

SPECIAL COURT FOR SIERRA LEONE

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TRIAL CHAMBER II

Before: Justice Julia Sebutinde, Presiding Judge
Justice Richard Lussick
Justice Teresa Doherty

Registrar: Lovemore G. Munlo, SC

Date: 23 January 2007

PROSECUTOR

Against

**Charles Ghankay Taylor
(Case No.SCSL-03-1-PT)**

**JOINT DECISION ON DEFENCE MOTIONS ON
ADEQUATE FACILITIES AND ADEQUATE TIME
FOR THE PREPARATION OF MR. TAYLOR’S DEFENCE**

Office of the Prosecutor:

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

SEISED of the “Defence Motion on Adequate Facilities for the Preparation of Mr. Taylor’s Defence” (“First Motion”), filed on 15 December 2006;¹

ALSO SEISED of the “Defence Motion on Adequate Time for the Preparation of Mr. Taylor’s Defence” (“Second Motion”), filed on 15 December 2006;²

NOTING the “Prosecution Response to ‘Defence Motion on Adequate Facilities for the Preparation of Mr. Taylor’s Defence’” (“Response to First Motion”), filed on 8 January 2007, and the “Prosecution Response to ‘Defence Motion on Adequate Time for the Preparation of Mr. Taylor’s Defence’” (“Response to the Second Motion”), filed on the same date³;

NOTING the correspondence dated 9 January 2007, in which the Trial Chamber was informed by the Defence that it will not file a reply to either the Response to the First Motion or the Response to the Second Motion;⁴

CONSIDERING that it is appropriate to issue a Joint Decision on both Motions, as the Defence bases part of its arguments contained in the Second Motion on those in the First Motion;⁵

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”), Rule 73 of the Rules of Procedure and Evidence (“Rules”) and of Article 26 of the Directive on Assignment of Counsel;

HEREBY DECIDES AS FOLLOWS based solely on the written submissions of the parties.

I. SUBMISSIONS

1. Adequate Facilities

Defence

1. The Defence submits that although the allocation of facilities and equipment for the preparation of the Defence case is primarily the administrative responsibility of the Office of the Principal Defender (“OPD”) under the authority of the Registrar, the Trial Chamber has inherent jurisdiction to entertain the First Motion in order to ensure that “the resources and facilities allocated to the parties for the preparation of their respective cases are not stacked wholly in favour of the Prosecution”, and that the right of the Accused under Article 17 (4)(b) of the Statute is not infringed by the provision of inadequate facilities.⁶

¹ Document SCSL-03-01-PT-147.

² Document SCSL-03-01-PT-148.

³ Documents SCSL-03-01-PT-153 and SCSL-03-01-PT-154, respectively.

⁴ Documents SCSL-03-01-PT-157 and SCSL-03-01-PT-158, respectively.

⁵ First Motion, para. 6.

⁶ First Motion, paras 1-8.

2. The Defence further submits that as a result of Mr. Taylor's transfer to The Hague, the Accused is "geographically divorced not only from the seat of the Court but also from the alleged crime base" and is isolated from the infrastructure and resources available to other detainees and their Defence teams in Freetown. The Defence claims that the present lack of office space in The Hague, coupled with the lack of other logistical office equipment,⁷ subjects its team members to "intolerable" working conditions, with case-related material dispersed at private residences, and no where to interview witnesses and no secure communication facilities.⁸ The Defence further contends that it faces difficulties preparing for trial since it has no offices or facilities available in Monrovia. The Defence submits this is of particular importance in the preparation of its case as Liberia, the State of which the Accused was formerly President, "is one of the two principal alleged crime bases".⁹

3. The Defence acknowledges the Registrar's undertaking that presently, the process of setting up office premises in The Hague is well under way and that these premises should be ready for use in February 2007.¹⁰ The Defence expresses concern, however, that the Special Court does not contemplate the creation of offices or other facilities in Monrovia. A request by the Defence to this end has been rejected by the OPD, an organ of the Registry,¹¹ and another request for additional funds had not been responded to by the time the First Motion was filed.¹²

4. The Defence contends that the current non-existence of Special Court offices or facilities at the disposal of the Defence at both locations poses a serious impediment to the effective preparation of the Defence case,¹³ and alleges that "the OPD, and by extension, the Registrar" are in breach of a Legal Services Contract between the OPD and the Defence and of Article 26 of the directive on Assignment of Counsel.¹⁴

5. In order to ensure that Mr. Taylor's right to a fair trial is not compromised, the Defence requests that the Trial Chamber direct the Registrar to provide facilities or financial support to the Defence with respect to offices in The Hague and Monrovia.

Prosecution

6. In its Response, the Prosecution neither supports nor opposes the First Motion, but submits however, that the Trial Chamber should grant the requests sought if it is satisfied that the issues raised by the Defence are capable of negatively impacting on the rights of the Accused to a fair trial.¹⁵

⁷ Defence Counsel cites the lack of a computer, printer, telephone, internet access, storage space and conference facilities.

⁸ First Motion, paras 9, 13-16.

⁹ First Motion, para. 10.

¹⁰ First Motion, para. 9.

¹¹ First Motion, paras 11-12, referring to a letter dated 6 November 2006. See also First Motion, paras 17-26, for the Defence's submissions with regard to efforts to achieve an administrative solution of this request.

¹² First Motion, para. 12, regarding a Defence proposal to set up an own office in Monrovia "if granted a monthly clerical services allowance in the region of 3,000 Euros to run to the conclusion of trial".

¹³ First Motion, paras 13-16.

¹⁴ First Motion, paras 27-29.

¹⁵ Prosecution Response to First Motion, paras 3, 9.

2. Adequate Time

Defence

7. The Defence submits that the Trial Chamber has inherent jurisdiction under Rule 54 of the Rules to entertain the Second Motion and to alter the “tentative trial date” of 2 April 2007 either on its own motion or upon good cause being shown by either party, in order to ensure that Mr. Taylor’s rights under Article 17(4)(b) of the Statute are not infringed.¹⁶

8. The Defence refers to the Status Conference held on 22 September 2006, when the date of 2 April 2007 was pronounced as the tentative date for commencement of trial, while recognising that this date was tentative in nature and subject to adjustment upon a showing of good cause.¹⁷

9. The Defence now submits that such good cause exists considering (i) the geographic complexity of the case; (ii) the volume of material disclosed by the Prosecution, including the reports of proposed experts; (iii) the lack of adequate facilities in The Hague and Monrovia, as illustrated in the First Motion, (iv) the fact that the Defence is not yet fully functional, having only recently assembled a complete legal and investigative team and (v) the inordinate amount of time spent by the Defence on attempting to resolve administrative matters.¹⁸ As a consequence, the Defence requests that in order to have adequate time to prepare its case, the tentative trial date of 2 April 2007 be postponed to “a more realistic date”, namely 3 September 2007.¹⁹

Prosecution

10. Although in disagreement with the Defence’s assessment of the geographic complexity of the case, the Prosecution essentially supports the request for a postponement of the trial start in the instant case, particularly in view of the workload put on the Defence in preparation of its case. The Prosecution submits that a postponement until at least July 2007 would be in the interests of justice.²⁰

11. The Defence did not file a Reply to the Prosecution Response to either the First Motion or Second Motion, nor did it comment on the Prosecution’s counter-proposal of a new trial date.

III. THE LAW

12. Article 17(4)(b) of the Special Court Statute provides:

(4) In the determination of any charge against the accused pursuant to the present Statute, he or she shall be entitled to the following minimum guarantees, in full equality:

(b) To have adequate time and facilities for the preparation of his or her defence and to communicate with counsel of his or her own choosing.

¹⁶ Second Motion, paras 4-17.

¹⁷ Transcript of 22 September 2006, pp. 46, 54.

¹⁸ Second Motion, para. 2.

¹⁹ Second Motion, paras 3, 13-27.

²⁰ Prosecution Response to Second Motion, paras 3-12.

13. International courts and tribunals routinely emphasise the importance of “adequate time and facilities” for the preparation of a defence.²¹ The meaning of ‘adequate facilities’ has been interpreted broadly, encompassing for instance access to a photo-copier,²² a laptop,²³ and may comprise everything which is necessary to prepare for trial.²⁴ The amount of time considered to be adequate for the preparation of a defence generally depends on the complexity of the case.²⁵ The Trial Chamber will take into account this jurisprudence when determining the adequacy of time and facilities in the instant case.

14. Article 26 of the Special Court’s Directive on the Assignment of Counsel (“Directive”)²⁶ is entitled “Provision of Facilities” and states:

(A) Assigned Counsel and members of the Defence Team who do not have professional facilities close to the seat of the Special Court shall be provided with reasonable facilities and equipment such as access to photocopiers, computer equipment, various types of office equipment, and telephone lines.

(B) At the seat of the Special Court, Assigned Counsel and members of the Defence Team may use the libraries and the documentation centre available at the Special Court.

(C) Assigned Counsel shall be entitled to request the assistance of the Defence Office for the [sic] any motion or other matter, and the Defence Office, if it can provide such assistance, must ensure that it does so without creating any conflict of interest between the Suspect or Accused and Defence Office personnel.

(D) Assigned Counsel shall make all reasonable efforts to use the personnel and facilities of the Defence Office in the preparation of a Suspect or Accused's case.

(E) The Principal Defender may refuse to approve a claim for remuneration or portion thereof where Assigned Counsel fails to make such reasonable efforts to use the personnel and facilities of the Defence Office in the preparation referred to in (C).

15. As far as the Defence impugns acts by the Registrar, the Trial Chamber recalls its previous decision stating that it is mandated, in limited circumstances, to review administrative decisions

where they are closely related to fundamental trial rights of the Accused and hence may negatively impact upon his statutory rights under Article 17(2) of the Statute and therewith ultimately on the trial proceedings [...].²⁷

The same standard will be applied as far as alleged failure to act attributable to the Registrar is at issue.

²¹ See, e.g., *Twalib v. Greece*, European Court of Human Rights, Judgement, 9 June 1998, Reports 1998-IV, paras 40 *et seq.*; *Prosecutor v. Milošević*, International Criminal Tribunal for the former Yugoslavia, Case No. IT-02-54-AR73.6, Decision on the Interlocutory Appeal by the *Amici Curiae* Against the Trial Chamber Order Concerning the Preparation and Presentation of the Defence Case, 20 January 2004, paras 8, 17.

²² *Kamasinski v. Austria*, European Court of Human Rights, Judgement, 19 December 1989, Series A no. 168, para. 88.

²³ *Prosecutor v. Prlić et al.*, International Criminal Tribunal for the former Yugoslavia, Case No. IT-04-74-T, Decision on the Oral Request of the Accused Jadranko Prlić for Authorisation to Use a Laptop Computer at Hearings or to be Seated Next to his Counsel, 29 June 2006.

²⁴ *Mayzit v. Russia*, European Court of Human Rights, Judgement, 20 January 2005, para. 78.

²⁵ *Twalib v. Greece* (fn. 22 *supra*), para. 40.

²⁶ The Directive entered into force on 3 October 2003.

²⁷ *Prosecutor v. Taylor*, Case No. SCSL-03-01-PT, Decision on Urgent and Public Defence Motion Requesting Removal of Camera from Conference Room, 30 November 2006, p. 3.

IV. DELIBERATION

1. Adequate Facilities

16. The Defence seeks an Order by the Trial Chamber which would direct the Registrar “to provide offices or financial support for offices in both The Hague, The Netherlands, and Monrovia, Liberia.”

17. The provision of adequate facilities to the Defence is an administrative matter falling primarily within the competence of the OPD²⁸ under the authority of the Registrar. Regarding office facilities in The Hague, the Defence concedes that the Registry is currently in the process of establishing such offices, and that according to the best information available at this moment, these offices will be ready for occupation in February 2007. In this regard, the Trial Chamber notes the extensive correspondence between the Defence and the OPD on the issue of office space.²⁹ While the Trial Chamber agrees that the availability of these offices to the Defence at the earliest opportunity is of paramount importance, it acknowledges that the process of establishing these offices is an involved one and is satisfied that the Registry is making every effort to secure the swift establishment of those facilities in The Hague. The Trial Chamber therefore does not deem it necessary to issue a specific Order to the Registrar in this regard.

18. As regards the Defence request for orders directing the Registrar to provide offices in Monrovia or, alternatively, financial support in that regard, the Trial Chamber particularly notes the contents of the Principal Defender’s letter to Defence Counsel³⁰, wherein the former states that it is not the practice of the Special Court to establish offices in countries or locations other than the venue of the trial. The Principal Defender nevertheless undertakes “to facilitate the Defence team to undertake investigations in Liberia as necessary.” This is in addition to providing the Defence team with offices both in Freetown and in The Hague. The Trial Chamber also recognises that the establishment of offices outside the seat of the Special Court is a matter that involves amongst others, budgetary and diplomatic considerations falling within the administrative purview of the Registrar, under the supervision of the President³¹. As far as providing adequate facilities to enable the Defence to conduct investigations in Liberia is concerned, we are not convinced that it is necessary or imperative for the Defence to establish an office in Monrovia for this purpose. On the contrary, we are of the view that the OPD’s undertaking “to facilitate the Defence team to undertake investigations in Liberia as necessary” adequately addresses this issue. Accordingly, the Trial Chamber does not deem it necessary to issue a specific Order to the Registrar in this regard. The First Motion is therefore denied in its entirety.

²⁸ Article 26(A) of the Directive.

²⁹ First Motion, paras 17-26. The Trial Chamber notes, in particular, a letter by the Deputy Registrar to the Defence of 19 December 2006, urging the Principal Defender to address all outstanding issues raised by the Defence before 10 January 2007.

³⁰ See Inter-Office Memorandum dated 6 November 2006, Annex 3 to the First Motion.

³¹ See Article 10 of the Agreement Between the United Nations and the Government of Sierra Leone on the establishment of a Special Court for Sierra Leone.

2. Adequate Time

19. The Trial Chamber recalls that during the Status Conference of 22 September 2006, Justice Sebutinde called upon the Prosecution and Defence to concentrate their efforts and focus on the date of 2 April 2007 as the start of the trial, but at the same time emphasised that this date was of a tentative nature and subject to adjustment upon good cause being shown by either party.³²

20. The Defence in its Second Motion relies on its submissions with respect to good cause as cited in paragraph 9 of this Decision. The Trial Chamber notes that after hearing oral submissions from the parties during the Status Conference, Justice Sebutinde did before setting the tentative trial date of 2 April 2007 take into consideration a number of factors including the alleged complexity of the case, the volume of material disclosed by OTP to the Defence and the fact that prior to September 2006 the Accused did not have a complete legal and investigative team in place.³³ These grounds are therefore not new and would in themselves not constitute “good cause” for adjusting the trial date. However, the Trial Chamber is of the opinion that these grounds if considered cumulatively with the new grounds cited in paragraph 9 (iii) and (v) of this Decision would amount to “good cause” warranting adjustment of the date for the start of the trial.³⁴ Although the First Motion has already been denied earlier, the provision of adequate offices and facilities to the Defence is relevant to the question whether the projected date for the start of the trial should be adhered to.

21. The duty of the Trial Chamber is to balance the right of the Accused to have adequate time for preparation of his case³⁵ and his right to be tried without undue delay.³⁶ The Second Motion is exceptional in that the Accused himself, having been in pre-trial confinement since the end of March 2006, nevertheless requests a delay of the start of trial to 3 September 2007, citing inadequate time and facilities to properly prepare for the trial. This would mean that the Accused would have spent a period of 17 months on pre-trial remand. While the Prosecution does not oppose a delay to the start of the trial, it suggests an earlier date, *i.e.*, July 2007, which would mean that the Accused would have spent a period of 15 months on pre-trial remand. While we are satisfied that the Defence does in the circumstances require extra time to prepare its case, we are of the considered opinion that the dates proposed in both instances would lead to undue delay of the trial. However, in light of all the aforementioned, the Trial Chamber is prepared to grant an adjustment and move the trial date to 4 June 2007.

³² Transcript 22 September 2006, pp. 46, 54.

³³ Transcript 22 September 2006, pp. 41-54.

³⁴ *Kamasinski v. Austria* (fn. 23 *supra*), para. 98.

³⁵ Article 17(4)(b) of the Statute.

³⁶ Article 17(4)(c) of the Statute. *See also Prosecutor v. Milošević* (fn. 22 *supra*), para. 9.

V. DISPOSITION

22. For the foregoing reasons, the Trial Chamber **HEREBY DISMISSES THE FIRST MOTION;**
GRANTS THE SECOND MOTION IN PART and **SETS** Monday 4 June 2007 as the date for the start of the trial.

Done at Freetown, Sierra Leone, this 23rd day of January 2007.

Justice Richard Lussick

Justice Julia Sebutinde
Presiding Judge

Justice Teresa Doherty

[Seal of the Special Court for Sierra Leone]