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SCSL-11-02-PT  
(157-160)

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SPECIAL COURT FOR SIERRA LEONE

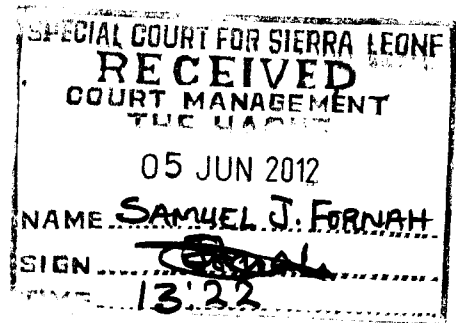
TRIAL CHAMBER II

Before: Justice Teresa Doherty, Presiding Judge  
Single Judge, Trial Chamber II

Registrar: Ms. Binta Mansaray

Case No. SCSL-11-02-PT

Date filed: 05 June 2012



The Independent Counsel

-V-

Hassan Papa Bangura  
Samuel Kargbo  
Santigie Borbor Kanu  
Brima Bazzy Kamara

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PUBLIC

DEFENCE SUBMISSIONS PURSUANT TO SCHEDULING ORDER DATED 1 JUNE 2012

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Independent Counsel:  
Mr. Robert L. Herbst  
Mr. Mohammed Bangura

Counsel for the Accused:  
Mr. Melron Nicol-Wilson  
Chief Charles A. Taku  
Mr. Kevin A. Metzger  
Mr. A.F. Serry Kamal

Office of the Principal Defender:  
Mrs. Claire Carlton-Hanciles

1. These submissions are filed in response to the Scheduling Order of 1 June 2012.
  
2. Counsel notes that the Scheduling Order directs that the Scheduling of the Trial shall be as follows:
  - a. *A Pre-Trial Conference shall be held on Saturday 16 June at 9:30 a.m. in Freetown.*
  
  - b. *The Trial shall commence on Monday 18 June 2012 at 9:30 a.m. in Freetown.*
  
  - c. *The Court will sit on Monday 25 June 2012 at 2:00p.m. In Kigali, Rwanda and will continue hearings in Kigali all of Tuesday 26 June and Wednesday 27 June 2012.*
  
  - d. *The Court will resume hearings on Friday 29 June 2012 at 9.30 a.m. in Freetown.<sup>1</sup>*
  
3. It is noted from said directions that the Honourable Court has set aside a maximum of five working days for the first part of the Trial in Freetown and allowed the weekend for travel to Kigali in readiness for the second part of the Trial, where three days have been set aside. Two further days have been set aside for travel, with the Trial to resume on 29 June 2012 at 9.30 a.m. in Freetown. It is further noted that the Prosecution intend to call some 9 witnesses, 4 of whom are likely to be extensively cross examined while there are issues concerning Lawyer-Client Privilege<sup>2</sup> in relation to the other witnesses that the court will have to resolve. Additionally, as the Defence for Santigie Borbor Kanu still await official documentation from the authorities in Rwanda regarding the periods Mr. Kanu was in Kigali<sup>3</sup>, it is presently not in a position to say exactly how many witnesses will be called on behalf of Mr. Kanu.
  
4. Recalling Counsel's experience in travelling to Rwanda and the lengthy transit times in Nairobi, together with the provisions of Article 17 of the Statute of the Special Court for

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<sup>1</sup>Prosecutor v. Bangura et al, SCSL-11-02-PT, Scheduling Order for the Conduct of the Trial, Justice Theresa Doherty, Single Judge of Trial Chamber II, paragraph 14.

<sup>2</sup> Rule 97 of the Rules of Procedure and Evidence.

<sup>3</sup> Prosecutor v. Bangura et al, SCSL-11-02-PT, Public Defence Pre-Trial Brief on behalf of Santigie Borbor Kanu filed pursuant to Scheduling Order of 1 May 2012, paragraphs 27 & 28.

Sierra Leone<sup>4</sup> and Rule 73 *ter* (B) of the Rules of Procedure<sup>5</sup> it is respectfully submitted that the Scheduling of this trial is likely to be over optimistic, punishing and unfair to the Defence.

5. Noting that it would not be possible, within the available logistics for Defence Counsel to confer with their clients in Rwanda confidentially in a manner that would allow privileged discussion and perusal of exhibits whilst in Freetown. On behalf of the Accused in Rwanda, it is submitted insufficient time has been allowed within the Scheduling order of 1 June 2012 to enable the Defence to take instructions with and or confer with their clients between the hearings in Freetown and Rwanda<sup>6</sup>.
  
6. Furthermore, Rule 98 of the Rules of Procedure allows for motions for Judgement of Acquittal by the Defence. Such a motion cannot be made until after the conclusion of the Prosecution case and, respectfully, it is submitted that the scheduling of this Trial may have inadvertently failed to consider this factor and that failure to allow time for such motions would amount to a breach of the Accused's fair trial rights and may provide the perception that the presumption of innocence, pursuant to Article 17(3)<sup>7</sup> as regards the Accused, is absent in this case.
  
7. In consequence of the matters raised above the Defence humbly invites and urges the Honourable Court to reconsider allowing further time between the hearing of the matter in Freetown<sup>8</sup> and Rwanda<sup>9</sup> as well as further time between the period in Rwanda<sup>10</sup> and the resumption of hearings in Freetown<sup>11</sup>. At the time of filing these submissions arrangements for travel to and from Kigali, Rwanda had not been confirmed and it Counsel is therefore not aware of the exact itinerary. It is nevertheless submitted that the

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<sup>4</sup> Article 17 enshrines the fair trial rights of the accused.

<sup>5</sup> Rule 73 *ter* (B) provides a procedure which envisages a period of time between the Prosecution case and the Defence case during which the Defence may be required to file documents.

<sup>6</sup> Article 17(4) (b) of the Statute of the Special Court for Sierra Leone.

<sup>7</sup> Statute of the Special Court for Sierra Leone.

<sup>8</sup> Prosecutor v. Bangura et al, SCSL-11-02-PT, Scheduling Order for the Conduct of the Trial, Justice Theresa Doherty, Single Judge of Trial Chamber II, paragraph 14.b.

<sup>9</sup> Prosecutor v. Bangura et al, SCSL-11-02-PT, Scheduling Order for the Conduct of the Trial, Justice Theresa Doherty, Single Judge of Trial Chamber II, paragraph 14.c.

<sup>10</sup> Prosecutor v. Bangura et al, SCSL-11-02-PT, Scheduling Order for the Conduct of the Trial, Justice Theresa Doherty, Single Judge of Trial Chamber II, paragraph 14.c.

<sup>11</sup> Prosecutor v. Bangura et al, SCSL-11-02-PT, Scheduling Order for the Conduct of the Trial, Justice Theresa Doherty, Single Judge of Trial Chamber II, paragraph 14.d.

Defence would require at least a day being set aside for conferences with the Accused in Rwanda on both arrival in Kigali before the hearings commence and after the hearings in Kigali conclude.

Respectfully submitted,



Kevin A. Metzger

Counsel for Santigie Borbor Kanu

Dated 05 June 2012