

NOTING that the Office of the Prosecutor (“Prosecution”) filed its pre-trial brief on 5 March 2004, in accordance with the Trial Chamber’s Order;[\[1\]](#)

NOTING that the Defence for the Accused Kanu has filed its Defence Pre-Trial brief on 22 March 2004, in which, the Defence reserves its right to file additional arguments in support of the brief, due to the fact that disclosure of witnesses statements by the Prosecution is still ongoing;[\[2\]](#)

NOTING that the Trial Chamber ordered that the pre-trial briefs of each Defence team for the RUF and the CDF be filed two weeks prior to the date of the commencement of trials;[\[3\]](#)

NOTING that in paragraph 1 of its pre-trial brief, the Prosecution states that the pre-trial brief is filed “to provide a preliminary indication as to the factual allegations and the points of law and legal issues pertinent to the case against all three accused persons”;

NOTING that the Prosecution had provided notice in the pre-trial brief that it would submit a request to the Trial Chamber for permission to file an additional more comprehensive pre-trial brief;

NOTING that all defence counsel submitted at the Status Conference of 8 March 2004 that they were not in a position to comment on the Prosecution pre-trial brief;

CONSIDERING that Rule 73 *bis* (“Pre-Trial Conference”) of the Rules provides, in part: “(B) At the Pre-Trial Conference the Trial Chamber or a Judge designated from among its members *may* order the Prosecutor, within a time limit set by the Trial Chamber or the said Judge, and before the date set for trial, to file the following: (i) A pre-trial brief addressing the factual and legal issues” (emphasis added);[\[4\]](#)

CONSIDERING that the Order of 13 February 2004 was made under Rule 54 and Rule 73 *bis* of the Rules;

CONSIDERING that each party is to address factual and legal issues in its pre-trial brief for the purposes of, *inter alia*, assisting the Trial Chamber in determining contested issues of fact and law;

CONSIDERING the purpose of a pre-trial brief is to provide the opposing party and the Trial Chamber with notice and an overview of the case to be presented at trial, including an indication of the evidence (testimonial and documentary) that will be relied upon in establishing its case;[\[5\]](#)

CONSIDERING the right of all accused, including accused who are jointly indicted and tried, to be informed of the nature and cause of the charges against him individually, and to have adequate time and facilities to prepare his defence;

CONSIDERING that the Trial Chamber, and indeed opposing counsel, will be more greatly assisted by a well-prepared, detailed pre-trial brief than a pre-trial brief drafted without the benefit of extensive disclosure and sufficient pre-trial preparation;

RECALLING the Trial Chamber's decision to hold separate joint trials for the alleged members of the RUF and the alleged members of the ARFC;[\[6\]](#)

FINDING that the Prosecution pre-trial brief is essentially in conformity with Rule 73 *bis* (B)(i) in relation to legal issues;

FINDING FURTHER however, that the Prosecution pre-trial brief does not sufficiently address factual issues;

FINDING ALSO that the Prosecution pre-trial brief does not provide the Defence or the Trial Chamber, with reasonable sufficiency, of notice and an overview of the Prosecution's case against each individual accused, and particularly the nexus between the crimes alleged and the alleged individual criminal responsibility of each individual accused;

FINDING THEREFORE that it will be of assistance to the Defence and the Trial Chamber, and in the interests of conducting a fair and expeditious trial, to receive a supplemental Prosecution pre-trial brief addressing, with reasonable sufficiency, the issues herein before highlighted;

FINDING, in addition, that it is in the interest of justice to revise the Order of 13 February 2004 in relation to the date for filing pre-trial briefs by the Defence also in this case;

HEREBY ORDERS *proprio motu*, that:

1. The Prosecution shall file a Supplemental Pre-Trial Brief on or before 22 April 2004;
2. The Supplemental Pre-Trial Brief shall:
 - a. Include references to the evidence, both testimonial and documentary, upon which the Prosecution will rely to establish the factual allegations set out in the Indictment and the Prosecution pre-trial brief of 5 March 2004;
 - b. Elaborate on the specific case against each individual accused, with particular attention given to the alleged nexus between each accused and the alleged crimes; and
 - c. Further distinguish between the case against alleged members of the RUF and the AFRC, to the extent possible, in light of the Joinder Decisions.

ORDERS that the pre-trial briefs shall be filed by Counsel for Alex Tamba Brima and Brima Bazzy Kamara two weeks prior to the date for the commencement of trial;

FURTHER ORDERS that Counsel for Santigie Borbor Kanu shall file any supplement to its pre-trial brief, if he wishes to do so, two weeks prior to the date for the commencement of trial.

Done at Freetown this 1st day of April 2004

Judge Bankole Thompson Judge Benjamin Mutanga Itoe Judge Pierre Boutet
Presiding Judge,

[1] Prosecution Pre-Trial Brief pursuant to Order for Filing Pre-Trial Briefs (Under Rule 54 and 73bis) of 13 February 2004, 5 March 2004.

[2] Defence Pre-Trial Brief and Notification of Defenses pursuant to Rule 67(A)(ii)(a) and (b), 22 March 2004, para. 2.

[3] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Revised Order for the Filing of Defence Pre-Trial Briefs, 12 March 2004; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-13-PT, Revised Order for the Filing of Defence Pre-Trial Briefs, 22 March 2004.

[4] As is clear from this provision, the Trial Chamber recalls that it is fully within its discretion to determine when a pre-trial brief is filed. Accordingly, the Trial Chamber finds that the Prosecution's comments prefacing its pre-trial brief of 5 March 2004, in which it submitted that "[i]n accordance with Rule 73 *bis*, the Prosecution would have expected to file its Pre-Trial Brief upon order from the Chamber after the holding of a Pre-Trial Conference", to be misconceived.

[5] In this respect, the Trial Chamber highlights the distinct purposes and requirements for an indictment, including that it must plead the material facts underpinning the charges contained therein so as to provide the accused with notice of the case against him, and a pre-trial brief, which should address the specific factual issues underpinning those charges, including an indication of the evidence that will be relied upon to establish those facts.

[6] See, e.g., *Prosecutor v. Alex Tamba Brima*, Case No. SCSL-03-06-PT, Decision and Order on Prosecution Motions for Joinder, 27 January 2004 ("Joinder Decisions") paras 38-48.