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SCSL-03-01-PT
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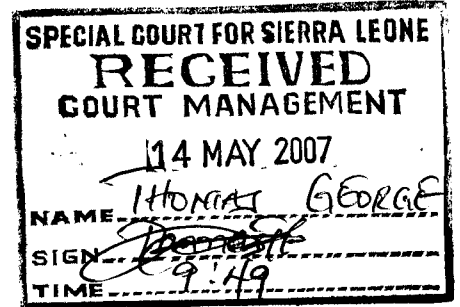
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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown - Sierra Leone

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

Registrar: Mr. Herman von Hebel, Acting Registrar

Date filed: 14 May 2007



THE PROSECUTOR **Against** **Charles Ghankay Taylor**

Case No. SCSL-03-01-PT

PUBLIC

MOTION REQUESTING LEAVE TO AMEND INDICTMENT

Office of the Prosecutor:
Ms. Brenda Hollis
Ms. Ann Sutherland

Defence Counsel for Charles Taylor:
Mr. Karim A. A. Khan
Mr. Avi Singh

I. INTRODUCTION

1. Pursuant to Rules 50(A) and 73 of the Special Court's Rules of Procedure and Evidence ("Rules"), the Prosecution files this motion requesting leave of the Trial Chamber to amend the operative indictment in this case, the Amended Indictment.¹
2. The proposed amendments were discussed at the Pre-Trial Conference held on 7 May 2007,² during which the Defence stated that "there will not be any objection by the Defence to the proposals put forward" by way of formal amendment to the Amended Indictment.³
3. For the reasons stated below, the Prosecution requests that the Trial Chamber grant leave to amend the Amended Indictment against the Accused Charles Ghankay Taylor ("Accused") and further requests that the Trial Chamber approve the proposed Second Amended Indictment which is attached to this motion and marked as Annex A.

II. APPLICABLE LAW

4. Rule 50(A) of the Rules provides that after the initial appearance, an amendment of an indictment may only be made by leave granted by a Trial Chamber pursuant to Rule 73, and that if leave to amend is granted, Rule 47(G) and Rule 52 apply to the amended indictment.

III. PROPOSED AMENDMENTS

5. The proposed amendments to the Amended Indictment are as follows:
 - (a) Count 5: Deletion of the words "and any other form of sexual violence";
 - (b) Count 11: Deletion of the words "Masiaka and" from paragraph 30; and

¹ *Prosecutor v. Taylor*, SCSL-03-01-I-75, Amended Indictment and Case Summary Accompanying the Indictment, 16 March 2006.

² *Prosecutor v. Taylor*, Pre-Trial Conference, 7 May 2007, Transcript ("T.") pp. 5, 50-51 (regarding paragraph 2(a) above) and T. pp. 49-50 (regarding paragraph 2(b) above).

³ T. p. 50.

- (c) Count 11: Between paragraph 30 and 31, insert a heading entitled “Port Loko District” and a paragraph, numbered 30A, which states “Between about 1 February 1998 and about 30 April 1998, in various locations, including Masiaka;”

IV. SUBMISSIONS

Count 5

6. The amendment set out in paragraph 5(a) above is to avoid any issues with respect to duplicity.⁴ This amendment, therefore, makes Count 5 more precise.

Count 11

7. Amendments set out in paragraphs 5(b) and (c) above are to correct an inadvertent oversight. The town of Masiaka is situated in the Port Loko District of Sierra Leone, and not in the Bombali District, as stated in the Amended Indictment.

Test to be applied

8. The Appeals Chamber in the *Norman et al.* case distinguished three categories of amendments to indictments, indicating their respective degrees of permissibility or impermissibility in the following terms:
- (i) Formal or semantic changes, which should not be opposed.
 - (ii) Changes which give greater precision to the charge or its particulars, either by narrowing the allegation or identify times, dates or places with greater particularity or detail. Such amendments will normally be allowed, even during the trial.
 - (iii) Substantive changes which seek to add fresh allegations amounting either to separate charges or to a new allegation in respect of an existing charge.⁵
9. The requested amendments are category (ii) amendments, providing greater precision to Count 5 and to the particulars of Count 11. The requested

⁴ T. p. 5.

⁵ *Norman Appeal Decision*, para. 79.

amendments do not “seek to add fresh allegations amounting either to separate charges or to a new allegation in respect of an existing charge.”⁶

10. The *Norman et al.* Appeals Chamber observed that “[i]n principle, the Indictment may be amended at any stage of the proceedings, [...] if the Court is satisfied that the Defence will not be prejudiced by the amendment and that making it will be in the interests of justice.”⁷
11. In the *Brima et al.* case this Trial Chamber considered that it would normally exercise its discretion to permit an amendment, provided that the amendment does not cause any injustice to the accused, or does not otherwise prejudice the accused unfairly in the conduct of his defence.⁸
12. Two factors particularly are relevant in determining whether amendment of an indictment would cause unfair prejudice: (1) notice, i.e., whether the Accused has been given an adequate opportunity to prepare an effective defence; and (2) whether granting the amendments will result in undue delay.⁹

Whether amendment of an indictment would cause unfair prejudice

13. None of the proposed alterations affect the Accused’s preparation of an effective defence. The amendment set out in paragraph 5(a) above potentially deletes an offence from Count 5 and therefore cannot be deemed prejudicial to the Accused. Likewise, the amendment set out in paragraph 5(b) above deletes a place name and therefore cannot be deemed prejudicial to the Accused. The amendment set out in paragraph 5(c) above does not require disclosure of additional evidence, does not allege a new crime, a new incident or a new location. The evidence relied upon by the Prosecution in relation to

⁶ *Norman Appeal Decision*, para. 79.

⁷ *Norman Appeal Decision*, para. 78.

⁸ *Prosecutor v. Brima et al.*, SCSL-04-16-PT-141, Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18, 15 February 2005, page 2.

⁹ *Norman Appeal Decision*, para. 80; *Prosecutor v. Norman et al.*, SCSL-04-14-PT-13, Decision on Prosecution Request for Leave to Amend the Indictment, 20 May 2004, para. 35; *Prosecutor v. Sesay et al.*, SCSL-04-15-PT-108, Decision on Prosecution Request for Leave to Amend the Indictment, 6 May 2004, para. 27; *Prosecutor v. Sesay et al.*, SCSL-04-15-PT-617, Decision on Prosecution Application for Leave to Amend the Indictment, 31 July 2006, para. 21.

this matter has been disclosed to the Defence for some time.¹⁰ For these reasons, this amendment is not prejudicial to the Accused. The proposed amendments provide greater particularity and precision in pleading and are in the interests of justice. Moreover, the Defence has intimated that it has no objection to the proposed amendments.

Whether there is a need for the Accused to re-plead to Counts 5 and 11

14. There are no “new charges” or material changes to the Second Amended Indictment which would require the Accused to re-plead.¹¹ The Accused’s plea of “not guilty” to Count 5 would still pertain to the remaining charge of sexual slavery in the Second Amended Indictment. Further, there is no “new charge” being made against the Accused by the correction of an inadvertent oversight in Count 11. Therefore, there is no need for the Accused to enter pleas on Counts 5 and 11 of the Second Amended Indictment.

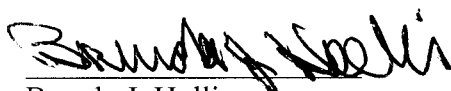
V. ORDERS SOUGHT

15. For the reasons stated above, the Prosecution requests that the Trial Chamber grant leave to amend the Amended Indictment as set out above and approve the Second Amended Indictment submitted for review as Annex A to the motion.

Filed in Freetown,

14 May 2007

For the Prosecution,



Brenda J. Hollis
Senior Trial Attorney

¹⁰ Statements of witnesses the Prosecution intends to call in relation to this aspect of the case (TF1-251; 334; 360; 366) were disclosed to the Defence on 17 May 2006; and documentary exhibits 1.073; 1.277; 1.283 were disclosed to the defence or notice provided on 11/08/06, 10/11/06 and 03/04/07 respectively.

¹¹ *Fofana Appeals Decision*, para. 71.

5587

LIST OF AUTHORITIES

Prosecutor v. Taylor – Case No. SCSL-03-01-PT - Indictment

1. *Prosecutor v. Taylor*, SCSL-03-01-I-75, Amended Indictment and Case Summary Accompanying the Indictment, 16 March 2006.

Prosecutor v. Taylor – Case No. SCSL-03-01-PT – Transcript of Proceedings

2. *Prosecutor v. Taylor*, Pre-Trial Conference, 7 May 2007, Transcript pages 5, 49-51.

SCSL – Other Cases

Prosecutor v. Brima et al. – Case No. SCSL-04-16

3. *Prosecutor v. Brima et al.*, SCSL-04-16-PT-141, Decision on the Prosecution Application to Further Amend the Amended Consolidated Indictment by Withdrawing Counts 15-18, 15 February 2005.
4. *Prosecutor v. Brima et al.*, SCSL-04-16-T-469, Decisions on Defence Motions for Judgment of Acquittal Pursuant to Rule 98, 31 March 2006, Separate Concurring Opinion of Hon. Justice Julia Sebutinde.

Prosecutor v. Norman et al. – Case No. SCSL-04-14

5. *Prosecutor v. Norman et al.*, SCSL-04-14-AR73-397, Decision on Amendment of the Consolidated Indictment, 16 May 2005.
6. *Prosecutor v. Norman et al.*, SCSL-04-14-PT-13, Decision on Prosecution Request for Leave to Amend the Indictment, 20 May 2004.

Prosecutor v. Sesay et al. – Case No. SCSL-04-15

7. *Prosecutor v. Sesay et al.*, SCSL-04-15-PT-108, Decision on Prosecution Request for Leave to Amend the Indictment, 6 May 2004.
8. *Prosecutor v. Sesay et al.*, SCSL-04-15-PT-617, Decision on Prosecution Application for Leave to Amend the Indictment, 31 July 2006.

ANNEX A

5389

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL- 2003- 01- PT

THE PROSECUTOR

Against

**CHARLES GHANKAY TAYLOR also known as
DANKPANNAH CHARLES GHANKAY TAYLOR also known as
DANKPANNAH CHARLES GHANKAY MACARTHUR TAYLOR**

SECOND AMENDED INDICTMENT

The Prosecutor, Special Court for Sierra Leone, under Article 15 of the Statute of the Special Court for Sierra Leone (the Statute) charges:

**CHARLES GHANKAY TAYLOR also known as
(aka) DANKPANNAH CHARLES GHANKAY TAYLOR
aka DANKPANNAH CHARLES GHANKAY MACARTHUR TAYLOR**

with **CRIMES AGAINST HUMANITY, VIOLATIONS OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II and OTHER SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW,** in violation of Articles 2, 3 and 4 of the Statute as set forth below:

THE ACCUSED

1. **CHARLES GHANKAY TAYLOR aka DANKPANNAH CHARLES GHANKAY TAYLOR aka DANKPANNAH CHARLES GHANKAY MACARTHUR TAYLOR (the ACCUSED)** was born on 27 or 28 January 1948 at Arthington in the Republic of Liberia.

- 2. From the late 1980's the **ACCUSED** was the Leader or Head of the National Patriotic Front of Liberia (NPFL), an organized armed group.
- 3. From 2 August 1997 until about 11 August 2003, the **ACCUSED** was the President of the Republic of Liberia.
- 4. Paragraphs 1 through 3 are incorporated by reference in CHARGES below.

CHARGES

By his acts or omissions in relation to the below described events, the **ACCUSED**, pursuant to Article 6.1. and, or alternatively, Article 6.3. of the Statute, is individually criminally responsible for the crimes alleged below:

TERRORIZING THE CIVILIAN POPULATION

COUNT 1: Acts of Terrorism, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.d. of the Statute.

PARTICULARS

- 5. Members of the Revolutionary United Front (RUF), Armed Forces Revolutionary Council (AFRC), AFRC/RUF Junta or alliance, and/or Liberian fighters, including members and ex-members of the NPFL (Liberian fighters), assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, burned civilian property, and committed the crimes set forth below in paragraphs 6 through 31 and charged in Counts 2 through 11, as part of a campaign to terrorize the civilian population of the Republic of Sierra Leone.

Burning

- 6. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or

subordinate to the **ACCUSED**, engaged in widespread destruction of civilian property by burning, including the following:

Kono District

- 7. Between about 1 February 1998 and about 31 December 1998, in various locations, including Koidu, Tombodu or Tumbodu, Sewafe or Njaima Sewafe, Wenedu and Bumpe;

Freetown and Western Area

- 8. Between about 21 December 1998 and about 28 February 1999, in locations throughout Freetown, including Kissy and eastern Freetown and the Fourah Bay, Upgun, State House, Calaba Town, Kingtom and Pademba Road areas of the city, and Hastings, Goderich, Kent, Grafton, Wellington, Tumbo, Waterloo and Benguema in the Western Area.

UNLAWFUL KILLINGS

COUNT 2: Murder, a **CRIME AGAINST HUMANITY**, punishable under Article 2.a. of the Statute;

In addition, or in the alternative:

COUNT 3: Violence to life, health and physical or mental well-being of persons, in particular murder, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute.

PARTICULARS

- 9. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, throughout Sierra Leone, unlawfully killed an unknown number of civilians, including the following:

Kenema District

10. Between about 25 May 1997 and about 31 March 1998, in various locations, including Kenema town and the Tongo Fields area;

Kono District

11. Between about 1 February 1998 and about 31 January 2000, in various locations, including Koidu, Tombodu or Tumbodu, Koidu Geiya or Koidu Gieya, Koidu Buma, Yengema, Paema or Peyima, Bomboa fuidu, Bumpe, Nimikoro or Njaima Nimikoro and Mortema;

Kailahun District

12. Between about 1 February 1998 and about 30 June 1998, in various locations, including Kailahun town;

Freetown and Western Area

13. Between about 21 December 1998 and 28 February 1999, in locations throughout Freetown, including the State House, Kissy, Fourah Bay, Upgun, Calaba Town, Allen Town and Tower Hill areas of the city, and Hastings, Wellington, Tumbo, Waterloo and Benguema in the Western Area.

SEXUAL VIOLENCE

COUNT 4: Rape, a **CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;

And:

COUNT 5: Sexual slavery, a **CRIME AGAINST HUMANITY**, punishable under Article 2.g. of the Statute;

In addition, or in the alternative:

COUNT 6: Outrages upon personal dignity, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.e. of the Statute.

PARTICULARS

14. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, committed widespread acts of sexual violence against civilian women and girls, including the following:

Kono District

15. Between about 1 February 1998 and about 31 December 1998, raped an unknown number of women and girls in various locations, including Koidu, Tombodu or Tumbodu, Wonedu and AFRC and/or RUF camps such as “Superman Ground”, “Guinea Highway” and “PC Ground”; abducted an unknown number of women and girls from various locations within the District, or brought them from locations outside the District, and used them as sex slaves;

Kailahun District

16. Between about 30 November 1996 and about 18 January 2002, raped an unknown number of women and girls in locations throughout Kailahun District; abducted many victims from other areas of the Republic of Sierra Leone, brought them to locations throughout the District, and used them as sex slaves;

Freetown and Western Area

17. Between about 21 December 1998 and about 28 February 1999, raped an unknown number of women and girls throughout Freetown and the Western area, and abducted an unknown number of women and girls and used them as sex slaves.

PHYSICAL VIOLENCE

COUNT 7: Violence to life, health and physical or mental well-being of persons, in particular cruel treatment, a **VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II**, punishable under Article 3.a. of the Statute;

In addition, or in the alternative:

COUNT 8: Other inhumane acts, a **CRIME AGAINST HUMANITY**, punishable under Article 2.i. of the Statute.

PARTICULARS

18. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, committed widespread acts of physical violence against civilians, including the following:

Kono District

19. Between about 1 February 1998 and about 31 December 1998, mutilated and beat an unknown number of civilians in various locations, including Tombodu or Tumbodu, Kaima or Kayima and Wonedu. The mutilations included cutting off limbs and other body parts and carving "AFRC" and "RUF" on the bodies of the civilians;

Kailahun District

20. Between about 30 November 1996 and about 18 January 2002, beat an unknown number of civilians in locations throughout the District;

Freetown and Western Area

21. Between about 21 December 1998 and about 28 February 1999, mutilated and beat an unknown number of civilians in various areas of Freetown, including the northern and eastern areas of the city, the Kissy area around the State House, Fourah Bay, Uppun and the Kissy mental hospital, and Hastings, Wellington, Tumbo, Waterloo and Benguema in the Western Area. The mutilations included cutting off limbs.

CHILD SOLDIERS

COUNT 9: Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities, an **OTHER SERIOUS VIOLATION OF INTERNATIONAL HUMANITARIAN LAW**, punishable under Article 4.c. of the Statute.

5395

PARTICULARS

22. Between about 30 November 1996 and about 18 January 2002, throughout the Republic of Sierra Leone, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, routinely conscripted, enlisted and/or used boys and girls under the age of 15 to participate in active hostilities. Many of these children were first abducted, then trained in AFRC and/or RUF camps in various locations throughout the country, and thereafter used as fighters.

ABDUCTIONS AND FORCED LABOUR

COUNT 10: Enslavement, a **CRIME AGAINST HUMANITY**, punishable under Article 2.c. of the Statute.

PARTICULARS

23. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, engaged in widespread and large scale abductions of civilians and use of civilians as forced labour, including the following:

Kenema District

24. Between about 1 July 1997 and about 28 February 1998, used an unknown number of civilians living in the District as forced labor in various locations such as the Tongo Fields area;

Kono District

25. Between about 1 February 1998 and about 18 January 2002, abducted an unknown number of civilians, and took them to various locations outside the District, or to locations within the District such as AFRC and/or RUF camps, Tombodu or Tombodu, Koidu and Wonedu, and used them as forced labour;

Kailahun District

26. Between about 30 November 1996 and about 18 January 2002, brought abducted civilian men, women and children to various locations within the District and used them and residents of the District as forced labour;

Freetown and Western Area

27. Between about 21 December 1998 and about 28 February 1999, abducted an unknown number of civilians, including a large number of children, from locations throughout Freetown and the Western Area, and used them as forced labour.

LOOTING

COUNT 11: Pillage, a VIOLATION OF ARTICLE 3 COMMON TO THE GENEVA CONVENTIONS AND OF ADDITIONAL PROTOCOL II, punishable under Article 3.f. of the Statute.

PARTICULARS

28. Between about 30 November 1996 and about 18 January 2002, members of RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, assisted and encouraged by, acting in concert with, under the direction and/or control of, and/or subordinate to the **ACCUSED**, engaged in widespread unlawful taking of civilian property, including the following:

Kono District

29. Between about 1 February 1998 and about 31 December 1998, in various locations, including Koidu, Tombodu or Tumbodu and Bumpe;

Bombali District

30. Between about 1 February 1998 and about 30 April 1998, in various locations, including Makeni;

Port Loko District

- 30A. Between about 1 February 1998 and about 30 April 1998, in various locations, including Masiaka;

Freetown and Western Area


31. Between about 21 December 1998 and about 28 February 1999, throughout Freetown and the Western Area.
32. Paragraphs 4 through 31 are incorporated by reference in INDIVIDUAL CRIMINAL RESPONSIBILITY below.

INDIVIDUAL CRIMINAL RESPONSIBILITY

33. The **ACCUSED**, by his acts or omissions, is individually criminally responsible pursuant to Article 6.1. of the Statute for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Amended Indictment, which crimes the **ACCUSED** planned, instigated, ordered, committed, or in whose planning, preparation or execution the **ACCUSED** otherwise aided and abetted, or which crimes amounted to or were involved within a common plan, design or purpose in which the **ACCUSED** participated, or were a reasonably foreseeable consequence of such common plan, design or purpose.
34. In addition, or alternatively, pursuant to Article 6.3. of the Statute, the **ACCUSED**, while holding positions of superior responsibility and exercising command and control over subordinate members of the RUF, AFRC, AFRC/RUF Junta or alliance, and/or Liberian fighters, is individually criminally responsible for the crimes referred to in Articles 2, 3 and 4 of the Statute as alleged in this Amended Indictment. The **ACCUSED** is responsible for the criminal acts of his subordinates in that he knew or had reason to know that the subordinate was about to commit such acts or had done so and the **ACCUSED** failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

Dated 14 May 2007,

Freetown, Sierra Leone,



Stephen Rapp
The Prosecutor