



SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

BEFORE THE DESIGNATED JUDGE

Before: Hon. Justice Bankole Thompson, Designated Judge

Registrar: Mr. Lovemore G. Munlo, S.C.

Date: 16th of March, 2006

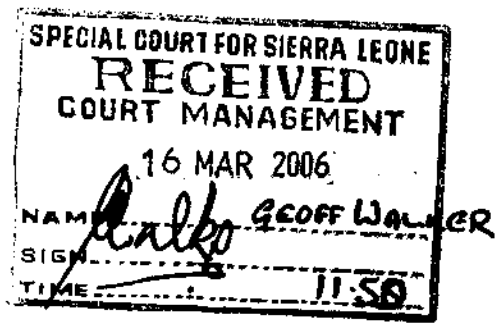
PROSECUTOR **Against** **CHARLES GHANKAY TAYLOR**
(Case No.SCSL-03-01-I)

Confidential and *Ex-Parte* Document

DECISION ON PROSECUTION'S APPLICATION TO AMEND INDICTMENT AND ON APPROVAL OF AMENDED INDICTMENT

Office of the Prosecutor:

Desmond de Silva, Q.C.
Christopher Staker
James C. Johnson
Brenda J. Hollis



I, HON. JUSTICE BANKOLE THOMPSON, sitting as Designated Judge pursuant to Rule 50 of the Rules of Procedure and Evidence (“Rules”) of the Special Court for Sierra Leone (“Special Court”);

NOTING the Indictment filed by the Office of the Prosecutor (“Prosecution”) against Charles Ghankay Taylor, also known as Charles Ghankay Macarthur Dakpana Taylor (“Charles Taylor”) on the 3rd of March, 2003;

SEIZED of the “Prosecution Motion for Leave to Amend the Indictment and for Approval and Non-Disclosure of the Amended Indictment”, filed confidentially and *ex-parte* by the Prosecution on the 6th of March, 2006 (“Motion”);

NOTING the “Decision Approving the Indictment and Order for Non-Disclosure” of the 7th of March, 2003;

NOTING the “Warrant of Arrest and Order for Transfer and Detention” of the 7th of March, 2003 (“Warrant of Arrest”);

NOTING the “Order for the Disclosure of the Indictment, the Warrant of Arrest and Order for Transfer and Detention and the Decision Approving the Indictment and Order for Non-Disclosure” of the 12th of June, 2003;

MINDFUL OF the Appeals Chamber “Decision on Immunity From Jurisdiction” of the 31st of May, 2004;

HAVING HEARD the Prosecution during an *Ex-Parte* hearing held in Chambers on the 15th of March, 2006;

PURSUANT to Article 17 of the Statute of the Special Court and Rule 8, 26bis, 47, 50, 52, 53, 54, 55, 56 of the Rules;

HEREBY ISSUE THE FOLLOWING DECISION:

I. PROCEDURAL BACKGROUND

1. An Indictment (referred to in this Decision as the “Original Indictment”) and a Warrant of Arrest against Charles Taylor were approved by me, sitting as Designated Judge pursuant to Rule 28



of the Rules,¹ on the 7th of March, 2003, when he was Head of State of the Republic of Liberia in consequence of an application by the Prosecution pursuant to Rule 47 of the Rules. On the 4th of June, 2003, at the request of the Prosecutor, they were transmitted to the appropriate authorities in the Republic of Ghana, where Charles Taylor was on an official visit, but proved ineffective in securing his apprehension. Subsequently, the orders for the non-disclosure of the said Indictment and the Warrant of Arrest were rescinded and the said documents made public.²

2. On the 23rd of July, 2003, Charles Taylor filed a Motion seeking an order that the said Indictment against him be quashed and that the Warrant of Arrest be declared null and void on the grounds that, in his capacity as Head of State of the Republic of Liberia, he enjoyed immunity from the jurisdiction of the Special Court.³ The said Motion was deemed to be a Preliminary Motion pursuant to Rule 72 of the Rules and, after oral arguments was subsequently dismissed by the Appeals Chamber on the 31st of May, 2004 for lack of merit.⁴

3. Since August 2003, Charles Taylor has ceased to be the Head of State of the Republic of Liberia and is reportedly in Nigeria.

II. DELIBERATION

4. It is necessary to begin this part of this Decision by noting that the Original Indictment preferred against Charles Taylor by the Prosecutor of the Special Court, which I approved on the 7th of March, 2003 charged him with Crimes Against Humanity, Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II and Other Serious Violations of International

¹ *Prosecutor against Charles Taylor*, Case No. SCSL03-1-I, Order Designating a Rule 28 Judge and Authorizing the Exercise of His Functions Away from the Seat of the Special Court, 7 March 2003.

² *Id.*, Order for the Disclosure of the Indictment, the Warrant of Arrest and Order for Transfer and Detention and the Decision Approving the Indictment and Order for Non-Disclosure, 12 June 2003.

³ *Id.*, Applicant's Motion made under Protest and without waiving of Immunity accorded to a Head of State President Charles Ghankay Taylor requesting that the Trial Chamber do quash the said approved indictment of 7th March 2003 of Judge Bankole Thompson and that the aforesaid purported Warrant of Arrest and Order for Transfer and detention of the same date issued by Judge Bankole Thompson of the Special Court for Sierra Leone, and all other consequential and related ORDER(S) granted thereafter by either the said Judge Bankole Thompson OR Judge Pierre Boutet on 12th June 2003 against the person of the said President Charles Ghankay Taylor be declared null and void, invalid at their inception and that they be accordingly cancelled and/OR set aside as a matter of Law, 23 July 2003.

⁴ *Prosecutor against Charles Taylor*, Case No. SCSL03-1-I-AR72(E), Decision on Immunity from Jurisdiction, 31 May 2004. See also *Prosecutor against Charles Taylor*, Case No. SCSL03-1-I, Order Pursuant to Rule 72(E): Defence Motion to quash the indictment and to declare the Warrant of Arrest and all other consequential orders null and void, 19 September 2003.

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Humanitarian Law.⁵ The Prosecution now seeks leave to amend the said indictment pursuant to Rule 50 of the Rules.

5. I am now seized of this Motion as the Designated Judge of this Trial Chamber who reviewed and approved the Original Indictment pursuant to Rule 47(E) of the Rules. As a matter of law, interpreted conjunctively in their plain and ordinary sense, Rule 47(E) and Rule 50 require that the Amended Indictment be also approved.

6. My judicial recollection of the applicable legal test in approving the Original Indictment is that prescribed by Rule 47(E). It is a two-prong conjunctive test, namely:

- (i) that the indictment charges the suspect with a crime or crimes within the jurisdiction of the Special Court; and
- (ii) that the allegations in the Prosecution's case summary would, if proven, amount to the crime or crimes particularised in the indictment.⁶

7. Since the approval of the Original Indictment, there has been some judicial guidance on the procedural steps for review and approval of an indictment within the jurisdiction of the Special Court for Sierra Leone. Instructively, Trial Chamber I in its *Decision On The Preliminary Defence Motion On The Lack of Personal Jurisdiction Filed On Behalf of Accused Fofana*, reasoned thus:

The Chamber notes that the next procedural step is that the Judge designated to review the indictment receives the "indictment and accompanying material" from the Registrar. He or she shall conduct a review of this material "to determine *whether* the indictment should be approved," in the Chamber's view. The final procedural step is that the Designated Judge shall approve the indictment "if" he or she is satisfied that certain conditions have been met, namely, that the indictment charges the suspect with a crime or crimes within the jurisdiction of the Special Court, and that the allegations in the Prosecutor's case summary would, if proven, amount to a crime or crimes as particularised in the indictment. The Designated Judge may approve or dismiss each count.⁷

⁵ *Prosecutor against Charles Taylor*, Case No. SCSL03-01-I, Decision Approving the Indictment and Order for Non-Disclosure, 7 March 2003.

⁶ *Id.*, page 1.

⁷ *Prosecutor against Sam Hinga Norman, Moinina Fofana and Allieu Kondewa*, Case No. SCSL04-14-PT, Decision On The Preliminary Defence Motion on the Lack of Personal Jurisdiction Filed on Behalf of Accused Fofana, 3 March 2004, para. 30.



8. Significantly, also, the Appeals Chamber of this Court in a recent Decision had this to say as regards the applicable test prescribed by Rule 47(E):

...The indictment was reviewed under Rule 47(E) by a designated judge for the purpose of ensuring that the crimes it charged were within the jurisdiction of the court and that allegations made by the Prosecution “would if proven, amount to the crime or crimes as particularised in the Indictment.” This exercise does not, as in certain other courts, require a judicial finding of a *prima facie* case: the judge is concerned only to ensure that the particulars which the Prosecution claims it can prove would amount to a triable offence.⁸

9. Guided by the foregoing exposition of the law as to the applicable test prescribed by Rule 47(E) and the requisite procedural steps, I now proceed to consider the merits of the instant application for leave to amend the Original Indictment. In doing so, let me first recall the rationale behind the Prosecution’s Motion for leave to amend the Original Indictment. It derives essentially from a four-fold observation on the original indictments made by the Appeals Chamber in the Decision referred to earlier. The first is that a case summary accompanying an indictment does not form part of the indictment and therefore is not susceptible to amendment.⁹ The second is that the indictments presented by the Prosecution before the Special Court were “overloaded” with particulars.¹⁰ The third is that “it can only serve the interests of justice to permit the Prosecution to reconsider and refine its case in the pre-trial period.”¹¹ The fourth is the need for strict compliance with Rule 47(C) in framing the indictment, by first setting out the statement of offence followed immediately thereafter by the particulars of offence. Furthermore, the primary purpose behind the proposed amendment can be deduced from this passage in the Prosecution’s Motion:

“As a result of these ongoing investigations, and with reference to the evidence that has been adduced at the trials of the AFRC and RUF accused, the evidentiary posture of the case against the Accused has been refined. It is primarily for this reason that the Prosecution moves to amend the Indictment against this Accused to allow the Amended Indictment to reflect this refined evidentiary posture.”¹²

⁸ *Prosecutor against Sam Hinga Norman, Moinina Fofana and Allieu Kondewa*, Case No. SCSL-04-14-AR73, Decision on Amendment of the Consolidated Indictment, 16 May 2005, para 49.

⁹ See *id.*, paras 50-53 and 78.

¹⁰ *Id.*, para. 53.

¹¹ *Id.*, para 53.

¹² Motion, para. 12.

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10. The Prosecution also asserts that the proposed amendments include the deletion of certain terms such as “but not limited to” which this Chamber had earlier held to be “impermissibly vague”, and other minor amendments of an editorial nature.¹³ Also very significant is the Prosecution’s averment that the proposed Amended Indictment contains no additional counts to the Original Indictment and that in fact certain counts contained in the Original Indictment have been deleted from the proposed Amended Indictment.

III. CONCLUSION

11. Bearing in mind the applicable test prescribed by Rule 47(E) and the rationale behind the proposed amendments as articulated in the Prosecution’s Motion Paper, I have reviewed and considered the proposed Amended Indictment (Attachment A to the Motion), summary of proposed Amendments to the Original Indictment (Attachment B to the Motion), the Case Summary accompanying the Proposed Amended Indictment (Attachment C to the Motion) alongside the Original Indictment, and after hearing the Prosecution, I am satisfied that (i) the proposed Amended Indictment charges the suspect with crimes within the jurisdiction of the Special Court for Sierra Leone; (ii) the allegations in the Prosecution’s Case Summary would, if proven, amount to crimes particularised in the proposed Amended Indictment; in effect, that the particulars of the crimes as embodied in the Amended Indictment in respect of each count which the Prosecution claims it can prove would, if proven, amount to triable offences; (iii) the requirements of Rule 47 have been complied with; (iv) the proposed Amended Indictment complies with Rule 47(C).

12. Being thus satisfied, I accordingly approve the Amended Indictment presented for review, and grant leave to the Prosecutor to amend the Original Indictment by substituting for the said Original Indictment, the Amended Indictment, recognising that it does serve the interests of justice for the proposed amendments to be granted at this early stage during the pre-trial phase of the proceedings as there is no conceivable prejudice to the Accused resulting from granting leave to amend.

IV. DISPOSITION

13. Convinced, therefore, of the merits of the Prosecution’s Motion herein, I, sitting as Designated Judge, pursuant to Rules 47, 50(A), 52, 53(A) and (B), 56, and other relevant rules, **HEREBY GRANT LEAVE** to the Prosecution to amend the Original Indictment dated the 7th day of

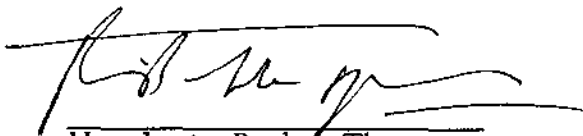
¹³ See, for example, *Prosecutor against Issa Hassan Sesay*, Case No. SCSL03-05-PT, Decision and Order on Defence

March, 2003 preferred against Charles Ghankay Taylor also known as Charles Ghankay Macarthur Dakpana Taylor by substituting for the said Original Indictment, which shall accordingly be marked "not to be proceeded with", the Amended Indictment which is annexed to the Motion as Attachment A;

AND MAKE THE FOLLOWING ORDERS

1. that the Prosecution file a signed copy of the Amended Indictment, accompanied by the Case Summary, with the Registry of the Special Court by no later than Monday, the 20th of March, 2006;
2. that there be no public disclosure of the Amended Indictment until it is served on the Accused or upon further order of the Special Court;
3. that the existing Warrant of Arrest in respect of the Accused shall remain valid and continue to be in force in the respect of the offences charged;
4. that the Registry transmit the said existing Warrant of Arrest to the specific States and relevant international bodies as may be indicated by the Prosecutor through the Registrar;
5. that the Accused be served with a copy of the Amended Indictment, together with a copy of the present Decision, at the time he is taken into custody or as soon as possible thereafter, in accordance with Rule 52.

Done in Freetown, Sierra Leone, this 16th day of March, 2006



Hon. Justice Bankole Thompson
Designated Judge



Preliminary Motion on Defects in the Form of the Indictment, 13 October 2003.