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SPECIAL COURT FOR SIERRA LEONE

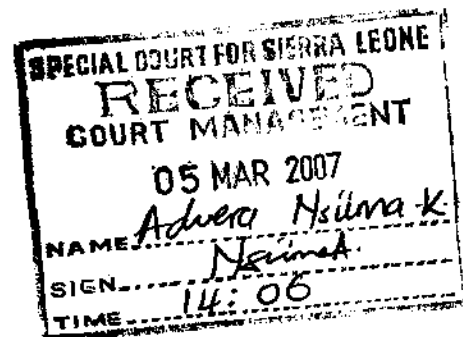
TRIAL CHAMBER II

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

Registrar: Lovemore G. Munlo, SC

Case No.: SCSL03-1-PT

Date: 5 March 2007



PROSECUTOR

Against

CHARLES GHANKAY TAYLOR

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DECISION ON URGENT DEFENCE MOTION TO  
VACATE DATE FOR FILING OF DEFENCE PRE-TRIAL BRIEF

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Office of the Prosecutor:

Brenda Hollis  
Anne Althaus

Defence Counsel for Charles G. Taylor:

Karim A.A. Khan  
Roger Sahota

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;

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SEISED of the "Urgent Defence Motion to Vacate Date for Filing of Defence Pre-Trial Brief", filed on 5 February 2007 ("Motion")<sup>1</sup>, wherein the Defence requests the Trial Chamber to "(a) vacate the third prong of the 2 February 2007 Order which requires the Defence to file a Pre-Trial Brief addressing factual and legal issues on 26 April 2007, without first hearing submissions from the parties; (b) schedule a Fourth Status Conference, in The Hague, in front of a full bench, to be held as soon as is practicable after the filing of the Prosecution Pre-Trial Brief on 4 April 2007"<sup>2</sup>, on the grounds that:

- (i) The Trial Chamber improperly and arbitrarily exercised its discretion in ordering the Defence to file a Pre-trial Brief by 26 April 2007, prior to hearing and giving due consideration to any submissions from the parties on that issue;<sup>3</sup>
- (ii) It is premature to expect the Defence to make submissions on a fair and appropriate scheduling date for the filing of the Defence Pre-Trial Brief prior to receipt and analysis of the Prosecution Pre-Trial Brief;<sup>4</sup>
- (iii) A three-week period allotted to the Defence within which to analyse and respond to the Prosecution Pre-Trial Brief is insufficient and prejudicial to Mr. Taylor's right to adequately prepare his defence and is unfair in comparison to the time allotted to the Prosecution for the filing of the Prosecution Pre-Trial Brief;<sup>5</sup>

CONSIDERING that although the Defence entitled the Motion as "urgent," the Trial Chamber found no reason to issue an order pursuant to Rule 7(C) of the Rules of Procedure and Evidence of the Special Court ("Rules") expediting the filing of the response or reply to the Motion;

NOTING the "Response to the Urgent Defence Motion to Vacate Date for Filing of Defence Pre-Trial Brief", filed on 15 February 2007 ("Response")<sup>6</sup>, wherein the Prosecution submits that the Trial Chamber should decide the Motion and uphold or vary its earlier Order solely on the basis of the parties' written submissions herein, and argues that:

- (i) By proffering written arguments in the Motion regarding the appropriate time for filing of the Defence Pre-Trial Brief, the Defence has now had an opportunity to be heard on the subject;<sup>7</sup>
- (ii) It is not necessary for the Trial Chamber to convene a fourth Status Conference for the purpose of hearing further, oral arguments from the parties, as an oral hearing is not a mandatory requirement under the Rules;<sup>8</sup>

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<sup>1</sup> Document No. SCSL-03-01-PT-172.

<sup>2</sup> Motion, paras 1, 10.

<sup>3</sup> Motion, paras 2-6.

<sup>4</sup> Motion, paras 3, 7.

<sup>5</sup> Motion, paras 8, 9.

<sup>6</sup> Document No. SCSL-03-01-PT-181.

<sup>7</sup> Response, paras. 3, 7.

(iii) The Motion fails to demonstrate in what way the Trial Chamber's earlier Order was 'arbitrary' or 'unconsidered';<sup>9</sup>

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NOTING the "Public and Urgent Reply to Prosecutor's Response to the Urgent Defence Motion to Vacate Date for Filing of Defence Pre-Trial Brief", filed on 20 February 2007 ("Reply"),<sup>10</sup> wherein the Defence reiterates its earlier request and further argues that:

- (i) The Motion does not contain the Defence submissions on what constitutes an appropriate date for the filing of a Defence Pre-Trial Brief;<sup>11</sup>
- (ii) Prior to receiving the Prosecutor's Pre-Trial Brief, the Defence will not be in a position to even consider the Defence Pre-Trial Brief;<sup>12</sup> and
- (iii) It would be in the interests of efficiency and judicial economy for the Trial Chamber to hear oral arguments on what constitutes an appropriate date for the filing of a Defence Pre-Trial Brief;<sup>13</sup>

NOTING that although the Motion in effect requests the Trial Chamber to review an existing order, the Defence did not state the procedural Rule under which that request was made;

HOLDING that the correct procedure for a party challenging an existing interlocutory order or decision of the Trial Chamber is either (a) an appeal pursuant to Rule 73 (B); or (b) an application for review pursuant to Rule 54, on the ground that there has been a substantial change of circumstances which has removed or altered the basis of the original order;<sup>14</sup>

RECALLING the Trial Chamber's "Scheduling Order for a Pre-Trial Conference pursuant to Rule 73bis" issued on 2 February 2007 ("Scheduling Order")<sup>15</sup> wherein the Trial Chamber ordered amongst others, that

"3. The Defence shall on or before the 26 April 2007 file a statement of admitted facts and law and a pre-trial brief addressing the factual and legal issues.";

NOTING that the Motion misquoted paragraph 3 of the Scheduling Order by adding thereto the words "*without first hearing the submissions of the parties*";<sup>16</sup>

CONSIDERING that Rule 54 confers a general power upon the Trial Chamber, at the request of either party or on its own motion, *inter alia*, "to issue any orders as may be necessary for the preparation of the trial";

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<sup>8</sup> Response, paras. 6-8.

<sup>9</sup> Response, para. 10.

<sup>10</sup> Document No. SCSL-03-01-PT-187.

<sup>11</sup> Reply, paras 4-5.

<sup>12</sup> Reply, para. 8

<sup>13</sup> Reply, para. 8.

<sup>14</sup> See *Prosecutor v. Brima, Kamara, Kanu*, SCSL-2004-16-AR73, Decision on Brima-Kamara Defence Appeal Motion Against Trial Chamber II Majority Decision on Extremely Urgent Confidential Joint Motion for the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara, dated 8 December 2005, Separate and Concurring Opinion of Justice Robertson, paras 49, 50, 102(vi).

<sup>15</sup> Document No. SCSL-03-01-PT-171.

<sup>16</sup> Motion, para. 10 (i).

CONSIDERING also Rule 73(A) which provides that

"subject to Rule 72, either party may move before the Designated Judge or a Trial Chamber for appropriate ruling or relief after the initial appearance of the accused. The Designated Judge or the Trial Chamber, or a Judge designated by the Trial Chamber from amongst its members, shall rule on such motions based solely on the written submissions of the parties, unless it is decided to hear the parties in open Court";

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CONSIDERING also Rule 73bis(F) which provides that

"Prior to the Pre-Trial Conference, the Trial Chamber or a Judge designated from among its members may order the defence to file a statement of admitted facts and law and a pre-trial brief addressing the factual and legal issues, within a time limit set by the Trial Chamber or the said Judge, and before the date set for trial";

RECALLING that a trial date has been set for 4 June 2007,<sup>17</sup> and that the Trial Chamber has scheduled a Pre-Trial Conference to take place on 7 May 2007<sup>18</sup>;

HOLDING that the purpose of the Prosecution filing a Pre-Trial Brief, and the Defence setting out the matters with which it takes issue in the Brief, is to define the issues in dispute before trial in order to avoid evidence being unnecessarily called in respect of matters not in dispute;<sup>19</sup>

CONSIDERING that the Defence Pre-Trial Brief is primarily a response to the Prosecution case as set out in the Indictment, Case Summary and other materials disclosed to the Defence by the Prosecution under the Rules and is only to a limited degree contingent upon the Prosecution Pre-Trial Brief, due for filing on or before 4 April 2007;

CONSIDERING further that a copy of the Amended Indictment<sup>20</sup> and Case Summary attached was served on Mr. Charles Ghankay Taylor as early as 29 March 2006<sup>21</sup>;

CONSIDERING further that the Accused did as early as 17 May 2006 receive the initial disclosure of evidential material from the Prosecution<sup>22</sup> in accordance with Rules 66(A)(i)<sup>23</sup> and has to date continued to receive from the Prosecution additional disclosure pursuant to Rules 66(ii) & (iii), 67 and 68 on a rolling basis;<sup>24</sup>

RECALLING the "Defence Submission on Behalf of Charles Ghankay Taylor in Respect of Preliminary Motions" filed on 7 June 2006<sup>25</sup>, wherein the Defence acknowledged having received the

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<sup>17</sup> *Prosecutor v. Taylor*, SCSL-03-1-PT, Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor's Defence, 23 January 2007, para. 21.

<sup>18</sup> *Prosecutor v. Taylor*, SCSL-03-1-PT, Scheduling Order for a Pre-Trial Conference Pursuant to Rule 73bis, 2 February 2007.

<sup>19</sup> The Trial Chamber cites with approval Jones & Powles, *International Criminal Practice*, 3<sup>rd</sup> Edition, para. 8.5.489.

<sup>20</sup> Approved by the Prosecutor on 17 March 2006.

<sup>21</sup> See "Acknowledgement of Receipt by the Accused Taylor", Document No. SCSL-03-01-I-77, filed on 30 March 2006

<sup>22</sup> See "Defence Submission on Behalf of Charles Ghankay Taylor in Respect of Preliminary Motions," 7 June 2006, Document No. SCSL-03-01-PT-105.

<sup>23</sup> The Prosecution indicated that the initial disclosure material also included potential exculpatory material pursuant to Rule 68. See Transcript of First Status Conference, 21 July 2006, p. 2, lines 16-21.

<sup>24</sup> Prosecution disclosure packages to the Defence include those served on 11/08/06, 30/08/06, 22/09/06, 3/10/06, 13/10/06, 27/10/06, 10/11/06, 24/11/06, 13/12/06 and 8/01/07.

<sup>25</sup> *Prosecutor v. Taylor*, SCSL-03-01-PT, Defence Submission on Behalf of Charles Ghankay Taylor in Respect of Preliminary Motions," 7 June 2006.

initial Prosecution disclosure on 17 May 2006<sup>26</sup> and on the basis of such disclosure submitted, *inter alia*, that

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- (i) "having conducted an initial review of the disclosure provided by the Prosecution, there is insufficient evidence to prove that Mr. Charles Taylor is criminally responsible on the basis of direct responsibility, involvement in a common plan, design or purpose, superior responsibility, or any other form of participation alleged by the Prosecution for any of the alleged offences in the Indictment"<sup>27</sup>; and that
- (ii) "...at the trial, the Defence of Mr. Taylor will dispute the allegations in the Indictment concerning Mr. Taylor's alleged criminal responsibility under the Statute. During the pre-trial stage, the Defence will endeavour with the Prosecution and under the control of the Trial Chamber to narrow the issues in dispute and, where possible, to agree upon admissions on the part of the Prosecution and Defence pursuant to Rule 65bis and Rule 73bis of the Rules of Procedure and Evidence."<sup>28</sup>

**CONSIDERING** that at the various status conferences convened in preparation for the trial of Mr. Taylor, the parties have had ample opportunity, either on their own motion or as directed by the Trial Chamber or designated Judge, to raise and discuss any issue relating to pre-trial proceedings, and did on various occasions make extensive submissions relating to the appropriate dates for the filing of the parties' Pre-Trial Briefs under Rule 73bis<sup>29</sup> and in particular to the filing of a Defence Pre-trial Brief pursuant to Rule 73bis(F);<sup>30</sup>

**SATISFIED** that in addition to the time that the Defence has had to review the Amended Indictment and Case Summary attached and various Prosecution disclosures, the period of three weeks<sup>31</sup> accorded to the Defence after the filing of the Prosecution Pre-trial Brief, is sufficient to enable the Defence to prepare and file its Pre-trial Brief by 26 April 2007;

**FINDING** that-

- (i) The Defence has failed to demonstrate that the Trial Chamber exercised its discretion arbitrarily or improperly in ordering the Defence to file a Pre-Trial Brief on or before 26 April 2007; and
- (ii) It is not necessary, in the circumstances, for the Trial Chamber to convene a status conference to address the issue prior to the Pre-Trial Conference;

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<sup>26</sup> *Ibid.*, para. 1.

<sup>27</sup> *Ibid.*, para. 2.

<sup>28</sup> *Ibid.*, para. 4.

<sup>29</sup> Transcript 22 September 2006, p. 58, line 29 to p. 60, line 19.

<sup>30</sup> Transcript 26 January 2007, p. 26, line 22 to p. 29, line 27. In particular, see Justice Doherty's statement addressed to Mr. Khan on p. 29, lines 21-27 which she made after hearing his submissions on the issue.

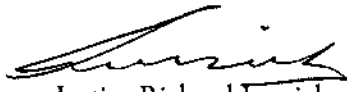
<sup>31</sup> See Scheduling Order.

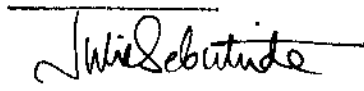


HEREBY DISMISSES THE MOTION.

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Done at Freetown, Sierra Leone, this 5<sup>th</sup> day of March 2007.

  
Justice Richard Lussick

  
Justice Julia Sebutinde  
Presiding Judge

  
Justice Teresa Doherty

[Seal of the Special Court for Sierra Leone]

