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by Kirsten Seffer
Researcher

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Summary

Charles Taylor
The initial appearance of former Liberian President Charles Ghankay Taylor took place on Monday, 3 April, 2006. The Principal Defender's decision to provisionally assign Mr. Karim Asad Ahmad Khan as Taylor's counsel was subsequently issued on Wednesday, 5 April, 2006. On Thursday, 6 April Mr. Khan filed an urgent motion before Trial Chamber II requesting that no change of venue from the seat of the Court in Freetown be ordered before the Defence had filed further submissions. He further asked the Chamber to urge the President of the Special Court to withdraw the requests he had reportedly made to both the government of the Netherlands and the President of the ICC to permit Taylor's trial to be conducted at the International Criminal Court in The Hague.

Trial Chamber I
The RUF trial continued before Trial Chamber I (3-6 April, 2006). On Wednesday, 5 April, 2006 a status conference for the CDF trial was held. The Chamber issued its decision on the Principal Defender's motion against the installation of surveillance cameras in the Detention Facility on Thursday, 6 April, 2006, following the decision issued by Trial Chamber II regarding the same matter the previous Monday.

Trial Chamber II

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On Monday, 3 April, 2006, Trial Chamber II issued its decision on the Principal Defender's motion against the installation of surveillance cameras the Detention Facility. A status conference for the ARFC trial was held on Tuesday, 4 April 2006.

The Special Court is in judicial Recess from Friday, 7 April until Monday, 24 April, 2006.

Initial Appearance of Charles Taylor before the Special Court for Sierra Leone[1]

On Monday, 3 April, 2006 former Liberian President Charles Ghankay Taylor made his initial appearance before Justice Richard Lussick, the Presiding Judge of Trial Chamber II. Despite parties from both within and outside the Court expressing concerns about the security surrounding Taylor's detention and appearance, the situation has remained calm and there are still no signs of social unrest. Nevertheless, local newspapers report that a number of Taylor's supporters have made their way from Liberia to Freetown, which is likely to be the reason why security surrounding the Court remains at a high level. The Office of Press and Public Affairs has sought to alleviate public concern surrounding Taylor's trial by issuing counter-reports that the situation is under control.

For further in-depth coverage of Taylor's initial appearance, readers are directed to a special report issued by Alison Thompson which is available on this web site at the Sierra Leone main web page. Perhaps the only other issue worthy of note is that ordinary members of the public were inadvertently excluded from seeing Taylor at trial due to the large number of jounralists from the local and international press that filled the public gallery. As a result, the press and the outreach section at the Court have been prompted to communicate to the public what happened during the initial appearance. The same strategy will likely be adopted regarding the ongoing discussion about the possible transfer of the Taylor Trial to The Hague. As the Court's Outreach Section is very aware of the crucial importance of keeping the public informed of the process and efforts have been made to expand outreach activities as far as Liberia to ensure the Court achieves this aim.

Assignment of Mr. Karim A. A. Khan as provisional Counsel for Charles Taylor[2]

On Monday, 3 April, the Principal Defender, Mr. Vincent Nmehielle, provisionally declared Charles Taylor partially indigent. Following a request of the accused to provide him with Legal Assistance, the Principal Defender then on Wednesday, 5 April, assigned Mr. Karim Asad Ahmad Khan as provisional Counsel to the accused Charles Taylor for a period of 90 days.

Taylor Defence: Urgent motion for an order that no change of venue from the seat of the Court in Freetown be ordered

During his initial appearance before the Special Court on Monday, 3 April, Charles Taylor insisted - much to the audience's astonishment - that he be tried in Sierra Leone. This declaration was followed by an urgent motion before Trial Chamber II filed by Taylor's provisional counsel seeking an order that no change of venue from the Seat of the Special Court in Freetown be ordered without the Defence being heard on the issue. The Defence further urged the Chamber to request the President of the Special Court withdraw the requests he had reportedly made to the government of the Netherlands and the President of the International Criminal Court in respect to a potential transfer of the trial to The Hague.

Trial Chamber I - RUF- Summary

The 7th trial session in the RUF-Trial before Trial Chamber I ended with the testimonies of four Prosecution witnesses of whom only three appeared in person before the Court. After the brief

[1] For a more details on the initial appearance see the Special Report by Allison Thompson http://socrates.berkeley.edu/~warcrime/SL-weekly.htm

[2] The Principal Defender's decision is available from the Special Court website http://www.sc-sl.org/Documents/SCSL-04-15-T-536.pdf

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oral testimony of TF1-081, the Chamber adjourned until 19 June, 2006, when a status conference will be held. The 8th trial session is scheduled to commence the following day, 20 June, 2006.

Witness Profiles

TF1-168 was the 69th witness called in the trial and the 68th witness for the Prosecution. He was first called on Friday, 31 March. The Prosecution applied for the entirety of his testimony to be heard in closed session. Accepting the reasons put forward by the Prosecution, the Trial Chamber granted the application and the public was excluded from hearing proceedings from Friday, 31 March until Tuesday, 4 April, 3.30 pm. No further information about witness TF1-168 or the content of his evidence is publicly available.

TF1-159 testified for just about one hour before Trial Chamber I on Wednesday morning. He was the 70th Prosecution witness and the 71st witness in the RUF Trial. His testimony marked the 150th day of the RUF-Trial, which has been ongoing since July 2004. The witness is an elderly man, who was born in Mateboi in the Bombali District. He is married, has 13 children, is illiterate and makes a living from doing farm work. The witness testified in Temne which is the only language he speaks. He could not give his age but referred to himself as an "old man". During his testimony the witness constantly had to be reminded not to go too fast so that the interpreters could accurately relate his testimony to the Chamber. He testified about the time he spent in captivity of a rebel group led by Saj Musa. He further gave evidence on mass killings he witnessed, the military training that young men and boys received at Camp Rosos and the work he was forced to do for the rebels.

TF1-156 was called as the 72nd witness for the RUF-Trial and the 71st Prosecution witness on Wednesday afternoon. In accordance with Rule 92*bis* of the Rules of Procedure and Evidence, passages of the witness's testimony given as evidence in the AFRC trial were submitted to the Chamber, and as a result, the witness did not have to testify in examination-in-chief. The Defence chose to forego their right to cross-examine the witness and as a result the witness did not appear before the Court.

TF1-081 was called as the 73rd trial witness and the 72nd for the Prosecution, again for cross- and re-examination purposes only, on Thursday, 6 April. The Prosecution once again had tendered passages of the witness's previous testimony in the AFRC-Trial in lieu of examination-in-chief under Rule 92*bis*. His brief oral testimony was entirely heard in closed session to protect the witness's identity.

Behavior of Defence Counsel for third accused during cross-examination of TF1-168

As mentioned, the entire testimony of TF1-168 was heard in closed session. As a result no information about the content of this witness's testimony is publicly available. However, a few procedural issues are worthy of note.

During the testimony of TF1-168, counsel for the third accused, Augustine Gbao, was frequently reminded by Judge Boutet not to be repetitive and lengthy in his cross-examination. Counsel replied by trying to clarify the purpose of his conduct, in particular emphasizing that the witness's reluctance to answer certain questions relating to Mr. Gbao's role in a specific incident. Judge Boutet disagreed with counsel's assessment of the witness's responses, stating that, in his view, the witness had answered the questions properly.

Despite repeated warnings from the bench, counsel's cross-examination continued to focus on repetitive questioning and appeared to be a wholly unpleasant and humiliating experience for the witness. Questions put to the witness appeared to paint him as opportunistic and self-serving. Counsel constantly suggested that the witness was lying to the Court in order to discredit his client, Mr. Gbao. Furthermore, Witness TF1-168 was repetitively called by his last name during the cross, making the witness somewhat agitated regarding his safety as a witness, despite the

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fact that he was testifying in closed session. The Presiding Judge subsequently asked counsel to refrain from using the witness's name – a request which was seemingly ignored by counsel.

From the perspective of a neutral observer, Defence counsel's behavior appeared to contravene the Court's Code of Professional Conduct by disregarding the measures taken under that instrument to ensure witnesses are not harassed or intimidated by counsel.[3] While it is clear that counsel is under a duty to defend his client rigorously, a duty that may at times call for him to discredit witnesses in a harsh manner, counsel's refusal to comply with the directions of the bench by continuing to call the witness by his last name and indulge in repetitive lines of questioning seemed to go beyond his professional duty in this regard.

Up until today the Judges of Trial Chamber I have been criticized on more than one occasion for taking a comparatively less active part in the proceedings. Under the circumstances described above, it would seem desirable for the Bench to intervene at an earlier stage and in a more rigorous manner, should any counsel act in contravention of their ethical obligations under the Code of Conduct.

While the mentioned counsel for the third accused seems to have developed an inappropriate manner towards witnesses, the second team member of the Gbao Defence team adopts the opposite approach. On previous occasions at trial, co-counsel had occasionally even expressed sympathy for victim-witnesses and seemed to be aware of their suffering. Furthermore, co-counsel's attitude towards closed sessions showed the respect he had for witnesses: mindful of his client's right to a fair trial, he objected to the entire cross-examination of Witness TF1-156 being heard in closed session, but admitted that it was his professional duty to agree to go into closed session for the parts of the cross-examination that might reveal the witness's identity.

Testimony of Witness TF1-159

TF1-159 alleged that he was captured by the rebels that he referred to as "soldiers" throughout his testimony. According to the witness he was abducted from his village by a group of seven "soldiers". He believed it was May, but was unable to determine in what year it had taken place. The soldiers hit him with a gun, knocking him to the ground, and took him to Mafabu town, where the witness saw many other people who had been captured. Some of the civilians were killed by the rebels: they were either shot or hacked to death. Others were victims of looting.

The witness alleged that he was made pound husk rice for the rebels. He claims he was told to do so by Saj Musa, whom he alleged appeared to be the leader of the rebel group. After nine days, the rebels burnt the town and took the captured civilians from Mafabu to Malama where

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[3] *Code of Professional Conduct for Counsel with the Right of Audience before the Special Court for Sierra Leone (adopted 14 May 2005)[3], Article 10 (excerpt):*

(A) In dealing with victims and witnesses, counsel shall:

> *(i) subject to the Rules of Procedure and Evidence, preserve confidentiality, and not disclose information which may jeopardize the privacy, safety and security of victims and witnesses, in particular those witnesses who have been afforded protective measures under Rule 69 or Rule 75 of the Rules;*

(ii) make reasonable efforts to minimize inconvenience to witnesses;

(iii) consider the views, legitimate interests and concerns of witnesses;
[…]
(C) Counsel shall not coerce, threaten, intimidate, humiliate or harass a witness or his relatives and acquaintances.

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further killings took place and forced labor allegedly continued. Three days after their arrival, the rebels burnt Malama and took their captives to Rosos. Again, the witness had to pound rice and fetch water for the rebels. While performing his duties, he witnessed that the rebels brought young men and young boys (TF1-159 could not give their age) to Rosos where they had to undergo military training. The witness described that the recruits were trained in rolling and crawling even when it was raining. He further testified that the rebels engaged in looting and the rape of women while at Rosos. After three months, the rebels set Rosos on fire and took their captives to Rotorfeyin [Ro-Thof-Ayim], where the witness was finally released and told by Saj Musa to return to his hometown.

Neither of the Defence teams had questions for this witness so his evidence before the Court was completed without cross-examination or re-examination. Given the witness constantly referred to "soldiers" (hence indicating that the combatants in the group may have been former Sierra Leonean Army soldiers), it is likely that this was part of a strategic Defence move to dispute the existence of a joint criminal enterprise between the two groups.

Rule 92*bis* - Trial Chamber I admits transcripts of TF1-156's and TF 1-081´s testimonies in AFRC-Trial in lieu of examination-in-chief

Witness TF1-156 did not appear in person before the Court since he had previously testified in the AFRC-Trial before Trial Chamber II. Instead, the Prosecution sought to admit the transcript of this testimony in lieu of TF1-156's examination-in-chief[4]. Trial Chamber I issued a decision granting the Prosecution's application[5]. The decision states that the transcripts in question are "relevant for the purpose of which it is sought to be admitted" in accordance with the requirements laid down in (B) of Rule 92*bis*. The Chamber further ordered that the Prosecution file the relevant passages in the RUF-trial and that the transcripts of closed sessions remain sealed. While Trial Chamber I noted that the Defence was not deprived of their right to cross-examine TF1-156 and that the Prosecution was also entitled to re-examine the witness, each party waived their rights in this regard. The relevant passages of the transcript from the ARFC-Trial were therefore tendered as an exhibit in the RUF-Trial.

On Thursday, 6 April, the Prosecution adopted the same procedure when calling the next witness, Witness TF1-081. In contrast to the previous witness, Witness TF1-081 was briefly cross-examined on the content of the transcripts filed as evidence. No re-examination took place. The whole oral testimony of TF1-081 was heard in closed session in accordance with the protective measures ordered by Trial Chamber II which Trial Chamber I saw no reason to overturn.

Decision on Gbao Counsel's Application to Withdraw[6]

On Monday, 27 March, 2006, Prof. Andreas O'Shea had made an oral application to be allowed to withdraw from the RUF case. According to Professor O'Shea, his client, Augustine Gbao, had repeatedly stated in public that he had no trust and confidence in his Defence Counsel. Nine days later, on Wednesday, 5 April, Trial Chamber I dismissed the application on the grounds that "no exceptional circumstances" were demonstrated which would have been required for the withdrawal pursuant to Rule 45 (E) of the Rules of Procedure and Evidence[7]. Furthermore, the

[4] Under Rule 92*bis* of the Rules of Procedure and Evidence "A Chamber may admit evidence […] in lieu of oral testimony." Rule 92*bis* of the Rules of Procedure and Evidence, available from the Special Court for Sierra Leone website http://www.sc-sl.org/rulesofprocedureandevidence.pdf

[5] The decision is available from the Special Court for Sierra Leone website http://www.sc-sl.org/Documents/SCSL-04-15-T-530.pdf

[6] The decision is available from the Special Court for Sierra Leone website http://www.sc-sl.org/Documents/SCSL-04-15-T-533.pdf

[7] Rule 45(E) of the Rules of Procedure and Evidence, available from the Special Court for Sierra Leone website http://www.sc-sl.org/rulesofprocedureandevidence.pdf

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Chamber asserted their "full confidence" in Prof. O'Shea and his ability to act in the best interests of his client. Subsequently, Trial Chamber I appointed both Defence Counsel for Gbao, Prof. Andreas O'Shea and Mr. John Cammegh, to represent their client "in the capacity of Court Appointed Counsel". Representation by Court Appointed Counsel would, at this advanced stage of the RUF trial, "be in the best interest of justice" and in accordance with Gbao's "fundamental right to a fair and expeditious trial".

Trial Chamber I – CDF Status Conference

On Wednesday, 5 April, Justice Boutet presided over a status conference for the CDF trial, scheduled to recommence after the Easter recess. Duty Counsel for the CDF trial, Mr. Lansana Dumbuya, appeared as legal representation for the second accused, Moinina Fofana, acting under the instruction of Court Appointed Counsel Mr. Arrow J. Bockarie.

At the last conference held on 22 March, the Chamber had indicated that further discussion about witness-related matters was required. On 23 March, the Chamber issued an order, mainly addressed to Court Appointed Counsel for the first accused (Sam Hinga Norman), to re-file a number of documents by 3 April. This included copies of revised witness lists that were to include summaries of witness testimonies, the order of their witnesses' appearance, and exhibit lists. The Chamber had further ordered Counsel to disclose any available information relating to their witnesses' identities and to reconsider the necessity of adding 13 witnesses to their witness list (for which they were seeking leave to do). Furthermore, the Chamber requested that all three Defense Teams determine the common witnesses in the CDF Defence case. The purpose of this subsequent status conference for the parties was to update the Chamber on their progress and compliance with these orders.

Justice Boutet acknowledged the receipt the first accused's re-filed reduced witness list (now consisting of a core list of 27 witnesses and a back-up list of 51 witnesses). The Chamber expressed concern at the large number of back-up witnesses for the first accused's case but was reassured by lead counsel that he understood back-up witnesses were only to be called if core witnesses could not testify.

The Presiding Judge noted that the witness list re-filed by the first accused provided the Chamber with more details and was generally in compliance with its orders, but criticized the fact that seven out of the 27 summaries of witnesses' testimonies had not been updated at all only ten out of the 27 witnesses had been fully updated in compliance with the order. The Defence were urged to provide the Chamber will full details of all its witnesses by the beginning of the next trial session at the very latest. Additionally, he noted discrepancies in the witness summaries from previous summaries filed on 23 January and 14 March: rather than adding to the summaries as the Chamber had requested, in some instance the Defence had re-filed witness information that they had previous deleted or deleted information that they had previous filed. Dr Jabbi failed to offer a reasonable explanation for this, merely suggesting it was an oversight or computing error. Justice Boutet requested the Defence Team to review these matters and to notify the parties accordingly.

Perhaps even more troubling was the fact that certain witness summaries re-filed by the first accused still contained reference to crimes or events that were outside the time frame of the indictment and therefore appeared not to be relevant. Dr Jabbi assured that those elements would be eliminated from the witnesses' evidence in Court, though he added that retaining some of the background material may be necessary. The Presiding Judge reminded counsel to focus on the core information and warned him to refrain from introducing further background information through witness evidence during the hearing.

The Prosecution shared the Chamber's concerns. James Johnson on behalf of the Prosecution complained that they often were not able to determine the content of the anticipated witness evidence in Court from the summaries provided to them by the Defence. As such, the prosecution

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was not in a position to agree or disagree with what was in the summaries. In order to save time at trial, the summaries would have to be improved.

The next item on the agenda was the issue of common witnesses. In their written submission Court appointed Counsel for the second accused (Fofana) had stated that they intend to call 13 witnesses common to the list of the first accused Norman. Mr. Charles Margai, lead counsel for the third accused (Allieu Kondewa), confirmed that his team no longer intended to call witnesses from the list filed on behalf of the second accused. He further explained that so far it had been impossible identify potential common witnesses with the first accused as the other Defence team was still in the process of bringing their witness list in compliance with the Chamber's order.

Justice Boutet urged the parties to engage in negotiations about a possible agreement on matters that are not in dispute. Dr Jabbi affirmed that there were talks in progress. Justice Boutet reminded him further to ensure that once the trial recommences in May the Defence had their witnesses available at all times to avoid undue delay. When questioned about his intention to call an expert witness, Dr Jabbi replied that it was very likely that his team would not call an expert witness at all. Duty Counsel for the CDF trial, Mr. Dumbuya, confirmed that the expert witness for the Fofana Defence had begun his studies and would continue his research after his arrival in Freetown. Mr. Margai, lead counsel for the third accused (Kondewa), stated that his team did not intend to call a military expert but that they were in a discussion with an anthropologist who was likely to be called as an expert witness.

Upon closing the status conference Justice Boutet confirmed that the Chamber had not reached a decision yet on the issue of President Kabbah being called as a witness for the first and the second accused. Nevertheless, he stated, a "very remarkable effort" had been made but that there was "still a requirement for more progress". The CDF trial is scheduled to recommence 2 May, 2006.

Trial Chamber II - AFRC Status Conference

On Tuesday, 4 April, Justice Lussick presided over a status conference in the AFRC trial. It was the first status conference held since the Chamber had dismissed the Defence motions for Judgment of Acquittal[8]. Although unusual for a status conference, the accused were present. The most important item on the agenda was the setting of a date for the pre-trial- / pre-Defence-conference and the start of the Defence case[9]. Further items discussed included the number of the witnesses called by each Defence team, the anticipated length of the Defence case and the disclosure obligations of the Defence.

Mr. Andrew Daniels, counsel for the second accused (Brima Bazzy Kamara), speaking on behalf of all three Defence teams declared that they were estimating 135 witnesses to be called of whom 50-70 were common witnesses, 60 individual witnesses (20 for each accused) and five expert witnesses. Counsel then submitted that the Defence case should last 10-12 months inclusive of the recesses. He suggested 1 May as an appropriate date for the pre-defence-conference. Mr. Kojo Graham, Counsel for the first accused (Alex Tamba Brima), continued, arguing that the Defence should be given adequate time for the preparation of their case. In this regard, he suggested the trial should recommence in September after the summer recess. He listed the wide ambit of the charges under the indictment, the handicap of not being equipped with all the information that was needed for an effective cross-examination of Prosecutions witnesses, the discontinuity in the legal representation of the accused and the issue of limited funding as reasons why the Defence case should commence this late. Counsel further pointed out that the upcoming rainy season would hamper the Defence investigations and the collection

[8]The decision is available from the Special Court for Sierra Leone website http://www.sc-sl.org/Documents/SCSL-04-16-T-469-1.pdf

[9] The Prosecution closed its case 21 November, 2005 after calling 59 witnesses (including three expert witnesses).

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of witnesses since a number of villages and crime bases, such as Camp Rosos, were likely to become inaccessible for the investigators. Mr. Abibola Manly-Spain, Counsel for the third accused (Santigie Borbor Kanu), then raised the issue that the Defence teams faced problems in getting "quality witnesses" as some of their potential witnesses, particularly former AFRC soldiers that are current members of the Republic of Sierra Leone Armed Forces, reported to the Defence that they had been intimidated. Mr. Graham. He added that the lack of cooperation from the state of Sierra Leone constituted another major difficulty in their preparations of the Defence case.

The Prosecution suggested Monday, 5 June, 2006 as a fair and reasonable start date, arguing that the Defence had already ample time to prepare their case since the Prosecution closed its case in November 2005. The Prosecution pointed out that they had no objections to a pre-defence conference to be held on 1 May but noted that disclosure orders for the Defence to disclose witness lists, exhibit lists, witness statements and copies of exhibits to the Prosecution still needed to be filed. Given Justice Lussick had stated that such orders could only be made at the pre-defence conference the Prosecution took the position that the sooner the conference could be held the better. At this stage Justice Lussick intervened, clarifying that a pre-defence-conference could not be scheduled for later this week as the Defence had already made arrangements to undertake investigations in rural Sierra Leone. He therefore suggested that instead of determining the date for an early pre-defence-conference, consent orders could be made following a further status conference scheduled for the following week after the Prosecution and the Defence had had further time to discuss their requirements.

Unfortunately, the Prosecution and the Defence could not agree to this suggestion. This was largely due to a dispute between the Prosecution and the Defence teams regarding the use of pseudonyms for witnesses and the disclosure of witness identities. Justice Lussick therefore determined that, to "get this case moving", the Chamber would need to issue disclosure orders as a matter of priority and instead scheduled the pre-defence-conference for Wednesday, 26 April.

Finally, Justice Lussick stated that both dates suggested as start date of the Defence case were much later than the date the Trial Chamber had had in mind. However, in spite of the obvious discrepancies a date for the hearing should be fixed in order to "have some definitive objective to work towards". Agreeing with the prosecution's submissions, he therefore ordered Monday, 5 June as start date for the Defence case.

Trial Chambers I and II - Decisions on Principal Defender's motion against the Registrar's decision to install surveillance cameras in the Detention Facility

The trial chambers issued their decisions regarding the Principal Defender's motion against the installation of surveillance cameras in the detention facility this week, with each Chamber finding that the motion should be dismissed. In the motion, filed in late January, the Principal Defender, Vincent Nmehielle, argued on behalf of the accused that the installation of surveillance cameras "struck at the heart of fair trial rights and was therefore am unjustified interference with the rights of the accused persons". According to Mr. Nmehielle, the detainees believed the installation of cameras was a "calculated measure" taken to eavesdrop on their conversations and to monitor the preparation of the Defence case. The Principal Defender further argued that the surveillance cameras contravened the principal that the accused should be innocent until proven guilty by unreasonably subjecting them to the same detention conditions normally only implemented once an accused had been tried and convicted.

Both Trial Chambers rejected the motion, on the grounds that the Principal Defender lacked the *locus standi* to file a motion as he was neither the Accused nor Accused's Counsel. In coming to this conclusion, the Chambers reasoned that motions brought on behalf of the Defence should properly be submitted by the Accused and/or the Accused's counsel in accordance with Rule

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72(A) of the Special Court's Rules.[10] The decision seems somewhat surprising, given the Principal Defender has been appointed to act on behalf of the accused persons and highlights an ongoing tension between the advocacy and managerial aspects of the role of the Defence Office at the Special Court.

[10] Pursuant to Rule 72(A) of the Rules of Procedure and Evidence[10] "either party may move […] for appropriate ruling or relief" which means that only a *party* has the right to file motions. In Rule 2(A) of the Rules of Procedure and Evidence *Party* is defined as "The Prosecutor or the Defence" while *Defence* is defined as "The Accused and/or the Accused's counsel". Since the Principal Defender is neither of them, he is not a *party* and hence has no right to file a motion regardless of its content.

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