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SCSL-03-01-T
(37705 - 37709)

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THE SPECIAL COURT FOR SIERRA LEONE

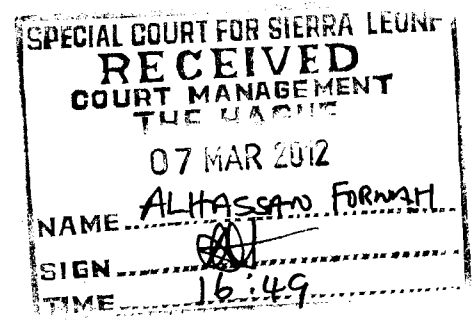
Trial Chamber II

Before: Justice Richard Lussick, Presiding
Justice Julia Sebutinde
Justice Teresa Doherty
Justice El Hadji Malick Sow, Alternate

Registrar: Ms. Binta Mansaray

Date: 7 March 2012

Case No.: SCSL-03-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**REPLY TO PROSECUTION RESPONSE TO
DEFENCE REQUEST TO CHANGE DATE OF JUDGEMENT**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Ms. Nina Tavakoli
Ms. Ruth Mary Hackler

Counsel for Charles G. Taylor:

Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Ms. Logan Hambrick

I. INTRODUCTION

1. The *Prosecution Response to the Defence Request to Change Date of Judgement*¹ does not assist the Chamber in this matter and therefore should be disregarded.
2. The Prosecution objects on six main grounds:
 - a. That in the context of criminal proceedings which have lasted almost six years, postponing the judgement date by one working day would affect the Accused's right to an expeditious trial;
 - b. That there is no requirement that the Trial Chamber should consult the parties before setting a date for judgement;
 - c. That there is no prejudice to the Accused, as Co-Counsel and the Principal Defender can adequately represent the Accused on the judgement date in the absence of Lead Counsel;
 - d. That the Defence, in requesting the change of date four working days after the Scheduling Order² was issued, has not acted diligently;
 - e. That since Lead Counsel has been retained in the Taylor case since the summer of 2007, he should not have made other professional commitments while waiting indefinitely for judgement, despite not being paid by the Court during this period; and,
 - f. That Defence submissions regarding potential security risks are purely speculative and thus should be dismissed as such.
3. None of these objections detract from the Defence's request to change the judgement date from Thursday, 26 April 2012 to Tuesday, 1 May 2012, or any suitable time soon thereafter.³

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1269, Public Prosecution Response to Defence Request to Change Date of Judgement, 7 March 2012.

² *Prosecutor v. Taylor*, SCSL-03-01-T-1265, Scheduling Order for the Delivery of Judgement, 1 March 2012.

³ *Prosecutor v. Taylor*, SCSL-03-01-T-1266, Urgent Public with Confidential Annexes A & B and Ex Parte Annex C, Defence Request to Change Date of Judgement, 6 March 2012; SCSL-03-01-T-1267, Corrigendum to Defence Request to Change Date of Judgement, 7 March 2012.

II. SUBMISSIONS

Right to be Tried Without Undue Delay⁴

4. The Prosecution cannot be serious in arguing that in the context of criminal proceedings which have lasted almost six years, including an entire year spent awaiting judgment, a one-working-day postponement of the judgement date, at the request of the Defence and the Accused, would detract from the Accused's right to be tried without undue delay. Indeed, it is ironic that the Prosecution should seek to assert this right on behalf of the Accused. For the avoidance of doubt, the Defence avers that the Accused is not negatively affected by this inconsequential delay and, if necessary, is happy to waive that right for present purposes.

No Provision to Consult Parties⁵

5. The Defence has never argued that there is a legal obligation for the Chamber to consult the parties prior to setting the date for judgement. The Defence however submits that it would be nothing less than best practice, professionally courteous, and pragmatic for the Chamber to consult the parties, especially where the Chamber is on notice that a scheduling conflict may arise.

No Prejudice to the Accused⁶

6. The Prosecution applies an incorrect legal standard to the issue in question. When seeking reconsideration of the Scheduling Order, the Defence does not have to show prejudice. The test for reconsideration simply requires a showing of 1) a clear error of reasoning, or 2) new material circumstances which justify reconsideration in order to avoid injustice.⁷ The Defence has adequately explained why it is clearly erroneous and/or unjust to deliver judgement in the midst of Independence Day celebrations in Sierra Leone. Further, the Defence has explained why it would be unjust, not to mention discourteous, to deliver the judgement in the absence of Lead Counsel. The Accused

⁴ Prosecution Response, para. 2.

⁵ Prosecution Response, para. 2.

⁶ Prosecution Response, para. 3.

⁷ Defence Request, para. 3.

chose Lead Counsel as the principal party to represent his interests, and the presence of Co-Counsel or the Principal Defender is no substitute for Lead Counsel on a date of such significance.

7. In any event, the Defence has provided all relevant information about Lead Counsel's availability in an *ex parte* annex. The precise details of hearing dates and travel arrangements from another jurisdiction are not necessary to enable the Prosecution to address the merits of the Defence Request. In any event, ordinarily, the word of Counsel as an officer of the Court as to his unavailability should suffice.

*Defence's Failure to Act Diligently in Requesting Change of Date*⁸

8. Rather than failing to act diligently with respect to the judgement date as the Prosecution asserts, the Defence has been proactive about avoiding potential conflict between the parties and the Chamber since June of last year.⁹ When the Scheduling Order was issued last week, Lead Counsel immediately tried to see if his other engagement could be moved in order to accommodate the 26th of April in his diary. This took time, especially considering the intervening weekend. Additionally, unlike the Prosecution, the Defence is always obligated to consult with the Client before determining a course of action and approaching the Chamber. This also takes time.

*Lead Counsel Should Be Available at All Times*¹⁰

9. The Prosecution suggests that since Lead Counsel has been retained to represent the Accused since the summer of 2007, he should be unquestioningly available for any date set by the Chamber. This would have been possible, had Lead Counsel, like the Prosecution staff, been paid a full salary for over a year to sit and wait an indefinite period of time for a judgement date. In the circumstances, to not accommodate a one-working-day adjournment threatens to erode the principle of equality of arms. Moreover, it smacks of double standards for the Prosecution to make this submission.

⁸ Prosecution Response, para. 4.

⁹ Defence Request, Confidential Annex A.

¹⁰ Prosecution Response, para. 4.

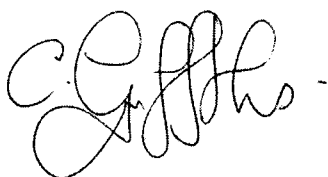
Potential Security Risks are Speculative¹¹

10. It seems the Prosecution would rather rush to a judgement date than err on the side of caution in respect of potential riots or negative repercussions, which might arise following the verdict. The Prosecution position is also strikingly insensitive toward the local customs and heritage of the people whose interests they ostensibly represent.

III. RELIEF REQUESTED

11. The Defence reiterates its request that the Trial Chamber exercise its discretion to reconsider its Scheduling Order and change the date of judgement from 26 April to 1 May 2012, or to any suitable date soon thereafter.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 7th Day of March 2012
The Hague, The Netherlands

¹¹ Prosecution Response, para. 5.