

SPECIAL COURT FOR SIERRA LEONE
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THE TRIAL CHAMBER

Before:	Judge Bankole Thompson Judge Benjamin Mutanga Itoe Pierre Boutet	
Registrar:	Robin Vincent	
Date:	1 April 2004	
PROSECUTOR	Against	Sam Hinga Norman Moinina Fofana Allieu Kondewa (Case No.SCSL-04-14-PT)

**ORDER TO THE PROSECUTION TO FILE
A SUPPLEMENTAL PRE-TRIAL BRIEF**

Office of the Prosecutor:

Luc Côté
James Johnson

Defence Counsel for Sam Hinga Norman:

James Jenkins-Johnston

Defence Counsel for Moinina Fofana:

Michiel Pestman

Defence Counsel for Allieu Kondewa

Charles Margai

THE TRIAL CHAMBER (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);

RECALLING the Trial Chamber’s “Order for Filing Pre-Trial Briefs” of 13 February 2004, in which it ordered that the Office of the Prosecutor (“Prosecution”) file a pre-trial brief on or before 2 March 2004, pursuant to Rule 54 and Rule 73 bis (F) of the Rules of Procedure and Evidence of the Special Court (“Rules”);

NOTING that the Office of the Prosecutor (“Prosecution”) filed its pre-trial brief on 2 March 2004, in accordance with the Trial Chamber’s Order;

NOTING the Revised Order for the Filing of Defence Pre-Trial Briefs of 22 March 2004, in which the Trial Chamber ordered that the pre-trial briefs of each Defence team be filed two weeks prior to the date of the commencement of trial;

NOTING that the Defence for Accused Allieu Kondewa filed a pre-trial brief on 22 March 2004 (“Kondewa Pre-Trial Brief”);

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 submitted in its Pre-Trial Brief that should it becoming necessary following any future Status Conferences or the Pre-Trial Conference, it will seek permission to file “a more comprehensive Pre-Trial Brief”;

NOTING that the submissions by the Defence at the Status Conference on the subject of pre-trial briefs were directed more to the readiness of the Defence to file their pre-trial briefs, in light of current disclosure, rather than to the sufficiency of the Prosecution pre-trial brief;

NOTING FURTHER the submissions in the Kondewa Pre-Trial Brief on the sufficiency or insufficiency of the Prosecution pre-trial brief;[\[1\]](#)

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);[\[2\]](#)

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 that case;[\[3\]](#)

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;

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;

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 2 March 2004; and
 - 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.

Done at Freetown this 1st day of April 2004

Judge Bankole Thompson
Presiding Judge,
Trial Chamber

Judge Benjamin Mutanga Itoe

Judge Pierre Boutet

[Seal of the Special Court for Sierra Leone]

[1] See, Kondewa Pre-Trial Brief, paras 2-3.

[2] 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 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.

[3] 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.

