

TRIAL CHAMBER II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court"), composed of Justice Richard Lussick, Presiding Judge, Justice Teresa Doherty and Justice Julia Sebutinde;

SEISED of the Urgent Prosecution Motion for Relief in Respect of Violations of the Trial Chamber's Order of 26 April 2006, filed on 29 August 2006 ("Motion"), in which the Prosecution seeks an order for expedited filings and submits that the Defence is in violation of the Trial Chamber's Order of 26 April 2006, in particular that:

- (i) the Defence for the Accused Brima and Kamara did not file any summaries for their respective individual witnesses¹ and consequently should be ordered either to disclose immediately to the Prosecution the statements of these witnesses or to file the summaries of all individual witnesses they intend to call, by 8 September 2006;
- (ii) the Defence has departed from the call order of common witnesses contained in the original witness list² and should be ordered to adhere to that call order; to drop from the final witness list³ any witnesses who do not appear on the original witness list, and to drop any witnesses who appear on the original witness list but not on the final witness list; and
- (iii) in their final list of common expert witnesses⁴ the Defence unilaterally changed their original list of expert witnesses⁵ and should be ordered to show good cause for the changes;

NOTING the Kanu Defence Response to the Prosecution Motion, filed on 1 September 2006 ("Kanu Response"), in which the Defence for the Accused Kanu oppose the Motion and submit that:

- (i) the Prosecution is not entitled to the statements of common witnesses in respect of whom the Defence has already disclosed summaries⁶ and that an order to this effect would prejudice the Kanu Defence;
- (ii) having been granted leave to file a final list of witnesses including experts, by 21 August 2006, the Defence is under no legal obligation to justify the changes in their list of common expert witnesses⁷; and
- (iii) the Kanu Defence fulfilled the requirements with regard to the call order of common witnesses contained in the original witness list, and that the Motion as relates to the

¹ Confidential Joint Defence Disclosure of Individual Witnesses for the 1st and 2nd Accused Pursuant to the Order of the Trial Chamber II, 21 August 2006.

² Confidential Joint Defence Disclosure Pursuant to Trial Chamber Order of 26 April 2006, **Annex 1**, filed 10 May 2006 ("Original Witness List").

³ Confidential Kanu- Defence Filing of Witness List Pursuant to Trial Chamber Order of 17 May 2006, **Annex B**, filed on 21 August 2006 ("Final Common Witness List").

⁴ Confidential Kanu- Defence Filing of Witness List Pursuant to Trial Chamber Order of 17 May 2006, **Annex C**.

⁵ Confidential Joint Defence Disclosure Pursuant to Trial Chamber Order of 26 April 2006 filed 10 May 2006, **Annex 2**.

⁶ Witnesses DAB-014, DAB-112, DAB-126, DAB-111, DAB-142, DBK-113, DBK-060, DBK001 and DBK-064.

⁷ Confidential Kanu Defence Filing of Witness List Pursuant to Trial Chamber Order of May 2006, filed 21 August 2006, **Annex C**.





third Accused is frivolous within the meaning of Rule 46(C) of the Rules of Procedure and Evidence ("Rules");

NOTING the Prosecution Reply to the Kanu Response, filed on 6 September 2006 ("Prosecution Kanu Reply");

NOTING the Joint Response of the Brima and Kamara Defence to the Prosecution Motion, filed on 8 September 2006 ("Brima and Kamara Response"), in which the Defence for Brima and Kamara:

- (i) concede that they did not disclose the summaries for their respective individual witnesses in their final list of individual witnesses⁸, and undertake to do so at least 21 days before the testimony of each witness; and
- (ii) submit that the Prosecution is not prejudiced by a change in the original call order of Defence witnesses;

NOTING the Prosecution Reply to the Brima and Kamara Response, filed on 11 September 2006 ("Prosecution Brima and Kamara Reply");

RECALLING the Trial Chamber's Order for Disclosure Pursuant to Rule 73^{ter} and the Start of the Defence Case dated 26 April 2006 ("the 26 April Order") requiring the Defence to file on or before 10 May 2006, *inter alia*:

- "(a) A list of witnesses which each Defence Team intends to call, including:
 - (i) the order in which the Defence team intend to call the witnesses,
 - (ii) the name and/or nickname, date of birth (if known), and occupation of each witness;
 - (iii) the language spoken by each witness;
 - (iv) a summary of the facts on which each witness will testify;
 - (v) the points in the Indictment as to which each witness will testify;
 - (vi) the estimated length of time required for each witness;
- (b) A list of expert witnesses with an indication of when their report will be disclosed to the Prosecution."

RECALLING also the Decision on Confidential Joint Defence Motion as to Inability to Provide Details of Certain Witnesses on 10 May 2006 and Anticipated Subpoenas *Ad Testificandum*, dated 17 May 2006 ("the 17 May Order") granting the Defence leave to file their final witness list pursuant to the 26 April Order on or before Monday, 21 August 2006;

RECALLING that the extension of time for filing a final Defence witness list, referred to in 17 May Order applied to not only the ordinary witnesses but also to expert witnesses⁹;

⁸ Confidential Joint Defence Disclosure of Individual Witnesses for the 1st and 2nd Accused Pursuant to the Order of the Trial Chamber II, 21 August 2006.

RECALLING also the Trial Chamber's Oral Decision of 11 July 2006 in which the Trial Chamber held that:

"There is no blanket right for the Prosecution to see the witness statement of a defence witness. The Prosecution has the power only to apply for disclosure of a statement after the witness has testified, with the Chamber retaining the discretion to make a decision based on the particular circumstances in the case at hand";¹⁰

CONSIDERING that as at the time of this Decision, the Defence for the Accused Brima have called all their individual witnesses;

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone ("Statute") and of Rules 73, 73ter and 94bis of the Rules;

FINDS as follows:

- (i) that there is no basis for the Motion to be treated as urgent;
- (ii) that the Defence for Brima and Kamara did not in their final list of individual witnesses¹¹ disclose the summaries for their individual witnesses, in breach of the Trial Chamber's 26 April 2006 Order, but have since disclosed a number of such summaries¹²;
- (iii) that the Defence, having been granted leave to file their final witness list including witness call order, by Monday 21 August 2006, was entitled to change the call order of its witnesses in its final witness list, provided the Prosecution is notified at least 21 days before a witness is called to testify; and
- (iv) that the Defence, having been granted leave to file their final witness list inclusive of expert witnesses, by Monday 21 August 2006, was entitled to make changes in their final expert witness list, provided the Defence comply with the provisions of Rule 94bis (A) of the Rules;

FOR THE ABOVE REASONS

¹⁰ In its 17 May Order, the Trial Chamber took into consideration the contents of the Memorandum (Annex 1) attached to the Confidential Joint Defence Motion as To Inability to Provide Details of Certain Witnesses on 10 May 2006 and Anticipated Subpoenas Ad Testificandum, dated 17 May 2006. This Memorandum particularly addresses the issue of expert witnesses.

¹¹ Prosecutor v. Brima, Kamara and Kanu, Case No. SCSL-04-16-T, Oral Ruling on the Disclosure of the Witness Statement of Witness Number DBK-094 to Prosecution, recorded at Transcript page 113, line 11; page 115, lines 24 and 29 and page 116, lines 1-2 and 7-10.

¹² Confidential Joint Defence Disclosure of Individual Witnesses for the First and Second Accused Pursuant to the Order of the Trial Chamber II, 21 August 2006

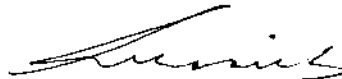
¹³ Confidential Joint Defence Disclosure of Individual Witness Summaries for the First and Second Accused, filed on 11 September 2006, in which the Defence for Brima and Kamara disclosed 12 and 10 individual witness summaries respectively; the Confidential Brima Defence Individual Witness Summaries, filed on 25 September 2006, in which the Defence for Brima disclosed 2 witness summaries and the Confidential Kamara Defence Individual Witnesses summaries, filed on 29 September 2006 in which the Kamara Defence disclosed five summaries.

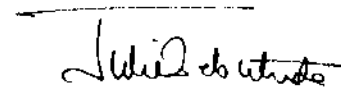
GRANTS THE MOTION IN PART and orders that the Defence for the Accused Kamara file on or before 12 October 2006 the remaining summaries of their individual witnesses and that any witness whose summary has not been filed by that date shall be deemed to have been dropped from the witness list; and

DISMISSES the Motion in all other respects.

Done at Freetown, Sierra Leone, this 5th day of October 2006.


Justice Teresa Doherty


Justice Richard Lussick
Presiding Judge


Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]

