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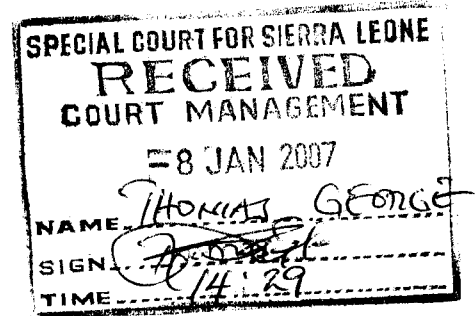
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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown - Sierra Leone

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

Registrar: Mr. Lovemore G. Munlo SC

Date filed: 8 January 2007



THE PROSECUTOR

Against

Charles Taylor

Case No. SCSL-03-01-PT

PUBLIC

PROSECUTION RESPONSE TO "DEFENCE MOTION ON ADEQUATE TIME FOR THE PREPARATION OF MR. TAYLOR'S DEFENCE"

Office of the Prosecutor:
Mr. James C. Johnson
Ms. Brenda Hollis

Defence Counsel for Charles Taylor
Mr. Karim A. A. Khan
Mr. Roger Sahota

I. INTRODUCTION

1. The Prosecution files this response to the “Public Defence Motion on Adequate Time for the Preparation of Mr. Taylor’s Defence” (“**Defence Motion on Time**”)¹, brought pursuant to Rule 54 of the Rules of Procedure and Evidence (“**Rules**”) and the Court’s inherent jurisdiction based on Article 17 and specifically Article 17(4)(b) of the Statute of the Special Court for Sierra Leone (“**Statute**”).
2. The Defence Motion on Time requests that the Trial Chamber postpone the commencement of trial until 3 September 2007, relief which is clearly within the jurisdiction of the Trial Chamber to grant.

II. ARGUMENT

3. In accordance with its earlier pronouncements, the Trial Chamber must consider whether the Defence has shown good cause for delaying the start of trial. The Prosecution disagrees with the Defence assertion at paragraph 8 of its motion that “if an Accused person is satisfied, upon the best advice of counsel, that postponing the commencement of trial for a reasonable period is in his best interests to allow for adequate Defence preparation, then, absent bad faith or proven bad judgement of counsel, the Chamber should be persuaded, *ceteris paribus*, that such postponement is in the interests of justice”. A showing of good cause requires more than a statement of the informed preference of the Accused.
4. The Prosecution notes, as described by the Defence,² that the trial start date set by the Chamber was intended to be a provisional date, subject to adjustment upon a showing of good cause. At the Status Conference held on 22 September 2006, the Presiding Judge stated:

We are of the view that this is the right time to fix a tentative trial date, more importantly to focus the activities of the pre-trial stage towards this date. I’ve

¹ *Prosecutor v Taylor*, SCSL-03-01-PT-148, “Public Defence Motion on Adequate Time for the Preparation of Mr. Taylor’s Defence”, 15 December 2006.

² Defence Motion on Adequate Time, paras. 9-11.

carefully called it a tentative or provisional trial date because it is subject to adjustment. It is subject to adjustment for good cause. We are prepared to adjust it. It is not just a loose date that I'm going to throw on the table.³

5. The Presiding Judge indicated further:

This is a tentative trial date which is going to assist the parties and the Bench to work toward the final trial date. It is flexible; it is adjustable. But I'm just calling on the parties to focus on this date and to focus your activities towards this date. We feel that six months afforded to a full Defence team would go a long way in preparing them towards a real trial date or the final fixed trial date.⁴

6. The Defence argues that each of the following factors, standing alone or considered collectively, amounts to a showing of good cause for the postponement of the trial: (i) the geographical complexity of the case; (ii) the volume of material disclosed by the Prosecution; (iii) the number and variety of the Prosecution's proposed expert witnesses; (iv) the fact that the Defence is not yet fully functional; (v) the inordinate amount of time spent unsuccessfully attempting to resolve issues through administrative channels.
7. The Prosecution disagrees with the Defence assertion in paragraph 13 of its motion that the breadth of the indictment and its geographic and temporal scope put this case in a different category to other cases before the Special Court. The indictment in this case is less broad than those in other cases before the Tribunal, and the geographic and temporal scope of this indictment are of the same nature as the indictments in the other cases heard before the Special Court. However, this is indeed a case of considerable factual and legal complexity. The Prosecution is of the view that such complexity is a significant factor in determining the amount of time the Defence requires to prepare for trial.
8. The Accused has entered a not guilty plea in this case, putting the burden on the Prosecution to prove beyond reasonable doubt each element of each crime, underlying act and form of criminal responsibility alleged. Extensive evidence will be offered at

³ *Prosecutor v Taylor*, Transcript, 22 September 2006, p. 46, l. 5.

⁴ *Prosecutor v Taylor*, Transcript, 22 September 2006, p. 54.

trial to meet this burden in this complex case. This, of course, means that disclosure in this case is substantial, as the Defence has noted.⁵ The Prosecution fully understands that the Defence must have adequate time to review and analyze this evidence in order to prepare for trial, and before it is in a position to make any informed decisions regarding agreed or stipulated facts or law⁶. The Prosecution also understands that delay in assembling a full Defence team would delay the completion of this review and analysis. Thus, the amount of evidence to be considered and delay in putting together a complete Defence team would also be significant factors in determining the amount of time the Defence requires to prepare for this trial.

9. In addition, significant evidence in this trial will involve events, acts and omissions which took place outside Sierra Leone, adding to the investigative complexities of preparing for trial. Related to these investigative complexities facing the Defence are the practical complexities which face all those involved in the case. For example, the trial will take place in The Hague and this will involve a certain set-up and transition period.
10. The number of proposed Prosecution expert witnesses is greater than in other cases before the Special Court and will inevitably add to the preparation time required by the Defence.

⁵ It is necessary to clarify certain points made by the Defence regarding disclosure. In relation to the statistics set out in paragraph 17 of the motion, the Prosecution wishes to advise that the following figures more accurately reflect the state of disclosure: (i) on 11 August 2006 disclosure was made of 23 statements and transcripts in respect of 13 witnesses and 83 exhibits (3 of which were videos) plus notice was given of 97 open-source documents; (ii) on 30 August 2006 disclosure was made of 34 statements and transcripts relating to 18 witnesses; (iii) on 22 September 2006 disclosure was made of 63 statements and transcripts relating to 44 witnesses and 11 non-witness-specific radio reports; (iv) on 3 October 2006 disclosure was made of 52 statements and transcripts relating to 21 witnesses and 2 exhibits; (v) on 13 October 2006 disclosure was made of 15 statements and transcripts relating to 7 witnesses and 17 non-witness-specific exhibits; and (vi) on 27 October 2006 disclosure was made of 11 statements and transcripts relating to 4 witnesses and 4 non-witness-specific exhibits. Further, in relation to paragraph 19 of the Defence motion, the Prosecution is in the process of reviewing some 1000 potentially relevant exhibits. The Prosecution asked the Defence if it would prefer to receive these documents *en masse* or to receive only those documents determined to be relevant as such determinations were made. The Defence opted to receive the documents *en masse*. Finally, the Prosecution wishes to clarify that in relation to paragraph 19 of the motion, very few of the Prosecution witnesses have been disclosed in the form of edited summaries of statements. In order to expedite the pre-trial preparation phase, throughout the disclosure process, the Prosecution has continued to implement an expansive disclosure policy, beyond what is required of the Prosecution under the Rules.

⁶ As ordered by the Court, the Prosecution provided the Defence with proposed agreed statement of facts by 31 October 2006. At that time, the Prosecution also provided the Defence with proposed stipulations of law. Although negotiation was to take place related to these facts, this was not done in November 2006 as scheduled. In this regard, see letter to the Chamber from the parties dated 5 December 2006.

11. One basis advanced by the Defence as justifying a delay in the trial start date is of particular importance to the Prosecution: the stated lack of proper office space in The Hague and Monrovia.⁷ The Prosecution is required to release the statements of witnesses in an unredacted form in respect of the majority of witnesses at least 42 days before a witness testifies.⁸ Accordingly, proceeding on the basis of a 2 April 2006 trial start date, disclosure of the identity of some of those witnesses would occur by 20 February 2007. Such imminent disclosure of the identities of protected witnesses in the absence of adequate office space which must, in the Prosecution's view, also mean the lack of adequate secure storage facilities, is of great concern to the Prosecution. The Prosecution believes that there must be adequate secure storage facilities before the disclosure of these unredacted witness statements, in order to insure the continued safety and security of these witnesses.

III. CONCLUSION

12. The Prosecution is of the view that the Defence has shown good cause to justify a delay in the commencement of the trial. The Prosecution submits that a delay in the trial start date until at least July 2007 would be in the interests of justice. To the extent a delay until the date requested by the Defence would ensure the orderly progress of the trial proceedings, unencumbered by additional delays for Defence preparation or to conclude proceedings in other cases before the Trial Chamber, such delay would be in the interests of justice, judicial economy and efficiency.

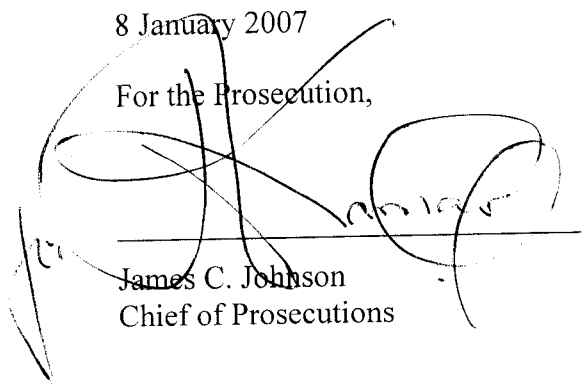
⁷ Defence Motion, para. 22.

⁸ In both decisions regarding protective measures to date in this trial (see (i) *Prosecutor v Taylor*, SCSL-03-1-PT-99, "Decision on Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures and on Confidential Prosecution Motion for Leave to Substitute a Corrected and Supplemented List as Annex A of the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures", 5 May 2006; and (ii) *Prosecutor v Taylor*, SCSL-03-1-PT, "Decision on Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure", 15 September 2006, which decision was confirmed in "Decision on Defence Motion to set aside and/or reconsider Trial Chamber's "Decision on Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure" dated 15 September 2006", 5 October 2006) it has been ordered that unredacted witness statements are to be disclosed to the Defence 42 days prior to the witness' testimony at trial. However, pursuant to Rule 75(F) of the Rules, certain witnesses in this case are subject to the continued effect of the protective measures previously granted in *Prosecutor v Kanu*, SCSL-2003-13-PT-037, "Decision on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims", 24 November 2003, which ordered that unredacted witness statements are to be disclosed to the Defence 21 days prior to the witness' testimony at trial.

Filed in Freetown

8 January 2007

For the Prosecution,

A large, stylized handwritten signature in black ink, appearing to be 'James C. Johnson', is written over a horizontal line. The signature is highly cursive and loops around the text below it.

James C. Johnson
Chief of Prosecutions