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SCSL-03-01-PT  
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**THE SPECIAL COURT FOR SIERRA LEONE**

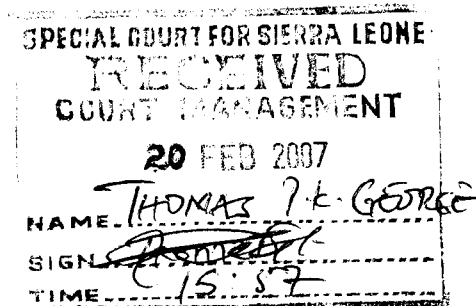
**In Trial Chamber II**

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

Registrar: Mr. Lovemore G. Munlo, SC

Date: 20 February 2007

Case No.: SCSL-2003-01-PT



**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

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**PUBLIC AND URGENT**

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

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**Office of the Prosecution**

Mr. Stephen Rapp  
Ms. Brenda Hollis  
Ms. Wendy van Tongeren  
Ms. Shyamala Alagendra  
Mr. Alain Werner  
Ms. Leigh Lawrie

**Counsel for Charles Taylor**

Mr. Karim A. A. Khan  
Mr. Roger Sahota

## I. Introduction

1. This is the “Defence Reply (“the Reply”) to the “Prosecutor’s Response to the Urgent Defence Motion to Vacate Date for Filing of Defence Pre-Trial” (the “Response”), filed 15 February 2007.<sup>1</sup>
2. In the Response, the Prosecutor concurs with the Defence submission that order of the Trial Chamber’s (the “Chamber”) that the Defence shall “on or before 26 April 2007 file a . . . pre-trial brief addressing the factual and legal issues”,<sup>2</sup> issued prior to parties’ submissions, requires reconsideration.<sup>3</sup>
3. The Defence, however, does not agree with the Prosecutor’s submission that the Defence “Urgent Motion to Vacate Date for Filing of Defence Pre-Trial Brief”, filed 5 February 2007 (the “Motion”),<sup>4</sup> precludes the Defence from making substantive written or oral submissions on the appropriate date for the Defence Pre-Trial Brief.

## II. The Motion Does Not Constitute the Defence Submissions on Appropriate Date for Defence Pre-Trial Brief

4. The Prosecutor is mistaken in treating the Motion as Defence submissions on the appropriate date for the filing of a Defence the Pre-Trial Brief.<sup>5</sup> The Motion plainly requests that the Trial Chamber’s order regarding the filing of a Defence Pre-Trial Brief be vacated because it preceded parties’ submissions on the issue. . The Defence maintain that it was made *per incuriam* in that it was a judicial order made in disregard of the right of the parties to be heard.

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<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-PT-181, Response to the Urgent Defence Motion to Vacate Date for Filing of Defence Pre-Trial Brief, 15 February 2007 (the “Response”).

<sup>2</sup> *Prosecutor v. Taylor*, SCSL-03-01-PT-171, Scheduling Order for a Pre-Trial Conference Pursuant to Rule 73*bis*, 2 February 2007, para. 3 (“The Order”).

<sup>3</sup> Response, para. 3.

<sup>4</sup> *Prosecutor v. Taylor*, SCSL-03-01-PT-172, Urgent Defence Motion to Vacate Date for Filing of Defence Pre-Trial Brief, 5 February 2007.

<sup>5</sup> Response, para. 3.

5. The Motion does not purport, explicitly or implicitly, to make submissions on what may be an appropriate date for the Defence Pre-Trial Brief. On the contrary, in the Motion, the Defence explicitly “reserv[ed] the right to make submissions on the appropriate scheduling date for the Defence Pre-Trial Brief”.<sup>6</sup> The Defence submit that the Motion may not now, at the Prosecutor’s request, be transformed into something it was never meant to be.
6. Contrary to the Prosecutor’s submissions<sup>7</sup>, the Defence submit that the mere possibility of an order does not lead to an obligation to make anticipatory submissions. The Defence had no notice, either (from the agenda circulated in advance) or orally at the status conference itself, that submissions were required. It would have been presumptuous and unnecessary to make submissions when there was no indication that any judicial order was being considered regarding the filing of a Defence Pre-Trial Brief. Not only was no mention made of a Defence Pre-Trial Brief in the agenda, or by the learned Judge Presiding over the Status conference, but no mention was made of it by the Prosecution either. Indeed, it would be strange in these circumstances if the defence was expected to raise the possible filing of a Defence Pre-Trial Brief when no one else evidently considered that to be a live issue at the hearing itself.
7. Further, the Defence explicitly stated at the 22 September 2006 Status Conference, in response to a query, that the Defence Pre-Trial Brief “will be considered in due course.”<sup>8</sup> The cursory exchange on the topic in the Status Conference does not constitute notice to the Defence requiring anticipatory submissions. The Defence, thus, have not waived their right to make submissions on the appropriate date for the Defence Pre-Trial Brief nor, to date, have such submissions be made at all. They will be made, with leave of the Trial Chamber, in the event that the Chamber accepts the present Motion.

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<sup>6</sup> Motion, para. 3.

<sup>7</sup> Response, para. 7.

<sup>8</sup> *Prosecutor v. Charles Taylor*, SCSL-03-01-PT, Second Status Conference, Transcript, 22 September 2006, p. 57 (“Second Status Conference”).

### III. Oral Submissions Are Preferable to Ensure Judicial Economy

8. The Defence concur with the Prosecutor's submission that parties' submissions may be oral or written.<sup>9</sup> However, oral arguments, in this instance, are supported by the need for judicial economy. Prior to service of the Prosecutor's Pre-Trial Brief, the Defence will not be in a position to even consider the Defence Pre-Trial Brief. Subsequent to service of the Prosecutor's Pre-Defence Brief, an oral hearing, and subsequent order from the Chamber will, in the submission of the Defence, be the most efficient means of reaching a decision on the appropriate date for the Defence Pre-Trial Brief.

### IV. The Defence Disagrees with the Prosecutor's Collateral Assertions

9. The Prosecutor contends that it has not been preparing the Pre-Trial Brief for the last five years because Mr. Taylor was not in the custody or control of the Special Court.<sup>10</sup> The Defence respectfully submit that the Pre-Trial Brief is not an entirely original document, and hopefully builds on case preparation that the Prosecutor had completed prior to preparing Mr. Taylor's indictment. The evidence collected and analysed prior to the Indictment is surely the starting point of the Prosecutor's Pre-Trial Brief. Thus, the Prosecutor's work on the Pre-Trial Brief started before the Indictment, not after Mr. Taylor's arrest by the Special Court.
10. The Defence submit that the Prosecutor misinterprets the Defence submissions on the Prosecutor's disclosure. The Defence submission, without impinging on the Prosecutor's diligence, was merely descriptive. The Prosecutor's disclosure has been piecemeal. New witnesses, whose statements have not yet been disclosed, were added in the 16 February 2007 amendments to the Prosecutor's Provisional Witness List submitted. The Defence have received disclosure packages on 17 May 2006, 11 August 2006, 30 August 2006, 22 September 2006, 3 October 2006, 13 October 2006, 27 October 2006, 10 November 2006, 24 November 2006, and 13 December 2006. The Defence expect re-service of a disclosure

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<sup>9</sup> Response, para. 6.

<sup>10</sup> Response, para. 12.

package, originally served in January, which the Prosecutor requested returned. Disclosure, thus, is not yet complete, only three months before the scheduled start date of the trial.

## V. Conclusion

11. The Defence hereby respectfully maintain that the Trial Chamber:

- (i) Vacate the third prong of the 2 February 2007 Order<sup>11</sup> 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;
- (ii) Schedule a Fourth Status Conference, in The Hague, in front of the full bench, to be held as soon as practicable after the filing of the Prosecution Pre-Trial Brief on 4 April 2007.

Respectfully Submitted,



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**Karim A. A. Khan**

**Counsel for Mr. Charles Ghankay Taylor**

Done in Freetown this 20<sup>th</sup> Day of February 2007.

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<sup>11</sup> The Order, para. 3.

**Table of Authorities**

1. *Prosecutor v. Taylor*, SCSL-03-01-PT, Second Status Conference, Transcript, 22 September 2006
2. *Prosecutor v. Taylor*, SCSL-03-01-PT-171, Scheduling Order for a Pre-Trial Conference Pursuant to Rule 73bis, 2 February 2007
3. *Prosecutor v. Taylor*, SCSL-03-01-PT-172, Urgent Defence Motion to Vacate Date for Filing of Defence Pre-Trial Brief, 5 February 2007
4. *Prosecutor v. Taylor*, SCSL-03-01-PT-181, Response to the Urgent Defence Motion to Vacate Date for Filing of Defence Pre-Trial Brief, 15 February 2007