1318) SCSL-03-01-A (208 – 227) 208

THE SPECIAL COURT FOR SIERRA LEONE

THE APPEALS CHAMBER

Before: Justice Shireen Avis Fisher, Presiding Judge
Justice Emmanuel Ayoola
Justice Renate Winter
Justice George Gelaga King
Justice Jon M. Kamanda
Justice Philip Nyamu Waki, Alternate Judge

Registrar: Ms. Binta Mansaray

Date: 15 August 2012

Case No.: SCSL-2003-01-A

THE PROSECUTOR

–v–

CHARLES GHANKAY TAYLOR

PUBLIC

MOTION FOR RECONSIDERATION OR REVIEW OF "DECISION ON PROSECUTION AND DEFENCE MOTIONS FOR EXTENSION OF TIME AND PAGE LIMITS FOR WRITTEN SUBMISSIONS PURSUANT TO RULES 111, 112 AND 113"

Office of the Prosecutor:
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Mr. Nicholas Koumjian
Mr. Mohamed A. Bangura
Ms. Nina Tavakoli
Ms. Leigh Lawrie
Mr. Christopher Santora
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Mr. Christopher Gosnell
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A. Introduction

1. The Defence files this motion for reconsideration or review by the Appeals Chamber of the Pre-Hearing Judge's *Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113.*[1] Reconsideration or review is necessary to prevent an injustice, given that the Impugned Decision is based on clear errors of reasoning, including the failure, contrary to Article 20(3) of the Statute,[2] to be guided by decisions of the ICTY and ICTR Appeals Chambers, and the erroneous assertion that the Defence's appeal does not challenge the "identification and application of the elements of the crimes."[3]

2. The Defence respectfully requests that the Appeals Chamber reconsider or review and overturn the Impugned Decision, and grant the specific time and page limit extensions that were requested in the Defence Motion for Extensions of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113.[4] The Defence also requests an immediate stay of the prescribed time and page limits in the Impugned Decision, pending a decision on this motion by the Appeals Chamber.[5]

B. Applicable Law

(i) Reconsideration

3. In *Norman et al.*, this Chamber reviewed jurisprudence from the ICTY[6] and acknowledged the inherent jurisdiction of the Appeals Chamber to reconsider its own decision to avoid injustice.[7] The Chamber observed that the power to reconsider would arise in the event of

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[1] *Prosecutor v. Taylor,* SCSL-03-01-A-1315, *Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113*, 7 August 2012 ("Impugned Decision").

[2] *Statute of the Special Court for Sierra Leone*, annexed to the *Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone*, 16 January 2002 ("Statute"), Article 20(3).

[3] Impugned Decision, para. 20. *Cf., Prosecutor v. Taylor*, SCSL-03-01-A-1301, Notice of Appeal of Charles Ghankay Taylor, 19 July 2012 ("Notice of Appeal"), e.g., Grounds 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20.

[4] *Prosecutor v. Taylor,* SCSL-03-01-A-1305, *Defence Motion for Extensions of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113*, 24 July 2012 ("Defence Motion").

[5] *Prosecutor v. Taylor,* SCSL-03-01-A-1290, Scheduling Order for Status Conference on 18 June 2012, 8 June 2012 (ordering that the "deadline for filing Notices of Appeal, pursuant to Rule 108(A), is stayed until further Order of the Court".)

[6] International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 ("ICTY").

[7] *Prosecutor v. Norman et al.*, SCSL-04-14-T-319, Decision on Prosecution Appeal against the Trial Chamber's Decision of 2 August 2004 Refusing Leave to File an Interlocutory Appeal, 17 January 2005 ("Norman Decision"), paras. 40 and 35. See, also, *Prosecutor v. Mucić, et al.*, IT-96-21A*bis*, Judgment on Sentence Appeal, 8 April 2003,

a clear error of reasoning,[8] and quoted from Judge Shahabuddeen's separate opinion in *Mucić, et al.*, to the effect that "clear error" means "'something which the court manifestly or obviously overlooked in its reasoning and which is material to the achievement of substantial justice.'"[9] The decision to reconsider is discretionary.[10]

4. A similar principle was articulated in *Ntagerura et al.*,[11] and endorsed by this Chamber, confirming that "it falls within the discretion of a Trial Chamber to reconsider a previous decision if a clear error of reasoning has been demonstrated or if it is necessary to prevent an injustice."[12]

5. In this case, the Impugned Decision was rendered by the Pre-Hearing Judge, acting on behalf of the Appeals Chamber,[13] pursuant to the wide powers granted under Rule 109 for that Judge to represent the Chamber in procedural matters.[14] Additionally, Rule 109(D) provides that the Appeals Chamber may, *proprio motu*, exercise any of the functions of the Pre-Hearing Judge.[15]

6. The ICTY Appeals Chamber has observed that, where a "pre-appeal Judge" is "entrusted by the Appeals Chamber with the competence of determining all pre-appeal motions of a procedural nature with the power to refer to the Appeals Chamber any such motions," in that capacity, "the pre-appeal Judge therefore acts on behalf of the Appeals Chamber as a whole."[16] Drawing from these and related characteristics of the role and functions of a pre-appeal or pre-hearing Judge, reconsideration by the Appeals Chamber of a decision of such a Judge is envisaged in both ICTY and ICTR[17] cases on appeal,[18] especially where an appellant can show

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para. 49 ("Mucić, et al.") and *Prosecutor v. Galić*, IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004, p. 2.

[8] Norman Decision, para. 35.

[9] Norman Decision, para. 35. See, *Mucić, et al.*, Separate Opinion of Judge Shahabuddeen, para. 15.

[10] Mucić, et al., para. 49.

[11] Case No. ICTR-99-46-A, Appeal Judgment, 7 July 2006, para. 55.

[12] *Prosecutor v. Brima, et al.*, SCSL-04-16-A, *Judgment*, dated 22 February 2008 and filed on 3 March 2008, para. 63, citing *Prosecutor v. Ntagerura, et al.* Case No. ICTR-99-46-A, Appeal Judgment, 7 July 2006, para. 55.

[13] *Prosecutor v. Taylor,* SCSL-03-01-A-1297, Order Designating a Pre-Hearing Judge Pursuant to Rule 109 of the Rules of Procedure and Evidence, 21 June 2012 ("Designation Order"). See, *Rules of Procedure and Evidence of the Special Court for Sierra Leone*, as amended on 31 May 2012 ("Rules").

[14] Rules, Rule 109(B)(i); Rule 109(B)(ii)(b); and Rule 109(C).

[15] Rules, Rule 109(D).

[16] *Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić*, Case No. IT-95-16-T, Decision on "Appeal of the Counsel of *Zoran Kupreškić, Mirjan Kupreškić, Drago Josipović and Vladimir Šantić* against the Decision of the Pre-appeal Judge from 29 June 2000, 4 July 2000 ("*Kupreškić* Appeals Decision"), page 1.

[17] International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for

"any clear error in the Decision of the Pre-Appeal Judge... or any particular circumstances justifying re-consideration."[19]

7. Notwithstanding that the Designation Order was issued by the Presiding Judge of the Appeals Chamber and not by the Appeals Chamber as a whole, the Defence submits that acts of the Pre-Hearing Judge are tantamount to acts on behalf of the Appeals Chamber as a whole and may, as such, be reconsidered by the Appeals Chamber.[20]

(ii) Review

8. Should the Appeals Chamber determine that "reconsideration" is permissible only by the Pre-Hearing Judge,[21] review of the Impugned Decision would nevertheless be proper, pursuant to the inherent powers of the Appeals Chamber.

9. This Chamber has observed that:

> The Appeals Chamber may have recourse to its inherent jurisdiction, in respect of proceedings of which it is properly seized, when the Rules are silent and such recourse is necessary in order to do justice. The inherent jurisdiction cannot be invoked to circumvent an express Rule. When in the course of proceedings which the Appeals Chamber is already properly seised of, a situation arises which it has to deal with in order to further its jurisdiction and fulfill the purpose for which it is already vested with powers, the Appeals Chamber may have recourse to its inherent jurisdiction to exercise powers which will help to further and fulfill that purpose as justice demands, notwithstanding that the rules do not expressly confer such powers. Inherent powers of the court are powers which are inherent in a court by virtue of its nature. They are powers necessary for the administration of justice. They are not powers derived from the Rules or from statute but are powers which must be exercised in the interest of justice by reason of absence of express statutory provisions to cover a particular situation. It is an attribute of judicial power.[22]

10. The Appeals Chamber is already properly seised of these proceedings and, irrespective of the absence of any provision of the Statute or Rules explicitly authorising review of the

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Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 ("ICTR").

[18] *Kupreškić* Appeals Decision, page 1; *Eliézer Niyitegeka v. The Prosecutor*, ICTR-96-14-A, Decision on Defence Extremely Urgent Motion for Reconsideration of Decision Dated 16 December 2003, 19 December 2003 ("*Niyitegeka* Appeals Decision"), page 2; and *Nahimana et al. v. The Prosecutor*, ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence Pursuant to Rule 115, 5 May 2006, paras. 6-8, esp. footnote 19.

[19] *Niyitegeka* Appeals Decision, page 2.

[20] *Kupreškić* Appeals Decision; *Niyitegeka* Appeals Decision. Cf., *Prosecutor v. Ignace Bagilishema*, Case No. ICTR-95-1A-A, Decision: Motions for Review of the Pre-Hearing Judge's Decisions of 30 November and 19 December 2001, 6 February 2002 ("*Bagilishema* Appeals Decision").

[21] See *Bagilishema* Appeals Decision, page 2.

[22] Norman Decision, para. 32.

Impugned Decision or an "appeal" against the same,[23] is competent to review such decisions, pursuant to its inherent powers.[24]

11. In addition to conferring on the Appeals Chamber the *proprio motu* authority to exercise any of the functions of the Pre-Hearing Judge,[25] the Rules allow the Appeals Chamber to review the Pre-Hearing Judge's decision under Rule 115.[26] Furthermore, Rule 109(B)(ii)(a) allows a party who is aggrieved by the Pre-Hearing Judge's order under that Rule to apply for review of the order to the Appeals Chamber.[27] These provisions make clear that the Appeals Chamber has the authority to review decisions of the Pre-Hearing Judge, once it is seised of the proceedings.

C. Submissions

12. In Section III of the Impugned Decision entitled, "Reasoning," a finding is made that the parties have established good cause within the meaning of Rule 116[28] and "exceptional circumstances" within the meaning of the Article 6(G) of the Practice Direction[29] for respective extensions of the time and pages limits for their written submissions on appeal.[30] The showing made by the parties and the concomitant finding by the Pre-Hearing Judge were based on "the complexity of the issues raised in the grounds of appeal and the size of the trial record."[31] Consequently, it has already been demonstrated and adjudged that extensions as to time and page limits are warranted in this case.

13. Nevertheless, the Pre-Hearing Judge found that the parties failed to provide "persuasive justification" for the specific extensions they requested.[32] It is this finding that was occasioned by clear errors of reasoning and regarding which reconsideration or review are, accordingly, being respectfully requested.

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[23] See *Bagilishema* Appeals Decision, page 2.
[24] Norman Decision, para. 32. The circumstances of this case are different from those in the Norman Decision, where the Appeals Chamber declined to invoke it inherent powers, inasmuch as this is not a situation where the inherent power of the Appeals Chamber is being invoked by a party to confer jurisdiction over the proceedings to the Appeals Chamber, nor is there an express rule that would be circumvented by the invocation of the inherent powers of the Chamber.
[25] Rules, Rule 109(D).
[26] Rules, Rule 115(C).
[27] Rules, Rule 109(B)(ii)(a).
[28] Rules, Rule 116.
[29] Practice Direction on dealing with Documents in The Hague - Sub-Office, amended 25 April 2008 (the "Practice Direction").
[30] Impugned Decision, paras. 18 and 25.
[31] Impugned Decision, paras. 18 and 25.
[32] Impugned Decision, para. 18.

(i) ICTY and ICTR Jurisprudence

14. The Pre-Hearing Judge asserted that "reliance by the Defence on the decisions of other tribunals in other cases is largely misplaced...," claiming that "[t]hose tribunals apply different rules" and that the Defence failed to "demonstrate that the cases cited represent a developed practice rather than *ad hoc* decisions."[33] These findings are erroneous and independently or cumulatively give rise to a clear error of reasoning, warranting reconsideration or review.

15. First, the Pre-Hearing Judge neglected Article 20(3) of the Statute which provides, *inter alia*, that: "The judges of the Appeals Chamber of the Special Court shall be guided by the decisions of the Appeals Chamber of the International Tribunals for the former Yugoslavia and for Rwanda." Additionally, Article 14(1) of the Statute provides that, "The Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda obtaining at the time of the establishment of the Special Court shall be applicable *mutatis mutandis* to the conduct of the legal proceedings before the Special Court." These statutory provisions are mandatory.

16. Second, observing that the "tribunals apply different rules with substantively different provisions,"[34] and the citing of those Rules in footnotes of the Impugned Decision is not tantamount to giving due consideration amounting to being guided by the cited decisions, as is required by Article 20(3).[35] More significantly, those Tribunals do not apply different Rules in the determination as to whether to extend applicable time limits beyond those prescribed in the Rules. The standard is whether such an extension, taking account of all the factors that may justify the request for additional time, is in the interests of justice and is supported by good

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[33] Impugned Decision, para. 21. See Defence Motion, paras. 12, 13, and 14, relying on ICTY and ICTR cases for the requested relief, including *Prosecutor v. Popović et al.*, IT-05-88-A, Decision on Joint Defence Motion for Extension of Time to File Notice of Appeal, 25 June 2010, p. 2; *Prosecutor v. Popović et al.*, IT-05-88-A, Decision on Motions for Extension of Time and for Permission to Exceed Word Limitations, 20 October 2010, pp. 5-6; *Prosecutor v. Milutinović et al.*, IT-05-87-A, Decision on Motions for Extensions of Time to File Notices of Appeal, 23 March 2009, p. 4; *Prosecutor v. Sainović et al.*, IT-05-87-A, Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009, pp. 4-5; *Prosecutor v. Nyiramasuhuko et al.* ICTR-98-42-A, Decision on Motions for Extension of Time for the Filing of Appeal Submissions, 22 July 2011, paras. 9, 13 and 16; *Prosecutor v. Perišić*, IT-04-81-A, Decision on Momčilo Perišić's Motion for an Extension of Time to File a Notice of Appeal, 16 September 2011, pp. 1-2; *Prosecutor v. Perišić*, IT-04-81-A, Decision on Momčilo Perišić's Motion for an Extension of Time to File his Appeal Brief, 24 November 2011, pp. 1-2; and *Prosecutor v. Milutinović et al.* IT-05-87-T, Judgement, 26 February 2009; *Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-42-T, Judgement and Sentence, 24 June 2011; *Prosecutor v. Popović et al.* IT-05-88-T, Judgement, 10 June 2010.

[34] Impugned Decision, para. 21.

[35] Neither can that observation be reconciled with the provisions of Article 14(1), insofar as the ICTR Rules are concerned.

cause. The standard articulated by the Appeals Chamber, for example, in the *Popović* case is therefore identical to the standard in Rule 116 of the SCSL Rules.[36]

17. Third, the purported requirement of a "developed practice"[37] in addition to "decisions," as referred to in Article 20(3), has no foundation in SCSL jurisprudence nor the Statute or Rules. In any event, the series of decisions cited undoubtedly and manifestly do represent a settled practice in respect of cases, like this one, with a judgement and record of extraordinary size.[38] Those cited decisions[39] (*Milutinović et al.*,[40] *Nyiramasuhuko et al.*,[41] and *Popović et al.*[42]) were not considered or addressed in the Impugned Decision, as a consequence of the clear errors of reasoning.

18. Fourth, on the basis of these errors, the Pre-Hearing Judge erroneously failed to address the cases cited in the Defence Motion.[43] In substance, these cases are directly relevant to the issue now before the Appeals Chamber and should have been addressed. The Pre-Hearing Judge was correct to hold that they may not be "dispositive" without analysis, but the requirement in Article 20(3) that this Court be "guided" by decisions of the Appeals Chambers of the ICTY and ICTR compelled consideration of those decisions.

(ii) SCSL Jurisprudence and Practice

19. One of the main reasons underpinning the Impugned Decision is the purported failure of the Defence to "justify the specific extensions it requests by reference to the Rules, Practice Direction and practice of the Special Court."[44] The Defence is said to have failed to explain "why those prior cases are so dissimilar from this case as to warrant such a significant departure from the Special Court's practice."[45] The Impugned Decision goes on to conclude that the trial records in those prior cases "were also significant in size."[46]

20. The Pre-Hearing Judge erred in concluding that resort was not had to Special Court cases and practice in the Defence Motion. Paragraph 19 of the Defence Motion reviewed and

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[36] *Prosecutor v. Popović et al.*, IT-05-88-A, Decision on Joint Defence Motion for Extension of Time to File Notice of Appeal, 25 June 2010, p. 2; Rules, Rule 116.
[37] Impugned Decision, para. 21.
[38] See, Impugned Decision, para. 26, describing the trial record in this case as "unquestionably substantial," and providing a statistical overview of the said record.
[39] Defence Motion, para. 13.
[40] *Prosecutor v. Milutinović et al.* IT-05-87-T, Judgement, 26 February 2009.
[41] *Prosecutor v. Nyiramasuhuko et al.*, ICTR-98-42-T, Judgement and Sentence, 24 June 2011.
[42] *Prosecutor v. Popović et al.* IT-05-88-T, Judgement, 10 June 2010.
[43] Defence Motion, para. 13.
[44] Impugned Decision, para. 20.
[45] Impugned Decision, para. 20.
[46] Impugned Decision, para. 20.

compared the decisions and practice of the Special Court vis-à-vis demonstrating the existence of "exceptional circumstances" under Article 6(G) of the Practice Direction.[47]

21. The Defence did not explicitly refer to prior SCSL cases in demonstrating the existence of "good cause" under Rule 116 for the requested extensions of time limits because those cases are demonstrably not at all analogous to this case, as far as the size of the Judgement and trial record are concerned. Therefore, the Pre-Hearing Judge's finding that this omission was significant to the ruling on the propriety of granting the requested relief constituted an error.

22. As discussed below, and contrary to the suggestion that helpful analogies could be made between this case and prior SCSL cases (i.e., that the trial records in those prior SCSL cases "were also significant in size"[48]), there should be no reliance placed on prior SCSL cases because they do not provide a comparable yardstick or barometer regarding what constitutes proportionate, reasonable, and necessary time-limits for written submissions.

23. While the Impugned Decision elaborates in some detail about the time and page limits that were granted in prior SCSL cases,[49] there is virtually no discussion or comparison of the size of the records and length of the judgements in those cases vis-à-vis this case. Indeed, a cursory comparison between this case and prior cases reveals the clear errors in reasoning that derive from reliance on the practice in those cases. The chart below demonstrates the substantial differences between this case and prior SCSL cases.

24. The chart reveals that this single accused case was more than twice as long, in terms of trial days, as the multi-accused AFRC and CDF cases. The number of trial days in this case exceeds that in the AFRC case by 244 days, that in the CDF case by 258 days, and that in the RUF case by 112 days. The number of admitted exhibits in this case is almost four (4) times those which were admitted in the RUF case and over nine (9) times those that were admitted in the AFRC case: 1,126 more exhibits were admitted in this case than in the RUF case and 1,366 more exhibits were admitted than in the AFRC case.

25. The number of pages of the trial record (excluding transcripts of the proceedings) exceeds that in the RUF case by 5,973 pages. Significantly, the size of the judgement in this case exceeds the RUF Trial Judgement by 1,705 pages, the AFRC Trial Judgement by 1,888 pages, and the CDF Trial Judgement by 2,098 pages.

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[47] Defence Motion, para. 19.
[48] Impugned Decision, para. 20.
[49] Impugned Decision, paras. 10 – 14 and 25.

Case	No. of Accused	No. of Trial Days	No. of Witnesses	No. of Admitted Exhibits	No. of pages of case file, excluding transcripts	No. of pages of trial transcripts	Length of Judgement in pages
Taylor	**1**	**420**[50]	115[51]	**1521**[52]	**38,069**[53]	49,622[54]	**2,538**[55]
RUF	3	308[56]	171[57]	395[58]	32,096[59]	--	833[60]
CDF	2	162[61]	119[62]	--	--	--	440[63]
AFRC	3	176[64]	148[65]	155[66]	--	--	650[67]

[50] *Prosecutor v. Taylor*, SCSL-03-01-T-1283, Judgement, dated 18 May 2012, filed 30 May 2012 ("Judgement"), "ANNEX B: PROCEDURAL HISTORY," page 2490, para. 19.
[51] Judgement, para. 163.
[52] Judgement, "ANNEX B: PROCEDURAL HISTORY," page 2490, para. 19. *Cf.*, Judgement, para 199, indicating there were 1522 admitted exhibits.
[53] Judgement, "ANNEX B: PROCEDURAL HISTORY," page 2490, para. 19.
[54] Judgement, "ANNEX B: PROCEDURAL HISTORY," page 2490, para. 19.
[55] The total number of pages is calculated using the page numbering by the Court Management Section (CMS). The first and last pages of the Judgement, respectively, received CMS page numbers 40588 and 43126. This amounts to 2,538 pages in total between both sets of numbers, excluding page 43126 which merely bears the seal of the Special Court and is not signed by the Trial Chamber justices.
[56] *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1234, Judgement, 2 March 2009 ("RUF Trial Judgement"), "ANNEX B: PROCEDURAL HISTORY," page 747, paras. 32 and 36.
[57] RUF Trial Judgement, "ANNEX B: PROCEDURAL HISTORY," pages 747 - 748, paras. 32 and 36.
[58] RUF Trial Judgement, "ANNEX B: PROCEDURAL HISTORY," pages 747 - 748, paras. 32 and 36. *Cf.*, *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Judgement Summary, 25 February 2009, indicating in para. 3 that 437 exhibits were admitted into evidence.
[59] *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Judgement Summary, 25 February 2009, para. 3.
[60] The total number of pages is calculated using the page numbering by the Court Management Section (CMS). The first and last pages of the RUF Trial Judgement, respectively, received CMS page numbers 32072 and 32905. This amounts to 834 pages in total between both sets of numbers.
[61] *Prosecutor v. Fofana, et al.*, Case No. SCSL-04-14-T-785, Judgement, 2 August 2007 ("CDF Trial Judgement"), "ANNEX F: PROCEDURAL HISTORY," para 21, pages F-7 to F-8.
[62] CDF Trial Judgement, "ANNEX F: PROCEDURAL HISTORY," para 21, pages F-7 to F-8.
[63] The total number of pages is calculated using the page numbering by the Court Management Section (CMS).). The first and last pages of the CDF Trial Judgement, respectively, received CMS page numbers 21048 and 21487. This amounts to 440 pages in total between both sets of numbers.
[64] *Prosecutor v. Brima et al.*,SCSL-04-16-T-628, *Judgement*, dated 20 June 2007, filed 20 July 2007, pursuant to *Prosecutor v. Brima, et al.*, SCSL-04-16-T, *Corrigendum to Judgement filed on 21 June 2007*, dated 19 July 2007, filed 20 July 2007 ("AFRC Trial Judgement"), para. 10.
[65] AFRC Trial Judgement, paras. 104 and 10.
[66] AFRC Trial Judgement, para. 134.
[67] The total number of pages is calculated using the page numbering by the Court Management Section (CMS). The first page of the AFRC Trial Judgement received CMS page number 23025, while the last page received CMS page number 23674. This amounts to 650 pages in total between both sets of numbers.

26. To suggest that a comparison between this case and prior SCSL cases and practice provides any useful guidelines for determining reasonable, proportionate and necessary time and page limits for written submissions is to ignore the quantitative and qualitative differences that the above chart makes obvious. It was consequently a clear error of reasoning to require the Defence to engage in an exercise that has little utility and relevance to the requested relief in the Defence Motion, as it was a clear error in reasoning to conclude that no such comparisons had been made in the Defence Motion when, for a limited purposes, there was explicit reference to, and reliance on, prior SCSL cases in paragraph 19 of the Defence Motion.

(iii) Challenges to the Identification and Application of the Elements of the Crimes

27. The Pre-Hearing Judge erred in finding that the Defence has not challenged the identification and application of the elements of the crimes in its Notice of Appeal.[68] Over two dozen of the forty-five grounds of appeal in the Notice of Appeal implicate such challenges in both fact and law: examples include, Ground 11 ("evolving plan"); Ground 12 ("evolving plan"); Ground 13 ("exercise of effective command and control"); Ground 14 ("requisite mental state for planning")' Ground 15 ("requisite mental elements for planning"); Ground 16 ("*mens rea* for aiding and abetting") Ground 17 ("mental state for aiding and abetting"); Ground 18 (requisite mental state for alleged assistance); Ground 19 ("mental state for aiding and abetting"); and Ground 20 (knowledge or awareness).[69]

28. It was consequently erroneous to conclude that appellants in prior SCSL cases challenged the Trial Chamber's "the identification and application of the elements of the crimes, which... the Defence here does not contest." Reconsideration or review of the Impugned Decision is, accordingly, warranted.

(iv) Continuity of Defence Counsel between the Trial and Appeals Phases

29. The observation in the Impugned Decision that Counsel for the Defence "have participated throughout the proceedings and are inherently familiar with the facts and law of the case"[70] is erroneous, insofar as it suggests that all defence counsel on appeal served on the trial defence team. In contrast to the Prosecution which has the benefit of the same three leading

[68] Impugned Decision, para. 20. See, Notice of Appeal.
[69] Notice of Appeal, Grounds 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20.
[70] Impugned Decision, para. 28.

counsel[71] on appeal that appeared in the trial, only the Lead Defence Counsel was a member of the trial defence team; the other defence counsel were appointed to the case at the appeals phase -- consistent with the right of an accused to select counsel of his own choosing. This was made part of the record in paragraph 11 of the *Defence Motion for Extension of Time to File Notice of Appeal*.[72] This erroneous assumption in the Impugned Decision constituted a clear error of reasoning, warranting reconsideration or review.

D. Conclusion and Requested Relief

30. For all of the foregoing reasons, and considering that even the Prosecution in this case suggested that a "*total* of 90 days and a *total* of 200 pages for [sic] Defence Rule 111 submissions would be warranted by the circumstances, as would an *additional* 30 pages for its Rule 113 submissions,"[73] the Defence respectfully prays for:

(i) an immediate stay of the prescribed time and page limits in the Impugned Decision, pending a decision on this motion by the Appeals Chamber[74]; and

(ii) reconsideration and reversal or, alternatively, review and reversal of the Impugned Decision, to the extent of granting the specific time and page limit extensions that were requested in the Defence Motion.

Respectfully submitted,

Morris Anyah **Lead Counsel for** **Charles G. Taylor**	Eugene O'Sullivan Co-Counsel for Charles G. Taylor	Christopher Gosnell Co-Counsel for Charles G. Taylor	Kate Gibson Co-Counsel for Charles G. Taylor

Dated this 15th Day of August 2012, The Hague, The Netherlands

[71] Prosecutor Brenda J. Hollis, Mr. Nicholas Koumjian and Mr. Mohamed A. Bangura.
[72] *Prosecutor v. Taylor*, SCSL-03-01-A-1287, Defence Motion for Extension of Time to File Notice of Appeal, 5 June 2012.
[73] *Prosecutor v. Taylor*, SCSL-03-01-A-1307, Prosecution Response to Defence Motion for Extensions of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113, 25 July 2012, para 3.
[74] *Prosecutor v. Taylor*, SCSL-03-01-A-1290, Scheduling Order for Status Conference on 18 June 2012, 8 June 2012 (ordering that the "deadline for filing Notices of Appeal, pursuant to Rule 108(A), is stayed until further Order of the Court.")

List of Authorities

SCSL

Rules of Procedure and Evidence of the Special Court for Sierra Leone, as amended on 31 May 2012 ("Rules").

Practice Direction on dealing with Documents in The Hague - Sub-Office, as amended on 25 April 2008.

Statute of the Special Court for Sierra Leone, annexed to the *Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone*, 16 January 2002.

***Prosecutor v. Taylor*, SCSL-03-01-A**

Prosecutor v. Taylor, SCSL-03-01-A-1315, Decision on Prosecution and Defence Motions for Extension of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113, 7 August 2012.

Prosecutor v. Taylor, SCSL-03-01-A-1307, Prosecution Response to Defence Motion for Extensions of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113, 25 July 2012.

Prosecutor v. Taylor, SCSL-03-01-A-1305, Defence Motion for Extensions of Time and Page Limits for Written Submissions Pursuant to Rules 111, 112 and 113, 24 July 2012.

Prosecutor v. Taylor, SCSL-03-01-A-1301, Notice of Appeal of Charles Ghankay Taylor, 19 July 2012.

Prosecutor v. Taylor, SCSL-03-01-A-1297, Order Designating a Pre-Hearing Judge Pursuant to Rule 109 of the Rules of Procedure and Evidence, 21 June 2012.

Prosecutor v. Taylor, SCSL-03-01-A-1290, Scheduling Order for Status Conference on 18 June 2012, 8 June 2012.

Prosecutor v. Taylor, SCSL-03-01-A-1287, Defence Motion for Extension of Time to File Notice of Appeal, 5 June 2012.

***Prosecutor v. Taylor*, SCSL-03-01-T**

Prosecutor v. Taylor, SCSL-03-01-T-1283, Judgement, dated 18 May 2012, filed 30 May 2012.

***Prosecutor v. Sesay et al.*, SCSL-04-15**

Prosecutor v. Sesay et al., SCSL-04-15-T-1234, Judgement, 2 March 2009.

Prosecutor v. Sesay et al., SCSL-04-15-T, Judgement Summary, 25 February 2009.

***Prosecutor v. Norman et al.*, SCSL-04-14**

Prosecutor v. Fofana, et al., Case No. SCSL-04-14-T-785, Judgement, 2 August 2007.

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***Prosecutor v. Brima et al.*, SCSL-04-16**

Prosecutor v. Brima, et al., SCSL-04-16-A, Judgment, dated 22 February 2008 and filed on 3 March 2008.

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Prosecutor v. Perišić, IT-04-81-A, Decision on Momčilo Perišić's Motion for an Extension of Time to File a Notice of Appeal, 16 September 2011.
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http://www.icty.org/x/cases/popovic/acdec/en/101020.pdf

Prosecutor v. Popović et al., IT-05-88-A, Decision on Joint Defence Motion for Extension of Time to File Notice of Appeal, 25 June 2010.
http://www.icty.org/x/cases/popovic/acdec/en/100625.pdf

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Prosecutor v. Sainović et al., IT-05-87-A, Decision on Joint Defence Motion Seeking Extension of Time to File Appeal Briefs, 29 June 2009.

[This authority is not readily available on the internet and has, therefore, been appended to this Motion][75]

Prosecutor v. Milutinović et al., IT-05-87-A, Decision on Motions for Extensions of Time to File Notices of Appeal, 23 March 2009.
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http://www.icty.org/x/cases/milutinovic/tjug/en/jud090226-e1of4.pdf
http://www.icty.org/x/cases/milutinovic/tjug/en/jud090226-e2of4.pdf
http://www.icty.org/x/cases/milutinovic/tjug/en/jud090226-e3of4.pdf
http://www.icty.org/x/cases/milutinovic/tjug/en/jud090226-e4of4.pdf

Prosecutor v. Galić, IT-98-29-A, Decision on Defence's Request for Reconsideration, 16 July 2004.
http://www.icty.org/x/cases/galic/acdec/en/040716.htm

Prosecutor v. Mucić, et al., IT-96-21A*bis*, Judgment on Sentence Appeal, 8 April 2003.
http://www.icty.org/x/cases/mucic/acjug/en/cel-aj030408.pdf

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http://www.icty.org/x/cases/mucic/acjug/en/cel-asosha030408-e.pdf

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http://www.unictr.org/Portals/0/Case/English/Nyira/decisions/110722.pdf

Prosecutor v. Nyiramasuhuko et al., ICTR-98-42-T, Judgement and Sentence, 24 June 2011.
http://www.unictr.org/Portals/0/Case/English/Nyira/judgement/110624_judgement.doc

Prosecutor v. Ntagerura et al., Case No. ICTR-99-46-A, Appeal Judgment, 7 July 2006.
http://www.unictr.org/Portals/0/Case/English/Ntagerura/judgement/060707.pdf

Nahimana et al. v. The Prosecutor, ICTR-99-52-A, Decision on Appellant Jean-Bosco Barayagwiza's Motion for Leave to Present Additional Evidence Pursuant to Rule 115, 5 May 2006.

[75] Pursuant to Article 7(D) of the Practice Direction.

http://www.unictr.org/Portals/0/Case/English/Nahimana/decisions/050506.pdf

Eliézer Niyitegeka v. The Prosecutor, ICTR-96-14-A, Decision on Defence Extremely Urgent Motion for Reconsideration of Decision Dated 16 December 2003, 19 December 2003. http://www.unictr.org/Portals/0/Case/English/Niyitegeka/decisions/191203.pdf

Prosecutor v. Ignace Bagilishema, Case No. ICTR-95-1A-A, Decision: Motions for Review of the Pre-Hearing Judge's Decisions of 30 November and 19 December 2001, 6 February 2002. http://www.unictr.org/Portals/0/Case/English/Bagilishema/decisions/060202a.pdf

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UNITED
NATIONS

	International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991	Case No.	IT-05-87-A
		Date:	29 June 2009
		Original:	English

IN THE APPPEALS CHAMBER

Before: **Judge Liu Daqun, Pre-Appeal Judge**

Registrar: **Mr. John Hocking**

Decision: **29 June 2009**

PROSECUTOR
v.

NIKOLA ŠAINOVIĆ
DRAGOLJUB OJDANIĆ
NEBOJŠA PAVKOVIĆ
VLADIMIR LAZAREVIĆ
SRETEN LUKIĆ

PUBLIC

DECISION ON JOINT DEFENCE MOTION SEEKING EXTENSION OF TIME TO FILE APPEAL BRIEFS

The Office of the Prosecutor:

Mr. Paul Rogers

Counsel for the Appellants:

Mr. Toma Fila and Mr. Vladimir Petrović for Mr. Nikola Šainović
Mr. Tomislav Višnjić and Mr. Peter Robinson for Mr. Dragoljub Ojdanić
Mr. John Ackerman and Mr. Aleksandar Aleksić for Nebojša Pavković
Mr. Mihajlo Bakrač and Mr. Đuro Čepić for Mr. Vladimir Lazarević
Mr. Branko Lukić and Mr. Dragan Ivetić for Mr. Sreten Lukić

I, LIU DAQUN, Judge of the Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 ("Appeals Chamber" and "Tribunal", respectively), and pre-appeal Judge in this case,[1]

NOTING the "Judgement" rendered by Trial Chamber III on 26 February 2009;[2]

NOTING the respective notices of appeal filed by the parties on 27 May 2009;[3]

BEING SEIZED OF the "Joint Defence Motion Seeking Extension of Time to File Appeal Briefs" filed on 12 June 2009 ("Motion") by Counsels for Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, and Sreten Lukić (jointly, "Defence") requesting the Appeals Chamber to allow them to file their respective appeal briefs no later than "120 days following the translations of the Judgement into the language of the respective accused";[4]

NOTING the "Prosecution Response to Joint Defence Motion Seeking Extension of Time to File Appeal Briefs" filed by the Office of the Prosecutor ("Prosecution") on 22 June 2009 ("Response"), opposing the Motion;

NOTING that the Defence did not file a reply;

NOTING that, pursuant to Rule 111(A) of the Rules of Procedure and Evidence of the Tribunal ("Rules"), the appellant's briefs are due to be filed within 75 days of filing of their notices of appeal, *i.e.* no later than 10 August 2009;

RECALLING that the Pre-Appeal Judge may, on good cause being shown by motion, enlarge the time limits prescribed under the Rules;[5]

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[1] *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Order Appointing the Pre-Appeal Judge, 19 March 2009.
[2] *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-T, Judgement, 26 February 2009 ("Trial Judgement").
[3] Prosecution Notice of Appeal, 27 May 2009; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Defence Submission Notice of Appeal, 27 May 2009 (filed by Counsel for Nikola Šainović); *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, General Ojdanić's Notice of Appeal, 27 May 2009; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Notice of Appeal from the Judgement of 26 February 2009, 27 May 2009 (filed by Counsel for Nebojša Pavković); *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Vladimir Lazarević's Defence Notice of Appeal, 27 May 2009 (confidential) and Defence Submission: Lifting Confidential Status of the Notice of Appeal, 29 May 2009; *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Sreten Lukić's Notice of Appeal from Judgement and Request for Leave to Exceed the Page Limit (I note that the request for the extension of the page limit is moot and have so informed the parties concerned).
[4] Motion, p. 6.
[5] Rules 127(A)(i) and 127(B) of the Rules.

NOTING that the Defence submits that good cause for the sought extension exists because of the complexity and all-encompassing nature of the grounds of appeal presented in the respective notices of appeal which in turn derive from an unprecedentedly voluminous trial record,[6] as well as the necessity to receive detailed instructions from the represented appellants once the Serbian translation of the Trial Judgement is filed;[7]

NOTING that the Prosecution submits that the requested extension would unreasonably delay the appellate proceedings[8] and is in any case unjustified given that "defence counsel are intimately acquainted with the material legal and factual issues, and are well able to seek instructions from their clients on the arguments to be advanced";[9]

NOTING that the Prosecution further refers to the Pre-Appeal Judge's decision in another case arguing that it was the correct way to balance the "right to a fair trial with the requirement for expeditious pleading";[10]

NOTING that the Prosecution finally submits that the extension of time granted for the filing of notices of appeal was "more than sufficient to meet the complexity arguments raised by the Defence as showing good cause to extend time",[11] and therefore suggests that if good cause were found to have been demonstrated on the basis of the need to receive the Serbian translation of the Trial Judgement, the extension should not surpass 30 days from its filing;[12]

CONSIDERING that "on appeal the main burden lies on counsel in preparing the submissions as he has the legal expertise to advise the appellant whether there exist any potential errors of law and fact";[13]

CONSIDERING that the Tribunal's deadlines for the filing of briefs pursuant to Rule 111(A) of the Rules are essential to ensure the expeditious preparation of the case;[14]

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[6] Motion, paras 8-12.
[7] Motion, paras 13-14.
[8] Response, para. 1.
[9] Response, para. 2 (footnote omitted).
[10] Response, para. 3, referring to *Prosecutor v. Ljube Boškoski and Johan Tarčulovski*, Case No. IT-04-82-A, Decision on Johan Tarčulovski's Motion for Extension of Time to File Appeal Brief, 16 October 2008 ("*Tarčulovski* Decision").
[11] Response, para. 4, referring to *Prosecutor v. Milan Milutinović et al.*, Case No. IT-05-87-A, Decision on Motion for Extension of Time to File Notices of Appeal, 23 March 2009 ("Decision on Extension of Time for Notices of Appeal").
[12] Response, para. 5.
[13] *Tarčulovski* Decision, p. 2, referring to *Prosecutor v. Fatmir Limaj et al.*, Case No. IT-03-66-A, Decision on Motion for Extension of Time, 16 February 2006, para. 12; *Prosecutor v. Radoslav Brdanin*, Case No. IT-99-36-A, Decision on Motions for Extension of Time, 9 December 2004, p. 3.
[14] *Tarčulovski* Decision, p. 2.

CONSIDERING that all Defence Counsel in the instant case are able to work in English, in conformity with Rule 44(A)(ii) of the Rules;

CONSIDERING that the deadlines for filing of notices of appeal have been considerably extended[15] and that all Defence Counsel have, as they should, already started working on the respective appeals since the Trial Judgement was rendered;

RECALLING that, pursuant to Rule 108 of the Rules and the Appeals Chamber's well-established jurisprudence, it may, on good cause being shown by motion, authorize a variation of grounds of appeal and subsequent amendments to the notices of appeal and appellant's briefs;[16]

CONSIDERING therefore that the Defence will have the opportunity, if they so wish, to request any variations or amendments after the appellants have read the Serbian translation of the Trial Judgement and discussed it with their counsel, provided that they show good cause under Rule 108 of the Rules;[17]

REITERATING that it would be unreasonable to delay the appellate proceedings until the filing of the Serbian translation of the Trial Judgement;[18]

FINDING therefore that the Defence has not shown good cause for the extension of time in relation to the filing of the Serbian translation of the Trial Judgement;

RECALLING, however, that the volume of the trial record, including the length of the Trial Judgement, is unprecedented and that this case raises issues of significant complexity;[19]

CONSIDERING that it is in the interests of justice to ensure that the parties have sufficient time to prepare meaningful appellant's briefs in full conformity with the applicable provisions;

FINDING that good cause exists for granting an extension on that basis;

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[15] Decision on Extension of Time for Notices of Appeal, p. 4.
[16] Decision on Extension of Time for Notices of Appeal, p. 4; *Tarčulovski* Decision, pp. 2-3.
[17] *Cf.* Decision on Extension of Time for Notices of Appeal, p. 4; *Tarčulovski* Decision, pp. 2-3.
[18] Decision on Extension of Time for Notices of Appeal, p. 4.
[19] Decision on Extension of Time for Notices of Appeal, p. 4, referring to *Prosecutor v. Enver Hadžihasanović and Amir Kubura*, Case No. IT-01-47-A, Decision on Motions for Extension of Time, Request to Exceed Page Limit, and Motion to File a Consolidated Response to Appeal Briefs, 27 June 2006, para. 7, in which the Pre-Appeal Judge noted the "unusual length" of the Trial Judgement rendered in that case; *Prosecutor v. Milomir Stakić*, Case No. IT-97-24-A, Decision on the Defence Motion for Extension of Time, 26 April 2004, para. 5, mentioning the complexity of issues in that appeal as one of the factors in favour of an extension of time; *Prosecutor v. Dario Kordić & Mario Čerkez*, Case No. IT-95-14/2-A, Decision on Motions to Extend Time for Filing Appellant's Briefs, 11 May 2001, para. 19, referring to the length and the complexity of the trial.

FOR THE FOREGOING REASONS,

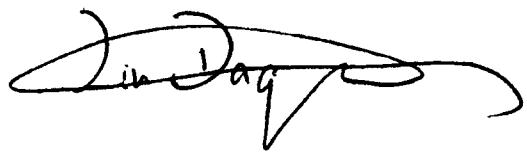
HEREBY GRANT the Motion **IN PART**;

ORDER the Defence to file their respective appellant's briefs within 120 days of the filing of their notice of appeal, *i.e.* no later than 23 September 2009;

DISMISS the remainder of the Motion.

Done in English and French, the English version being authoritative.

Done this 29th day of June 2009,
At The Hague, The Netherlands.



Liu Daqun, Pre-Appeal Judge

[Seal of the Tribunal]