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The Opening of the Trial of Charles Taylor: Early Developments and Delays

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- The Special Court for Sierra Leone convened in the trial of Charles Taylor on June 4, June 25, and July 3, 2007. The accused absented himself from the first two sittings, and appeared briefly in court on July 3. The Principal Defender had previously relayed that Taylor was willing to cooperate with the court if his concerns about defence resources were addressed. Presiding Judge Sebutinde characterized Taylor's absence from the proceedings as "tantamount to a boycott."
- After representing himself for nearly a month following his dismissal of defence counsel, Taylor is currently represented by duty counsel from the Office of the Principal Defender. Trial Chamber II ruled that a new legal team should be appointed as soon as possible. All parties determined that it was in the best interest of the accused to have legal representation rather than to represent himself.
- In response to a joint request by the prosecution and defence, the trial has been delayed until August 20, approaching the date of the original extension requested by Taylor's former defence team.

Overview: Delays in the Trial of Charles Taylor

The agreed timeline for Charles Taylor's trial has been pushed back once again due to issues relating to Taylor's legal representation. Trial Chamber II of the Special Court has had to balance pressures to move the trial forward with concerns relating to fair trial rights. These two sets of concerns are not necessarily in tension, as the right to be tried without undue delay is guaranteed by the Statute of the Special Court, but the issues relating to Taylor's representation were considered substantial enough to delay the trial. Factors affecting the trial timeline included defence preparation and scheduling conflicts, such as the AFRC sentencing judgment in Freetown in mid-July and the SCSL and ICC recesses.

The Chamber will not begin hearing evidence in the trial of Charles Taylor until late August. Notably, this is only shortly before the date that the defence had requested for

the start of trial, and it appears no substantial gains have been made by the Chamber in refusing to grant this original request.¹ The Trial Chamber's efforts to hold to the agreed timeline appear to have been disrupted by a combination of factors, including Taylor's own timing in firing his defence counsel, Defence Office delays in assigning new counsel, logistical issues arising from the dual locations of the Court in Freetown and the Hague, and time constraints tied to other commitments of the Trial Chamber with the AFRC case and scheduled recesses. In the proceedings of 25 June, however, Presiding Judge Sebutinde placed blame for trial delays largely with the Registry, claiming that it had focused more on budgetary constraints than on providing the accused with adequate representation in accordance with Article 17 of the Court Statute.

Taylor had been represented by an assigned counsel up until the day of the prosecution's opening statement on June 4, 2007. As of that day, Taylor terminated his representation and stated that he would represent himself at trial. The accused refused to appear in trial until today, however, and the combination of this refusal and the lack of a new assigned defence team created an impasse where the trial could not go forward without raising concerns about fair trial rights. The Principal Defender indicated that Taylor has since been persuaded to accept legal representation rather than to represent himself in court. The option of compelling Taylor's original counsel to appear on his behalf has not been explored by the Trial Chamber, although a decision by the Appellate Chamber suggests that they have the authority to do so.

The following sections consider the background of the delays in more detail, including relevant aspects of the proceedings thus far that contributed to the court's adjournment. Taylor's actions are not unprecedented at the Special Court, and the Chamber can draw from previous experience of an accused terminating his representation and refusing to appear in court. A final section thus details related issues of legal representation in other cases before the Special Court.

Background: Opening of Trial

The trial of Charles Taylor began in The Hague on the 4th of June, 2007. Taylor did not appear for the opening of trial, and the judges asked his attorney, British barrister Karim Khan, to explain the reasons for Taylor's absence from the proceedings. In response, Khan read selections of a letter from Taylor that effectively terminated Khan's representation. The prosecution expressed concerns that Taylor was using the

¹ See SCSL-2003-01-PT, *Defence Motion Requesting Reconsideration of "Joint Decision on Defence Motions on Adequate Facilities and Adequate Time for the Preparation of Mr. Taylor's Defence,"* 17 April 2007. The motion was unopposed by the prosecution, who acknowledged that "the Accused has shown good cause for an additional delay in the commencement of trial," a point that was noted by the Chamber in their decision of 25 April. The Chamber granted the defence motion in part by adjourning the court for eighteen days after the opening statement. They did not grant the full request of the defence to postpone the trial until September, however, even though the prosecution supported it.

opportunity to make political claims about the court through the medium of the letter,² and the judges encouraged Khan to isolate his reading to sections of the letter that gave reasons for Taylor's absence. In Taylor's letter, after naming specific complaints that including the small size of his defence team relative to the prosecution and the temporary presence of a security camera in the conference room where he had met with his team,³ the accused summarized: "I must decline to attend any further hearings in this case until adequate time and facilities are provided to my Defence team and until my other long-standing reasonable complaints are dealt with. It follows that I must terminate instructions to my legal representatives in this matter. Despite my complete confidence in their ability and competence, I must ask that they cease to represent me before the Special Court and instruct them accordingly."⁴

Khan also explained that Taylor had written a letter to the Registrar terminating his legal representation that noted Taylor would represent himself "in the manner he deems appropriate at this point." Khan emphasized that Taylor was not disputing the court's jurisdiction; instead he took issue with the resources provided to prepare his defence, and was concerned that he would not receive a fair trial. In response, lead prosecutor Stephen Rapp stated "there is nothing that prevents the accused from being here today to listen to this opening statement, and if he had respect for this Court, this is where he would be."

Although the Chamber directed Khan to remain in the courtroom for the opening statement, Khan responded that according to his code of conduct, he was obligated not to represent Taylor after his client had terminated his representation. Under threats that he was "verging on contempt," Khan left the chamber. Three days later, the prosecution filed a motion contesting Khan's withdrawal on the grounds that it may only be granted under "exceptional circumstances," and the Trial Chamber was the proper authority to grant the withdrawal rather than the Principal Defender.⁵ The Chamber has not issued a decision on this motion to date, nor has it invoked its authority to review the decision of Khan's withdrawal, which has been established in a decision by the Appellate Chamber.⁶

² In response to a request by Taylor's defence team, the Chamber ruled in late May that Taylor would not be able to make an un-sworn statement at the opening of trial. See SCS-2003-01-PT, *Decision on Urgent and Public Defence Motion Requesting Leave for Charles Ghankay Taylor to Give an Un-sworn Statement from the Dock*, 29 May 2007.

³ The security camera was affixed by the ICC, and was monitoring images without sound. The Trial Chamber ordered its removal from the room. When the ICC did not comply with this request for 18 days, the Chamber extended the start date of trial proceedings, with the exception of the prosecution's opening statement, from the 4th to the 25th of June in order to compensate for lost time in defence preparation. The defence contends that its loss of preparation time far exceeds this eighteen-day period.

⁴ Transcript of 4 June 2007, p. 10, lines 17-24.

⁵ *Prosecution's Motion Regarding Legal Representation of the Accused*, 7 June 2007. The prosecution also noted that Khan apparently continued to represent Taylor even after he claimed he had been fired, as he filed documents with the court in his capacity as Taylor's counsel after appearing in the trial chamber on June 4.

⁶ In its *Decision on Brima-Kamara Defence Appeal Motion Against Trial Chamber II in Majority Decision on Extremely Urgent Confidential Joint Motion for the Re-appointment of Kevin Metzger and Wilber Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara*, 8

Second Day of Trial Proceedings

The proceedings of June 25, 2007 largely concerned the logistical problems posed by Taylor's absence and lack of legal representation. A witness for the prosecution had been brought to The Hague and was waiting outside the chamber to begin giving testimony. At the opening of proceedings, however, the defence side of the chamber was empty except for the appearance of Principal Defender Vincent Nmehielle and duty counsel Charles Jalloh. The Principal Defender noted that he was addressing the court in his capacity as the head of the Defence Office, not as a representative of the accused, and was thus not in a position to appear on Taylor's behalf if testimony was given. The Principal Defender reported that he had met with Taylor and submitted recommendations to the Registrar for assembling a larger defence team, including a leading senior counsel, two co-counsels and an international investigator. These recommendations were later ordered by the Trial Chamber in their decision issued at the end of the sitting.

During the course of the proceedings, the Principal Defender suggested that Taylor was not satisfied by the options available on the list of qualified counsel maintained by his office, and added that budgetary constraints were impacting his ability to assign an appropriate team. Prosecutor Brenda Hollis responded that Taylor does not have an unqualified right to be represented by a lawyer of his own choosing. Her argument is supported by a decision of the Appellate Chamber of the Special Court.⁷ The prosecutor added that Karim Khan's withdrawal would not be effective unless accepted by the Trial Chamber. The judges did not address this point about their authority over Khan's withdrawal at that time or in their subsequent decision, and it appears that Khan's continued representation of Taylor will not be considered as an option by the Chamber despite the advantages it would offer in preventing further delays.

The prosecution implied that Taylor had deliberately orchestrated the timing of his decision to terminate representation in order to delay the start of trial. Prosecutor Brenda Hollis stated that "The accused should not be allowed to unduly benefit from a situation of his own making" and added "it appears that much too much emphasis is being placed on what the accused decides will be the way these proceedings run."⁸ The bench was reticent on this point, with only a comment from Judge Lussick that the first day of trial was the first time that the bench had heard that Taylor's representation was inadequate. Although they did not speculate about the timing of Taylor's actions, the judges did feel free to comment on his absence from the chamber. Following an argument made by the prosecution, the Trial Chamber determined that Taylor's refusal to appear was tantamount to boycotting the proceedings.

December 2005, paragraph 78, the Appellate Chamber found that the Trial Chamber has the jurisdiction to judicially review decisions by the Registrar on assignment of counsel.

⁷ See *Decision* of footnote 6, paragraph 89: "the right to counsel of the Accused's own choosing is not absolute, especially in the case of indigent accused."

⁸ Transcript of Proceedings of 25 June 2007, p. 39, lines 8-9 and 27-29.

The Chamber also used the ruling as an opportunity to assign responsibility for trial delays largely to the Court Registry and the Acting Registrar. In particular, the Presiding Judge stated, “We wish to emphasize here that we really would not like – or we’ve frowned upon undue delay in this trial. That it would come from an institution within the Court is really regrettable, or it would come from some kind of consideration of budgetary constraints, et cetera, is really regrettable, and I do not know how to underline that.”⁹

The Chamber directed the Registry and Defence Office to assemble a team by the time trial would resume on July 3, or in the alternative, to have a Defence Office duty counsel serve as Taylor’s legal representation as an interim measure. This second option raises questions about the role of the Defence Office in relation to individual trial teams.¹⁰ Although duty counsel are granted the authority to appear as interim counsel for the accused, the Principal Defender stated that in this instance the duty counsel was unprepared to represent Taylor at trial, primarily because he had not been authorized to receive disclosure from the prosecution.¹¹

The developments of the 25th of June highlighted the way in which moving the trial to The Hague has strained the administrative resources of the Special Court. This was evident in previous complaints raised by Taylor’s defence team that they had not been receiving submissions and documents that had been filed in Freetown in a timely fashion.¹² The need to split time between Freetown and The Hague has interrupted the judges’ ability to go forward with the trial after July 12, when they are scheduled to return to Freetown for the AFRC sentencing judgment. The Principal Defender had not met with Taylor until ten days before the resumption of proceedings on the 25th of June because he had been working from Freetown, and he maintained that he had not been able to meet with Taylor due to budgetary constraints. Both the defence and the Chamber have acknowledged what they term “teething problems” arising from the setup of the Registry’s sub-office in The Hague. A defence motion questioning the move of the Taylor trial to The Hague is currently pending before the Council of Judges.¹³

⁹ Transcript of Proceedings for 25 June 2007, page 43, lines 9-14.

¹⁰ For further background on the role of the Defence Office in the functioning of the Special Court, see *The Defence Office of the Special Court for Sierra Leone: A Critical Perspective* (April 2007), by Michelle Staggs and Alison Thompson, a publication of the War Crimes Studies Center at UC Berkeley. In particular, the report notes that “Duty Counsel are infrequently required to stand-in for acting counsel and to represent defendants when counsel are absent or in specific circumstances – for example, if they unexpectedly withdraw from the case” (p. 22).

¹¹ Notably, the Special Court’s own literature states that Duty Counsel “provided advice and substantive assistance to all Defence teams in the preparation of their cases, from research on legal issues to *representing accused in the absence of assigned counsel and co-counsel*” (emphasis added). *Fourth Annual Report of the President of the Special Court for Sierra Leone*, January 2006 to May 2007, p. 42.

¹² See *Defence Motion Pursuant to Rule 54 Requesting Order to Court Management to Accept Filings and Serve Hard Copies of All Filings on the Parties in The Hague Immediately*, 23 May 2007.

¹³ See *Defence Motion Before the Council of Judges to Review the President’s Decision to Transfer the Venue of Mr. Taylor’s Trial*, 25 May 2007. The defence alleges that the change of

Third Day of Trial Proceedings

At the resumption of proceedings on July 3, 2007, the Presiding Judge again noted Taylor's absence from the chamber. Duty Counsel Jalloh, who was appearing as Taylor's interim counsel, notified the judges that Taylor intended to appear and was on his way from the detention facility. The Presiding Judge did not delay the proceedings, however, and instead stated that under Rule 60 the court could continue in his absence. An administrator later explained that Taylor's route to the court had been modified by transport police, which was why his arrival had been delayed. It was not clear why the bench continued with the proceedings rather than waiting for the accused, especially in light of the content of the ruling that was delivered in his absence. This ruling granted the defence request for more time and acknowledged the issues of adequate support that Taylor had raised both through his former counsel and through his letter to the Trial Chamber.

While awaiting Taylor's arrival, the Presiding Judge read out a ruling granting a postponement of trial proceedings until August 20. This ruling was in response to a joint motion by the prosecution and defence, which pointed out that duty counsel was not able to effectively represent Taylor during the scheduled proceedings from July 3 through July 11. The Trial Chamber noted that good cause had been shown to postpone the trial, as compelling the duty counsel to represent Taylor without adequate time or support would be a violation of the accused's fair trial rights under Article 17 of the Court Statute. The Chamber also agreed to extend the time limits on defence responses to pending motions by the prosecution. The Presiding Judge noted that the Trial Chamber had warned the Registry in March of the possibility of undue delay, and stated that Taylor should not be penalized for what she termed the "laxity of the Registry."

Charles Taylor arrived approximately twenty-five minutes after the start of trial. After a brief adjournment for him to consult with his acting counsel, Taylor was read an amended count of the indictment, Count Five, charging sexual slavery as a crime against humanity. With the agreement of defence counsel, the Chamber had determined that the changes to Count Eleven of the indictment were not substantial enough to warrant Taylor entering a new plea. The accused entered a plea of "not guilty" for the crimes alleged in Count Five, and the court adjourned until August 20, 2007.

venue is prejudicial to the accused, and that neither party requested the transfer nor has been heard on the issue of the transfer.

Issues of Legal Representation before the Special Court

The rights of the accused which the Trial Chamber must have regard to include the right to legal assistance. To ensure that this right is preserved, the Trial Chamber may, under Rule 60(B), appoint Counsel to represent an accused who refuses to come to court or, under Rule 45(E), the Trial Chamber can refuse permission for Counsel to withdraw from a case.¹⁴

-Trial Chamber II

Issues relating to legal representation have been particularly important in the opening days of the trial against Charles Taylor. In particular, the court has had to navigate the accused's refusal to appear in court, his decision to represent himself, and his termination of legal representation. None of these issues are unprecedented before the Special Court for Sierra Leone, and Trial Chamber II has had prior experience with the issue of applying the Rule 45(E) standard of "most exceptional circumstances" to requests by counsel to withdraw from a case.

It has been well established that the trial can proceed in the absence of the accused under the authority of Rule 60 of the Rules of Procedure and Evidence. Presiding Judge Sebutinde invoked this rule when she stated that the court presumed Taylor was voluntarily absenting himself from proceedings on the 25th of June. Taylor's absence from the Chamber only presented a problem because he had also decided to represent himself, and the combined self-representation and absence from the chamber meant that he was without any form of representation if the prosecution were to lead evidence. Taylor is no longer interested in representing himself, and he will be assigned new counsel before proceedings resume.

The court has previously dealt with the matter of an accused's self-representation in the case against Samuel Hinga Norman, now deceased, who participated in the cross-examination of witnesses for a period of his trial. When Norman determined that he would be representing himself at the opening of trial proceedings, the court ordered his legal representatives to serve as "stand-by counsel," a designation that was later changed to "court-appointed counsel" when Norman refused to appear in court. This changed designation signaled that the lawyers were answerable to the court rather than to the accused. Two defence lawyers contested this shift as a violation of the law of their home jurisdictions, which require them to be answerable solely to their clients. Karim Khan made a similar comment in the proceedings of June 4, where he implied that he was subject to the instructions of his client even if they went against an order of the Trial Chamber.¹⁵

In the case against alleged members of the RUF, Augustine Gbao similarly withdrew from proceedings and refused to give instructions or communicate at all with his legal

¹⁴ SCSL-04-016-T-278, *Decision on the confidential joint Defence application for withdrawal by Counsel for Brima and Kamara and on the request for further representation by counsel for Kanu*, 20 May 2005, Page 11, paragraph 46.

¹⁵ June 4, 2007 Transcript of Proceedings, pages 22-27.

representatives. In a letter addressed to the Trial Chamber, Gbao stated that he did not want any legal counsel to appear for him because he did not recognize the legitimacy of the court. Unlike Taylor, Gbao refused to recognize the court's jurisdiction, and he did not make a request to represent himself at trial. Trial Chamber I ruled that Gbao's refusal to recognize the court did not constitute "exceptional circumstances" that would permit his counsel to withdraw, and the Appeals Chamber upheld its decision.

As with Gbao's case, Taylor appears to have made an effort to terminate his representation as a form of communicating his disapproval of the court. Gbao made both verbal and written applications to Trial Chamber I requesting to end his legal representation because he claimed his rights under Article 17 of the Court Statute had been violated.¹⁶ In his letter to the judges of Trial Chamber II, Taylor noted that he had "complete confidence" in his defence team, but stated that "I must ask that they cease to represent me" because his confidence in the court had waned and he felt that his statutory rights had been violated. It would appear that in order to remain consistent with their own rulings and with the rulings of Trial Chamber I, the judges of Trial Chamber II would need to make a determination as to whether Taylor's termination of Khan as counsel met the "exceptional circumstances" requirement. The Norman case indicates that an accused's decision to represent himself does not constitute such circumstances, and Gbao's case shows that the accused's own desire to end legal representation does not warrant a withdrawal of counsel.¹⁷

The two previous examples of issues of self-representation and withdrawal or termination of instructions arose from the cases governed by Trial Chamber I. Trial Chamber II has also addressed issues of legal representation, and has prior experience with the issue of counsel requesting to withdraw. In the case against Brima, Kanu, and Kamara (the "AFRC case"), all three accused chose to absent themselves from proceedings following events surrounding the disclosure of a witness's identity. Here the three accused also protested that they had not been given the proper resources to conduct their defence, largely because their investigator had been suspended in light of this identity disclosure. In response, they threatened to withdraw instructions to their counsel. Two counsel in the AFRC case were permitted to withdraw by Trial Chamber II on the grounds that they were concerned about threats to themselves and their families.¹⁸ The Chamber was satisfied that the threshold "most exceptional circumstances" requirement articulated in Rule 45(E) had been met. However, the Chamber pointed out that withdrawal of instructions alone did not meet the requirement of "most exceptional circumstances."

¹⁶ See *Gbao – Decision on Appeal Against Decision on Withdrawal of Counsel*, 23 November 2004, paragraph 25.

¹⁷ On July 2, 2007, however, Trial Chamber I finally granted the request of one member of Gbao's team to withdraw on the basis of "a complete and irreversible breakdown of trust and confidence" between counsel and his client. The reasoned judgment, which presumably considers this issue in light of Rule 45(E), is not yet available.

¹⁸ See *Decision on the Confidential Joint Application for Withdrawal by Counsel for Brima and Kamara and on the Request for Further Representation by Counsel for Kanu*, 20 May 2005, paragraphs 59-61.

It has been established that the trial chambers of the Special Court for Sierra Leone have the authority to intervene in matters concerning the withdrawal of counsel. This is apparent both from the language of Rule 45(E) of the Rules of Procedure and Evidence as well as from relevant developments in both trial chambers. Trial Chamber II's relative passivity in the matter of Karim Khan's withdrawal appears to break from positions taken in the past by both chambers, where judges permitted an accused's self-representation in conjunction with stand-by or court-appointed counsel, and where termination of instructions or a request to terminate representation has not been considered sufficient cause for an attorney to withdraw. Although the Presiding Judge claimed that Khan's behavior on the first day of trial was "verging on contempt," contempt was not formally alleged.¹⁹ In light of Trial Chamber II's desire to proceed without undue delay in the trial of Charles Taylor, and considering Taylor's publicly expressed confidence in Khan's ability to represent him, refusing to accept his withdrawal from the case would have been one way of moving the trial forward. The bench's tacit acceptance of Khan's withdrawal appears to shift from previous positions taken by both trial chambers.

¹⁹ When Karim Khan asked for advice from independent counsel on the possibility of contempt, Judge Lussick stated, "Mr. Khan, you are very well aware that you haven't been charged with anything yet" (Transcript of Proceedings, 4 June 2007, page 24, lines 27-28). When Khan attempted to leave the courtroom, Presiding Judge Sebutinde stated, "There is a directive of this Court asking you to sit down and to represent your client, which you apparently have defied, and now you are walking out with further defiance, without leave. You are withdrawing from the Court without leave. Now you're really verging on contempt" (Transcript of Proceedings, 4 June 2007, page 25-26, lines 26-2). Judge Sebutinde did also direct duty counsel Charles Jalloh to "take charge of Mr. Taylor's case throughout these opening statements," however, which arguably could constitute recognition, if not acceptance, of Khan's withdrawal.