one of the best resourced teams there's ever been in an international tribunal."

ANNEX E

34764

REUTERS

» Print

Taylor snubs war crimes trial for second day

Wed, Feb 9 2011

By Aaron Gray-Block

THE HAGUE (Reuters) - Former Liberian president Charles Taylor snubbed his war crimes trial for a second day on Wednesday, prompting judges to adjourn the case as they consider whether to allow a defense appeal over key documentation.

Taylor, the first African ruler to stand trial for war crimes, has denied 11 charges of instigating murder, rape, mutilation, sexual slavery and conscription of child soldiers during a civil war in Sierra Leone in the 1990s.

Taylor and his defense lawyer Courtenay Griffiths boycotted much of Tuesday's hearing after the Special Court for Sierra Leone refused to accept the defense's almost 600-page final case summary because they filed it 20 days after a January deadline.

Both Taylor and Griffiths, who has appealed the decision denying him the right to lodge the documentation, boycotted the hearing again on Wednesday and Griffiths said he would continue the boycott until the documentation was accepted.

"What we were trying to do is ensure we get some semblance of justice out of this and it's turned into this personalized attack on us," Griffiths told reporters outside the court on Wednesday. "I find it totally despicable."

Griffiths had requested an extension of the filing time limit before the deadline. He said he was still waiting for the judges to rule on eight legal matters and therefore had not been ready to file his summary last month.

But in a majority ruling late on Wednesday, the trial judges directed Griffiths to attend the next hearing on Friday, warning that unless he apologizes for his boycott this week, the court "may impose sanctions."

Any sanctions are stipulated by court regulations around misconduct of counsel and include the possibility of Griffiths being ruled ineligible to represent Taylor or being fined.

Prosecutors accuse Taylor of directing Revolutionary United Front rebels who raped, killed and hacked off the limbs of women, men and children in a campaign of terror in Sierra Leone.

They also say Taylor tried to control Sierra Leone's diamond mines, using "blood diamonds" -- a reference to stones taken from conflict zones -- for profit or to buy weapons.

Griffiths has questioned the Sierra Leone court's impartiality, citing leaked U.S. diplomatic cables he says suggest Taylor's prosecution was politically motivated.

More than three years of testimony was due to end this week. Tensions ran high on Tuesday, and Griffiths stormed out of the court, an act that put him at risk of being ruled in contempt.

Justice Richard Lussick sharply rebuked Taylor and the defense, telling them: "you're not running the court you know."

"ILLEGITIMATE"

The defense was due to present its closing arguments on Wednesday, but judges adjourned the case until Friday, when the defense is due to rebut the prosecution's final arguments.

Presiding judge Teresa Doherty was given a letter which she said she presumed was from the court's detention center and which indicated that Taylor had "waived his right" to attend Wednesday's hearing and was not sick.

Griffiths said it would be "illegitimate" of the defense to attend hearings until judges accept the final documentation.

In seeking the appeal, the defense noted in its court filing that Justice Julia Sebutinde had opposed the majority decision denying the filing of the documentation. Sebutinde had said it would be "in the interests of justice" to accept the brief.

Under court procedures, Griffiths must first seek the right to appeal the decision not to accept his documentation, but it may take a few days before a decision is made on his request.

That decision could be handed down on Friday, but the defense lawyer said it was possible judges could opt to close the case on Friday prior to a final judgment in the trial, expected later this year.

(Reporting by Aaron Gray-Block; editing by Giles Elgood)

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Conte

INTERVIEW - COURTENAY GRIFFITHS - Article published the Tuesday 08 February 2011 - Latest update : Thursday 10 February 2011

Not going to offer war crimes court a fig leaf, says Taylor's lawyer

By Daniel Finnan

Charles Taylor's defence lawyer walked out of the Sierra Leone war crimes court in protest on Tuesday. British attorney Courtenay Griffiths told RFI that the court is a "farce" and riding "roughshod" over his client's rights. The ex-Liberian president denies 11 counts of war crimes and crimes against humanity allegedly committed in Sierra Leone.


Courtenay Griffiths, Charles Taylor's lead counsel
Reuters

Q&A - Lawyer Courtenay Griffiths

Listen (04:53)

08/02/2011 by Daniel Finnan

What made you decide to walk out of court?

We had filed our final brief last Thursday, only to be told yesterday afternoon that two of the judges have refused to look at it because we filed it 20 days later than we should have done. My point is this, in the context of a trial which has lasted three years, do your listeners think that it is disproportionate for the judges to refuse to hear, in effect, the whole defence case, because we're 20 days late? They're cutting out Mr. Taylor from putting forward a defence, and as far as I'm concerned, that is totally inequitable.

Why were you late in filing these final submissions?

Since the date was fixed for when the final brief was to be submitted, a number of issues arose which we felt we had to take up as legal issues before the court. By 14 January, none of those issues had been resolved. Amongst those issues was one very central to our case. Mr. Taylor had, since 2000, being saying that certain powerful countries were out to get him. Then, in December last year, the *Guardian* newspaper published a couple of cables, one of which emanated from the US ambassador to Monrovia. In effect, it said that the US government would have to do everything within its power to ensure that either Mr. Taylor was convicted or got a long sentence, or if neither of those happy outcomes came about, that steps should be taken to try him in the United States. So, here we had at the last minute confirmation of a central plank of our case. Were we supposed to overlook that? And how were we supposed to serve a final brief when issues as central as that were stil outstanding? Tell me, have you ever heard of legal proceedings where your final address to a jury or a court is made when several important legal issues are yet to be decided?

Did you tell the judges that you wanted an extension for the time to file your closing arguments?

We did it on no less than three occasions. The first occasion being right at the start of January, when we suggested that they might consider adjourning the deadline for a few weeks. Not only to give us more time to file our brief, but also to give them more time to properly address th issues we were raising and which were still outstanding. After we told them that we would not be filing until those issues were decided, within a few days we had these rapid decisions by them, none of which truly addressed the issues raised by us. But merely to get them out of the way so we no longer had an excuse to file. Is that the way a court is supposed to operate? Particularly when they're dealing with a case as grave as this – the first African leader ever put on trial – what kind of example is this setting? Are African people, with only Africans currently awaiting trial before the ICC, supposed to look at this standard of justice, given this primary example?

You are asking for closing arguments to be rescheduled prior to a final ruling. How hopeful are you?

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What I'm asking for is a right to appeal to the Appeals Chamber, for them to consider whether it was equitable and just for our trial chamber to refuse to look at our final brief by a majority. Frankly, I am not prepared to provide a fig leaf to this court whilst they ride roughshod over my client's rights. What am I suppose to do, sit in court and give some kind of credibility to what's going on when I know that it's a farce? I'm sorry, this is not the way in which a trial as important as this should be conducted and I'm not going to be party to it.

How do you feel about possibly being ruled in contempt of court and receiving a fine or prison sentence?

It's for the judges to decide whether they think it's the right thing to do, to be considering such punitive measures against me. That's out of my hands, if they wish to go ahead with that. There's nothing I can do about it.

TAGS: CHARLES TAYLOR - INTERNATIONAL CRIMINAL COURT - LIBERIA - SIERRA LEONE - WAR CRIMES

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COMMENTS

REACT TO THIS ARTICLE

BBC World Service Trust

Friday, 11 February 2011

Following the recent development in the ongoing trial of former president of Liberia Charles Taylor in the Hague, Taylor's lead defence lawyer Courtenay Griffiths on the 8th February, walked out of court saying he will not be part of the final trial brief because according to him, the court has not been fair with his client as their final trial brief was not accepted.

Taylor's defence council were twenty days behind the schedule time of submission. The court says it is a violation of court order for failing to submit their Final trial brief on time
Mr. Griffiths says the court has not been just to his client. Via telephone interview, the BBC World Service Trust Mariama Khai Fornah asked Mr. Griffiths from The Hague to explain what the reason for their late submission

GRIFFITHS: Well the delay was due to the fact that after the timetable was set by the Court on the 22nd of October of last year, a number of issues arose which we brought up with the Court. And by the 14th of January none of those issues had been resolved by the Court. And it's normal practice that one doesn't submit a final brief or argument until such time as all outstanding issues have been resolved by the Court. And that's why we didn't file by the 14th. [Indistinct] the delay was only 20 day, and in the context of a trial lasting three years, we think it's totally unreasonable of the Court to say they won't receive our final written brief.

Now Mr. Griffiths, this was something you should have filed earlier, but you did 20 days outside the deadline set by the Trial Chamber it its 22 October scheduling order.

GRIFFITHS: Yes, I appreciate that, but there was good reason for us not filing on the 14th, because at that time the Court had not decided on a number of motions [indistinct] matters which we wanted to include in our final brief. How could we complete that brief when there were so many outstanding issues?

What are some of these issues you are talking about here?

GRIFFITHS: Well for example, we had asked for the Court to allow us to re-open our case to call four witnesses about whom fresh information had come to light as to inducements received by them from the Prosecution. Furthermore, some code cables had been released in December which suggested that the Special Court for Sierra Leone was less than independent of the US Government, which is a point we've been making from the word go. So I think that it was perfectly reasonable for us to say to the Court, let us wait until these issues have been resolved before we can move to any kind of final arguments.

Mr. Griffiths, the Court is now seeing your actions as a wilful breach of Court orders.

GRIFFITHS: Yes, it's a matter of principle, because as far as we're concerned we are here to protect Mr. Taylor's interests, and his rights under Chapter 17 of the Statute which established this court guarantees him an adequate time and facility to prepare his case, and that is what we've been denied, which is why on that point of principle – it's not a question of ignoring a court order; it's a case of acting in the best interests of the Accused.

The Court's action, and remarks made by Justices Lussick and Doherty, was as a result of a response to your submission, that in the absence of your final brief you were not going to be part in the oral submission. How can you comment on this?

GRIFFITHS: Well the fact of the matter is, if the Judges are not prepared to listen to, or see our closing submission, it means then that they've totally rejected the Defence case. In that [aspect], why do I need to be in court? My presence there now serves no purpose, because they've already rejected our case.

Well now Mr. Griffiths, how is this going affect your client's case?

GRIFFITHS: Well, I mean, I think you should address that question to Justice Lussick and Justice Doherty, because effectively they're now going to decide on the guilt of Mr. Taylor without hearing an argument from us. So of course it's going to affect his case.

You are Mr. Taylor's Lead Counsel and you are speaking on behalf of your client. That's why I'm posing this question to you.

GRIFFITHS: Well, as I say, at the end of the day, when I was asked whether or not the position adopted by Justice Lussick and Justice Doherty reflects their view as to the guilt or innocence of Mr. Taylor. It may well be that they don't need to look at the Defence case because they've already decided he's guilty. I don't know.

Now the court is claiming that you are always in the habit of disobeying the court. Is that not a stain in your profession as Lead Counsel?

GRIFFITHS: No, no, no, no, there can be no suggestion that I'm in the habit of disobeying the Court. I have always cooperated with this tribunal from word go. That has always been the case. And when one compares the Taylor trial with other trials which have taken place, such as the trial of Mr. Milosevic, this trial has run extremely smoothly, and I think it's largely due to the very responsible way in which the Defence have behaved.

Mr. Griffiths, now, from the latest developments from the court in The Hague, you have been ordered that you be in court Friday by 11:30 Dutch time. What are you going to do there?

GRIFFITHS: Well I will attend because the court has ordered me to attend, and I'm not in the habit of disobeying court orders. I will be in attendance.

So what difference would this make, after you have walked out from the court on the 8th and now you are gong back to the court? What then are you going to do?

GRIFFITHS: Well, my position remains as it was on Tuesday when I walked out, that I am not going to, by my presence in court, add any credibility to proceedings which I consider are totally unjust. That remains my position.

Is there anything you may like our audience in Sierra Leone and Liberia to know with regards to the trial that I didn't ask you?

GRIFFITHS: Yes, I would like your audience to know that as far as I'm concerned, I think the two Judges that decided not to accept our closing brief have behaved totally unreasonably. I think the interests of justice demanded that they look at all sides of the story. That's a basic principle of natural justice, and one which these judges have totally disregarded.

That was the BBC WST Mariama Khai Fornah talking there to Taylor's lead defence counsel Courtenay Griffiths from The Hague.

ANNEX F

34771

Concord Times
Friday, 11 February 2011

As Charles Taylor boycotts trial, Sierra Leone's war-battered residents hope for justice

By Paige McClanahan (Credit: The Christian Science Monitor)

Former Liberian President Charles Taylor boycotted his war crimes trial in The Hague for a second day on Wednesday, further delaying the court's ruling on whether he bears responsibility for the civil war that ravaged the West African country of Sierra Leone for more than a decade.

It is the longest feature case in the international trial at the Special Court for Sierra Leone, established in 2002 to try those who bear the greatest responsibility for the war that terrorized the country in the 1990s. Proceedings have included testimony from Mr. Taylor along with testimony from British supermodel Naomi Campbell and American actor Mia Farrow.

But here in Sierra Leone's capital, Freetown, the public remains skeptical that the law will eventually catch up with Taylor, who faces 11 indictments on 11 counts, including murder, rape, sexual slavery, and the use of child soldiers.

"Charles Taylor is pretending to the world that he's innocent," says Theresa Tucay, a Sierra Leonean who lived through the country's gruesome 11-year civil war. "But he has to face the trial. He has to face the penalty." If you play evil," she adds, "it will come back for you."

The trial, which heard its first witness in January 2008, was set to close this year on Friday. Prosecutors are scheduled to give closing arguments Tuesday, and the defense was meant to do the same today. If closing arguments had not stayed on schedule this week, a ruling in the case could have been reached sometime later this year.

Taylor's boycott has thrown that schedule into disarray.

"This is about ego, not justice."

Taylor's lawyers led the walkout Tuesday, claiming the court wrongly rejected their 547-page trial summary, which was filed three weeks late despite multiple warnings from the court.

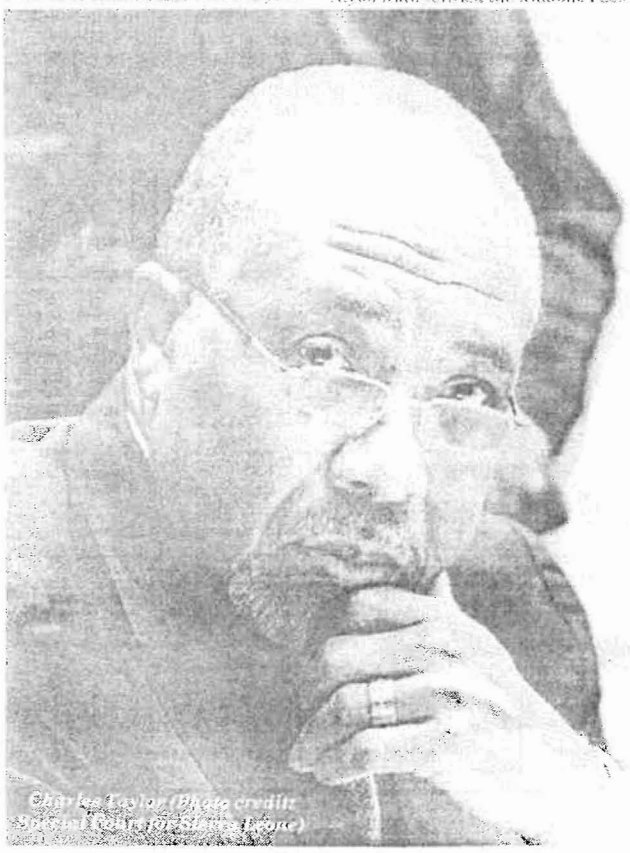
Speaking outside the courtroom Wednesday morning, Taylor's lead lawyer Courtenay Griffiths insisted that the court's refusal to accept the trial summary was evidence of its bias against the defense team. The British lawyer said he plans to appeal, a process that could delay a ruling in the case indefinitely.

"It's about simply this: 'You're not running this court, Mr. Taylor, and we're going to show you who's in charge by rejecting your final brief'," Mr. Griffiths said outside the court, reports the Associated Press. "So, this is about ego, not justice, and I really don't see that this kind of personalized politics has any part to play in a court of law."

Chief prosecutor Brenda Hollis shot back, claiming that Taylor's team was just trying to buy time. "The accused is not attending a social event. He may not R.S.V.P. at the last minute. He is the accused at a criminal proceeding," Ms. Hollis said.

Prosecutors claim that while Liberia's president from 1997 to 2004, Taylor effectively served as the commander of the Revolutionary United Front (RUF) – the rebel group that instigated Sierra Leone's civil war – from his base in Liberia, issuing orders and supplying the rebels with black market weapons. In exchange, the prosecution maintains, RUF

Contd page 11



Charles Taylor (Photo credit: [illegible])

34772

4

As Charles Taylor boycotts trial

From page 2

fighters brought Taylor a ready supply of rough diamonds that had been picked out of alluvial deposits in mineral-rich eastern Sierra Leone, which was under rebel control.

Testimony from Naomi Campbell and Mia Farrow

Witnesses who have taken the stand over the past three years have put a human face to the reports of atrocities perpetrated by the RUF.

A young woman told the court that she was raped repeatedly by the rebels and impregnated at the age of 11. A local man described having his hands cut off by a boy soldier who was just 13 years old. A former radio controller told the court about the RUF's "Operation Pay Yourself," the 1998 campaign in which soldiers were instructed to pillage the countryside for food, women, and supplies.

Taylor, who likes to show up in court wearing bespoke suits and gold cuff links, denies all the charges, at one point claiming they were part of a US conspiracy against him. He has also taken the witness stand, testifying on his own behalf for a full seven months.

Ms. Campbell made a brief appearance last summer to testify about the pouch of "dirty looking stones" that were presented to her by unnamed men after she met Charles Taylor at a dinner hosted by former South African president Nelson Mandela in 1997. Soon afterward, Ms. Farrow took to the stand to dispute Campbell's testimony.

'Let law take its course'

Back in Sierra Leone, there's not much sympathy for Taylor, the first African head of state to face an international criminal tribunal.

"[Taylor's] strongmen started this whole thing back in 1991," says Richard Koroma, a 31-year-old high school teacher in Makeni, the capital of Sierra Leone's Bombali District, which saw heavy fighting during the war.

The first combatants crossed into Sierra Leone over the country's southern border with Liberia, Mr. Koroma says. "They then began terrorizing villagers and taking control of the local diamond mines.

"They were Charles Taylor's former fighters," he says of the men who came from Liberia. "He's the one who sent them."

RUF soldiers shot at Koroma as he fled the town of Kono with family members in 1997. A bullet punctured his left calf, but he had to walk 40 miles before he reached safety.

Today, Koroma is ready to leave those nightmares behind him. His first child, a girl, was born on Feb. 4, and he's confident that Sierra Leone will have a peaceful future. As far as Charles Taylor is concerned, he just wants to move on.

"There's nothing that we can do to Charles Taylor that will be equal to what he has done to the people of Sierra Leone," Koroma says. "But let the law take its course."

ANNEX G

34774

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Former Liberian President Charles Taylor awaits the start of the prosecution's closing arguments

Charles Taylor's lawyer storms out of court

Calling the trial "a farce," Charles Taylor's lawyer stormed out of court Tuesday after judges refused to accept a written summary of the former Liberian president's defense at the end of his landmark war crimes case. British attorney Courtenay Griffiths ignored judges at the Special Tribunal for Sierra Leone who ordered him to stay in court after unprecedented angry exchanges erupted before closing arguments in the three-year case.

"How will posterity judge the credibility of this court if, at this 11th hour, they prevented Mr. Taylor from presenting ... 90 percent of his closing arguments?" Griffiths said outside court. "We have decided not to participate in these closing arguments because as far as we are concerned it is a complete farce."

But prosecutor Brenda Hollis argued that neither Taylor nor his lawyers had the right to walk out.

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Charles Taylor's

"The accused is not attending a social event. He may not R.S.V.P. at the last minute," Hollis said. "He is the accused at a criminal proceeding."

Taylor himself initially remained in court as Hollis began summing up the prosecution case, but did not return after a break.

Claire Carlton-Hanciles, an independent defense lawyer who is not part of Taylor's team, said Taylor told officials "he was very upset and needed some rest."

Griffiths said Taylor had wanted to walk out with him earlier, but guards refused to let him leave. "It would have been unseemly" for Taylor to struggle with the guards, Griffiths said. The courtroom fireworks were ignited Monday, when the three-judge panel issued a majority decision rejecting Taylor's final brief in which his lawyers summed up their defense case, because it was filed 20 days after their Jan. 14 deadline.

Ugandan Judge Julia Sebutinde dissented, warning that refusing to accept Taylor's brief "is to deny him his fundamental right to defend himself."

Griffiths said he would file an appeal later Tuesday against the trial chamber's decision to reject the summation. He said he would not appear in court Wednesday as scheduled to present his closing arguments. It was not clear when the appeals chamber would rule on Griffiths' appeal, but the trial continued without Taylor or Griffiths.

Presiding Judge Teresa Doherty said Taylor had voluntarily waived his right to be present. "This court case will proceed to its close as scheduled," she said.

Griffiths argued earlier that he could not submit the defense summary on time because the court had not ruled on several outstanding motions, including one challenging the U.N.-backed court's independence based on diplomatic cables released by WikiLeaks. In one leaked cable from the U.S. Embassy in the Liberian capital, Monrovia, diplomats warned that if Taylor is acquitted and returns to Liberia it could destabilize the country's fragile peace. "The best we can do for Liberia is to see to it that Taylor is put away for a long time" said the cable, dated March 10, 2009. It also suggested that building a case against Taylor in the U.S. could be one way of ensuring he does not return to Liberia should he be acquitted by the Sierra Leone tribunal.

Griffiths said the cable showed the tribunal is not independent "because the Americans are already putting in place contingency plans so if Mr. Taylor is acquitted they will put him on trial again in the United States."

Taylor, the first former African head of state to be tried by an international court, has pleaded innocent to 11 charges of war crimes and crimes against humanity, including murder, torture and using child soldiers. Prosecutors allege he armed and supported brutal rebels responsible for many of the worst atrocities of Sierra Leone's civil war, which left tens of thousands of people dead and many more mutilated after enemy fighters hacked off their limbs, noses or lips. Continuing to sum up her case in Griffiths' absence, Hollis laid the blame for the atrocities firmly at Taylor's feet, saying he used the rebels to pillage Sierra Leone's mineral wealth and in particular its diamonds.

"Charles Taylor, this intelligent, charismatic manipulator, had his proxy forces ... carry out these crimes against helpless victims in Sierra Leone," she said. "All this suffering, all these atrocities, to feed the greed and lust for power of Charles Taylor."

Hollis reviewed for the judges some of the war's worst atrocities as described by witnesses, including a villager forced to carry a sack full of severed heads, and "civilians being forced to watch as a child is buried alive and the mother is forced to laugh."

Taylor and his rebels "were the gods," Hollis said. "They decided life, they decided death."

Taylor, however, in months testifying on his own behalf, cast himself as a statesman who tried to pacify Western Africa. Taylor boycotted the opening of his trial in June 2007 and fired his defense team, saying he had not had enough time to prepare his defense. The trial got under way again six months later with the first witness.

"We have seen this attempt at manipulation of the proceedings at the beginning and now we are seeing it at the end," Hollis said.