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SCSL-03-01-PT

C 4336-4341

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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

Before: Hon. Justice Julia Sebutinde, Presiding
Hon. Justice Richard Lussick
Hon. Justice Teresa Doherty

Registrar: Mr. Lovemore G. Munlo SC

Date filed: 15 February 2007

PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-PT

PUBLIC

**RESPONSE TO THE URGENT DEFENCE MOTION TO VACATE DATE FOR
FILING OF DEFENCE PRE-TRIAL BRIEF**

Office of the Prosecutor:

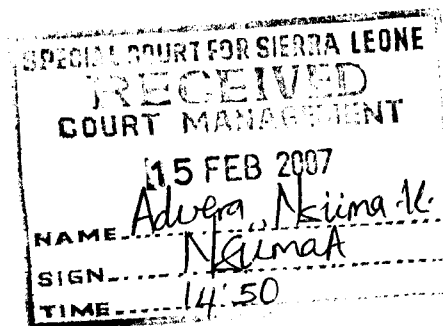
Ms. Brenda J. Hollis

Ms. Anne Althaus

Defence Counsel for Charles Taylor

Mr. Karim A.A. Khan

Mr. Roger Sahota



I. INTRODUCTION

1. The Prosecution hereby responds to the “Urgent Defence Motion to Vacate Date for Filing of Defence Pre-Trial Brief” (“the Motion”)¹.
2. The Defence requests that the Trial Chamber vacate its Order for the filing of the Defence pre-trial brief “on or before 26 April 2007” (“the Order”).² The Defence also requests the scheduling of a fourth Status Conference after the filing of the Prosecution’s pre-trial brief on 4 April 2007, apparently for oral submissions on this matter.³
3. The Prosecution, although it supports the general principle of the right of the parties to an opportunity to be heard, submits that the Defence has now had such opportunity, and there is no need for further submissions on this issue.

II. APPLICABLE RULES

4. Rule 73 *bis* (F) of the Rules of Procedure and Evidence (“the Rules”) stipulates:

“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.”

III. SUBMISSIONS

5. The Prosecution agrees that the general rule should be that parties are given an opportunity to be heard. The Appeals Chamber of the ICTY stated in the *Jelusic* case that it is:

“the normal duty of a judicial body [to] first hear a party whose rights can be affected by the decision to be made...Failure to hear a party against whom the Trial Chamber is provisionally inclined is not consistent with

¹ *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-172, “Urgent Defence Motion To Vacate Date For Filing Of Defence Pre-Trial Brief”, 5 February 2007.

² *Prosecutor v. Charles Taylor*, SCSL-03-01-PT-171, “Scheduling Order for a Pre-Trial Conference Pursuant to Rule 73*bis*”, 2 February 2007.

³ Motion, para. 10.

the requirement to hold a fair trial.”⁴

6. However, the Prosecution submits that the hearing need not be oral.⁵ There is no provision in the Rules requiring that a party be allowed to make oral submissions on a matter. Nor do the Rules require that a party be allowed to make both oral and written submissions on a matter. In many instances oral submissions may be of assistance to the Trial Chamber or may be in the interest of justice. However, as the Appeals Chamber in the *Jelusic* case quoted above held, “the practice of the Tribunal allows for a decision on a written motion without any supplementary arguments, the motion itself being regarded as affording to the moving party a sufficient right to be heard.”⁶
7. In the present instance, the Prosecution submits that the Defence has now had an opportunity to be heard regarding the timing of submission of its pre-trial brief. The possibility of an order requiring the Defence to file a pre-trial brief prior to the beginning of trial was first raised during the 22 September 2006 Status Conference, when the Judge gave the Defence an opportunity to express its point of view in this regard.⁷ And the Defence has now filed its written submission in the motion to which the Prosecution is responding.
8. Accordingly, assuming that the Trial Chamber decides to vacate its decision, the Trial Chamber can, in the same decision, set the revised date upon which the Defence must file its pre-trial brief. Therefore, there is no need for the Trial Chamber to schedule a fourth Status Conference for the purpose of allowing further argument on this issue
9. While, as noted above, the Prosecution agrees that the parties should be heard on matters which affect their rights, the Prosecution does not agree with several other assertions made by the Defence in its Motion.

⁴ *Prosecutor v. Jelusic*, IT-95-10, Appeal Judgement, para. 27, that refers to *R. v. Barking and Dagenham Justices, ex parte Director of Public Prosecutions* [1995] Crim LR 953 (“*Barking case*”), and *Director of Public Prosecution v. Cosier*, Q.B.D., 5 April 2000 (“*Cosier case*”).

⁵ *Ibid.*, para. 25.

⁶ *Ibid.*

⁷ *Prosecutor v. Charles Taylor*, SCSL-01, Status Conference Transcript, 22 September 2006, p. 57, lines 22-25: “whenever the Defence is able, prior to trial, to produce a better understanding in a pre-trial brief, for example, the Defence, of course, will do that”; *Ibid.* p. 59, lines 14- 22.

10. The Prosecution submits that the Defence erroneously characterizes the Order, which is an exercise of the Trial Chamber's discretion, as arbitrary and "unconsidered".⁸ The Defence fails to demonstrate in what way the Order is arbitrary or unconsidered.
11. In particular, contrary to what the Defence contends, the Chamber did not mistakenly make the Prosecution "Pre-Trial brief 'partly dependent' on the Defence filing an agreed statement of facts".⁹ The legal and factual matters to be addressed in the Prosecution pre-trial brief are informed in part by any facts which are agreed or stipulated by the Defence.
12. The Defence also contends that their time to file a pre-trial brief should be extended because "[f]acially, a three week deadline to respond to the Prosecution's Pre-Trial Brief, five years in the making, is unfair and prejudicial to Mr. Taylor's right to a fair trial".¹⁰ In response to that assertion, the Prosecution will state the obvious: Prior to the arrest of the Accused Taylor, the Office of the Prosecutor concentrated its work, time and limited prosecutorial resources on the cases currently before the Special Court, not on preparing a pre-trial brief against an Indictée not in the custody or control of the Special Court.
13. The Defence also alleges incorrectly and without foundation a "lack of timely disclosure of witness statements and exhibits, and expert reports, which till [sic] date have only been piecemeal and partially disclosed to the Defence." In fact, the Prosecution has been particularly diligent in its disclosure, has indeed adopted what the Defence calls a "cards-on-the-table-approach"¹¹, and has gone beyond the requirements of the Rules. For example, in order to facilitate the pre-trial process, the Prosecution has, from the beginning, provided broad disclosure of copies of all potentially relevant non-public documents, rather than providing only a list of exhibits it intends to offer in accordance with Rule 73bis.¹²

⁸ Motion, para. 6.

⁹ Ibid.

¹⁰ Ibid., para. 7.

¹¹ *Prosecutor v. Charles Taylor*, SCSL-01, Status Conference Transcript, 26 January 2007, p. 32, line 27.

¹² The Rules and the Order of the Trial Chamber require only that the Prosecution provide a *list* of such exhibits (see Rule 73 bis (B) (v.) and *Prosecutor v. Charles Taylor*, SCSL-01-PT-171, "Scheduling Order for a Pre-Trial Conference Pursuant to Rule 73bis", 2 February 2007); the Prosecution notes that the Defence has filed a request to inspect pursuant to Rule 66 (A) (iii); however the Prosecution does not read

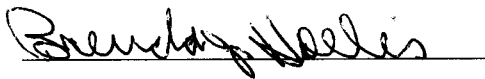
14. Finally, the Prosecution wishes to note that the comparison made by the Defence with the *Milosevic* case¹³ is of no assistance to resolve the issue raised by the Motion. The Defence once again merely asserts, without any ground or justification, that the proceedings in the *Milosevic* case –as well as in “other well known trials” that the Defence does not identify - were supposedly “unjust or otherwise unsatisfactory”.¹⁴

IV. CONCLUSION

15. For the reasons set out above, the Prosecution respectfully submits that the Trial Chamber consider the written submissions of the parties regarding the date on which the Defence pre-trial brief should be filed, and, in light of those written submissions, in the exercise of its sound discretion, uphold or vary its original decision ordering the Defence to file its pre-trial brief on or before 26 April 2007.

Filed in Freetown,
15 February 2007

For the Prosecution,



Brenda J. Hollis
Senior Trial Attorney

the language of that Rule to require the Prosecution to provide copies of such material to the Defence.

¹³ Motion, para. 9.

¹⁴ Ibid.

PROSECUTION INDEX OF AUTHORITIES

Special Court Cases

Prosecutor v. Charles Taylor, SCSL-01-PT-171, “Scheduling Order for a Pre-Trial Conference Pursuant to Rule 73bis”, 2 February 2007.

Prosecutor v. Charles Taylor, SCSL-01, Status Conference Transcript, 22 September 2006.

Prosecutor v. Charles Taylor, SCSL-01, Status Conference Transcript, 26 January 2007.

ICTY

Prosecutor v. Jelusic, IT-95-10, Appeal Judgement, 5 July 2001
(<http://www.un.org/icty/jelusic/appeal/judgement/index.htm>)

Other authorities

The Statute of the Special Court for Sierra Leone, 16 January 2002

Special Court for Sierra Leone, Rules of Procedure and Evidence, Amended 24 November 2006