

NOTING that the Office of the Prosecutor (“Prosecution”) filed its pre-trial brief on 1 March 2004,[\[1\]](#) in accordance with the Trial Chamber’s Order;

NOTING the Revised Order for the Filing of Defence Pre-Trial Briefs of 12 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 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 the submissions of the Prosecution at the Status Conference held in this case on 2 and 3 March 2004 in relation to its pre-trial brief, including that it had provided notice in the pre-trial brief that the Prosecution would submit a request to the Trial Chamber “should the need arise” after the Status Conference and Pre-Trial Conference for permission to file an additional pre-trial brief reflecting the outcomes of each “to basically reflect what the case for the Prosecution will look like as is partly the reason for [there] being a pre-trial brief”;[\[2\]](#)

NOTING the submissions of the Defence for the Accused[\[3\]](#) at the Status Conference, and particularly the remarks of counsel for Issa Hassan Sesay that his “preliminary view” is that the Prosecution’s pre-trial brief “does not fulfil the criteria of raising in detail any issues of fact or law”;

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);[\[4\]](#)

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 its case;[\[5\]](#)

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;

RECALLING the Trial Chamber’s decision to hold separate joint trials for the alleged members of the RUF and the alleged members of the ARFC;[\[6\]](#)

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 19 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 1 March 2004;
 - 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; and
 - c. Further distinguish between the case against alleged members of the RUF and the AFRC, to the extent possible, in light of the Trial Chamber's Decision of 27 January 2004.

Done at Freetown this 30th day of March 2004

Judge Bankole Thompson Judge Benjamin Mutanga Itoe Judge Pierre Boutet
Presiding Judge,
Trial Chamber

[Seal of the Special Court for Sierra Leone]

[1] On 27 February 2004, the Prosecution filed a pre-trial brief that did not comply with the Practice Direction on Filing Documents before the Special Court for Sierra Leone of 27 February 2003, which had been referenced in the Trial Chamber's Order. The Prosecution did not seek leave of the Trial Chamber to file a new pre-trial brief in compliance with the Practice Direction before filing the revised pre-trial brief on 1 March 2004. In an Order of 12 March 2004, the Trial

Chamber accepted the Prosecution's pre-trial brief of 1 March 2004 as having been filed in compliance with its Order of 13 February 2004.

[2] The Trial Chamber notes that the Prosecution has included comments to this effect in the preliminary pre-trial brief of 27 February 2004; it did not, however, include such comments in the pre-trial brief of 1 March 2004, which is the only Prosecution pre-trial brief recognised by this Trial Chamber.

[3] Morris Kallon was represented by Duty Counsel from the Defence Office of the Special Court at the Status Conference. Shekou Touray was provisionally assigned as counsel for Mr. Kallon on 17 March 2004.

[4] 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 the *defective* pre-trial brief of 27 February 2004, in which it submitted 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.

[5] 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.

[6] See, e.g., *Prosecutor v. Issa Hassan Sesay*, Case No. SCSL-03-05-PT, Decision and Order on Prosecution Motions for Joinder, paras 38-48.