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**SPECIAL COURT FOR SIERRA LEONE**

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| Date:   | 1 <sup>st</sup> July 2004   | Case Name: | The Prosecutor v. Morris Kallon |
|         |   | Case No:   | SCSL-2004-15-PT                 |
| To:     | <b>PROSECUTION: Luc Coté, Robert Petit</b><br><br><b>DEFENCE: for Kallon, Sesay &amp; Gbao</b><br><br><b>CHAMBER: Trial</b><br><br><b>OTHER:</b>  |            |                                 |
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Document(s): Morris Kallon – Pre Trial Brief

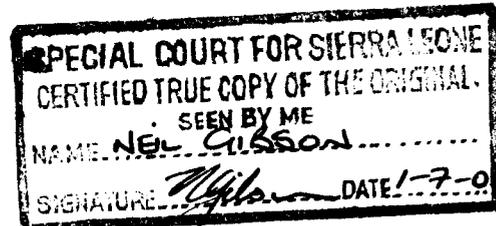
Dated: 1<sup>st</sup> July 2004

Reason:

Other reasons: *The Pre-Trial Brief is filed out of time.*

Signed:

Dated: 1.7.2004



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177,

SCSL - 2004 - 15 - PT  
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**IN THE SPECIAL COURT FOR SIERRA LEONE**

**THE TRIAL CHAMBER**

**Before: The Trial Chamber**  
Judge Benjamin Itoe, presiding  
Judge Bankole Thompson  
Judge Pierre Boutet

**Registrar: Mr. Robin Vincent**

**Date filed: 1<sup>st</sup> July 2004**

**Case No. SCSL 2004-15-PT**

**In the matter of:**

**THE PROSECUTOR**

**Against**

**ISSA SESAY  
MORRIS KALLON  
AUGUSTINE BAO**

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**MORRIS KALLON -DEFENCE PRE-TRIAL BRIEF**

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*Prosecutor vs. Sesay, Kallon and Gbao SCSL-2004-15-PT*

**INTRODUCTION**

1. The Defence for Morris Kallon apologizes to the Trial Chamber and the Office of the Prosecutor for filing the Defence Pre-Trial Brief only now pursuant to Rules 54 and 73 bis of the Rules of Procedure and Evidence of the Special Court and the Order of the Trial Chamber dated 12<sup>th</sup> March 2004. The delay is due to an oversight on the part of the Defence at the time it took over the case of Morris Kallon.

2. According to the Rule 73 bis (F) of the Rules.

“[...] The Trial Chamber or a judge designated from among its members may order the Defence to file a statement of admitted facts and law and a Pre-Trial Brief addressing the factual and legal issues, not later than seven days prior to the date set for trial.”

3. The Defence Pre-Trial Brief is principally intended to provide a response to the Prosecution's Pre-Trial Brief and to address the factual and legal issues contained therein.

**Background**

4. On the 10<sup>th</sup> of March 2003, Morris Kallon was indicted by the Chief Prosecutor of the Special Court on a 17-count charge and was subsequently arrested. The Indictment was later consolidated and the indictment amended by the addition of one more count.

5. Morris Kallon was born on the 1<sup>st</sup> of January 1964 at Wonde Chiefdom, Bo District and not at “Bo, Bo District” as alleged by the Prosecution in its Pre-Trial Brief.

*Prosecutor vs. Sesay, Kallon and Gbao SCSL-2004-15-PT*

5. At about the age of 7, he left Sierra Leone for Liberia under the guardianship of an uncle. He attended primary school in Liberia and after attaining the 9<sup>th</sup> grade, he came back to Sierra Leone in 1980 to take advantage of the General Certificate of Education (GCE) system. He then attended the Christ the Kings College (CKC), Bo, 1980-1985, attained the 5<sup>th</sup> form and sat the GCE exams. As a result of financial constraints he could not continue his education up to University level and left in November 1988, after getting married to his present wife, Esther, then attending OIC Mattru, as he was unable to secure any employment.
  
7. When the Liberian civil war started in 1989, Morris Kallon was in Monrovia, Liberia, having just graduated from the Liberian Opportunities Industrial Centre and was working for a Furniture Company. Upon the outbreak of the civil war members of the Company (including Morris Kallon) left Monrovia for Abidjan. At a checkpoint called "Kakata" members on board their vehicle were asked by Armed Men belonging to the National Patriotic Front of Liberia (NPFL) to alight and produce their passports. Morris Kallon produced his Sierra Leone Passport and was immediately arrested, harassed, molested and tied with a string (the mark is still visible on his body). The Armed Men threatened to kill him, according to them for anti-Liberian ECOMOG activities conducted in Sierra Leone against Liberia.
  
3. Morris Kallon and a fellow Sierra Leonean one Martin Nyande (now deceased) were taken in a truck by the Armed Men to Harbel Hill in Liberia where they were detained for three weeks. While in detention a gentle man who introduced himself as Pa. Morlai approached them and said he will intercede on their behalf to get their freedom. He got them released and took them to Gbanga where they spent a night and were then taken to Camp Nama in Liberia. At this Camp, Morris Kallon met about 150 other Sierra Leoneans who narrated a similar story to him. He was enrolled as No. 118 and started Military Training. "Pa. Morlai"

*Prosecutor vs. Sesay, Kallon and Gbao SCSL-2004-15-PT*

informed him and other members at the Military Camp that the Government of Sierra Leone was corrupt and inept having brought poverty, unemployment, poor health conditions and mass suffering on the population and that he was against the one party state and would fight to restore Democracy again to bring about changes in the lives of the people. Morris Kallon was at the Training Camp for about one year.

9. In 1991, Morris Kallon came to know the real identity of "Pa. Morlai" as Foday Saybana Sankoh. This was when he heard him over the radio giving his real identity and his ultimatum to the Momoh Government to resign.
10. In March 1991, Morris Kallon and other Sierra Leoneans from Camp Nama and some Liberian Fighters, under the command of Liberians, were brought to the Sierra Leone border at a place called Vahun to launch the revolution and campaign to remove the Government of Sierra Leone.

**FACTUAL ALLEGATIONS**

11. The Defence for Morris Kallon admits certain aspect of the Prosecution's General Factual Background, more particularly:
  - A. That Sierra Leone became Independent on the 27<sup>th</sup> of April 1961.
  - B. That in 1995 Joseph Saidu Momoh was elected in a one party election as President of the Republic of Sierra Leone and that he was overthrown in 1992 by a military putsch organized by members of the junior ranks.
  - C. That on the 30<sup>th</sup> of November 1996, President Tejan Kabbah and the leader of the Revolutionary United Front (RUF), Foday Saybana Sankoh signed a

*Prosecutor vs. Sesay, Kallon and Gbao SCSL-2004-15-PT*

Peace Agreement in Abidjan, Ivory Coast, known as the Abidjan Peace Accord.

D. That during the late 1996 and early 1997, tensions between the Sierra Leone Army (SLA) and the Civil Defence Forces (CDF) heightened due in part to the increased Government use of the CDF.

E. That on the 25<sup>th</sup> of May 1997, the RUF honoured the invitation of the Armed Forces Revolutionary Council (AFRC) to join in the running of the Country but contends that the prime objective of the RUF in so doing was essentially to expedite the peace process, put an end to hostilities as well as shape the government in response to the ineptitude of the previous government.

12. The Defence for Kallon does not support the averment by the Prosecution that the RUF was an Organized Armed Group in so far as it is intended to suggest that it was imbued, with a proper command structure in the like of a normal Conventional Army and with full knowledge by all combatants of International Humanitarian Law or the Laws of War.

13. The Defence for Kallon maintains that the RUF started a campaign in 1991 with the sole political motive of liberating Sierra Leone from a One Party State and all its attendant ills, such as massive violations of human rights, corruption, debilitating poverty, joblessness and thuggery. Foday Saybana Sankoh even wore a green muffler on his neck, those days, representing that he came with the SLPP; an ideology people welcomed at the time and hailed the revolution. It accordingly maintains that the RUF was very popular at the inception of the campaign because of its aims and objectives and was widely acclaimed by Sierra Leoneans as true liberators.

*Prosecutor vs. Sesay, Kallon and Gbao SCSL-2004-15-PT*

14. The Defence for Kallon maintains that Kallon never lost sight of and was always guided by the laudable political objectives of the movement through out the years of the conflict and even took advantage at the first available opportunity to become an RUF Party candidate in Bo, in the May 2002 General Elections.
15. The Defence for Kallon maintains that Morris Kallon supported the Peace Process in Sierra Leone after the signing of the Lome Peace Accord and enthusiastically encouraged, when he was able and in position so to do, disarmament of RUF Combatants, collaborated with UNAMSIL Officials in expediting the Peace Process and the re-deployment of UNAMSIL Troops after initial lapses.
16. The Defence for Kallon maintains that diamonds did not play a major role in the conflict from 1991 to 1996 because the RUF did not occupy diamondiferous areas for too long and was constantly under threat from Government Forces. During the periods of limited occupations of diamond fields in 1998-2001, mining operations were restricted to only a select few RUF and the areas were declared out of bounds except for the authorized, and under very stiff sanctions, if breached. The mining of diamonds was represented to the movement as an exercise carried out for the sole purpose of pursuing the political objectives of the RUF and not for personal gains, aggrandizement and greed, contrary to the allegations of the Prosecution's; the objective being to preserve and protect the resource for the welfare of the people of Sierra Leone, rather than for foreigners.
17. In response to the Basic Factual Allegations in the Prosecution's Pre-Trial Brief, the Defence will contend that the alleged acts if they did occur at all, which the Defence does not admit, were acts carried out by persons taking advantage of the existence of the conflict to score old wounds and carry out personal vendettas and revenges and that they were intrinsically motivated by community grudges rather

*Prosecutor vs. Sesay, Kallon and Gbao SCSL-2004-15-PT*

than as a result of the execution of any Joint Criminal Enterprise or the pursuit of the objectives of the RUF movement as alleged.

**GENERAL ALLEGATIONS IN THE INDICTMENT**

18. The Defence for Morris Kallon refers to its Response to the Motion by the Prosecution for Judicial Notice and admission of Evidence and takes respectful cognizance of the recent Trial Chambers decision on the Motion in the light of which substantial aspects and paragraphs of the General Allegations in the Indictment have been judicially noticed and deemed to be conclusively proven. The Defence notes with serious concern the expansive rather than restrictive application of the concept by the Trial Chamber in aid of judicial economy as opposed to the rights of the Accused to a fair trial.

**LEGAL ISSUES**

**Cumulative Charges**

19. The Prosecution has in the consolidated indictment charged the Accused cumulatively with more than one offence within the subject-matter Jurisdiction of the Special Court of Sierra Leone for the same conduct alleged, relying on the Case Law of the ICTY in support.
20. The Defence for Kallon however submits that cumulative charging offends the double jeopardy rule and ought to be restrictively encouraged in the evolving jurisprudence of International Criminal Law as it tends to deprive the Accused of his right to a clear cut delimitation of the case against him and to weaken procedural fairness. (Refer to *Prosecutor vs. Krnojelac*, "Decision of Defence

*Prosecutor vs. Sesay, Kallon and Gbao SCSL-2004-15-PT*

Preliminary Motion on the form of the Indictment February 24, 1999. Para. 5 and *Prosecutor vs. Akyaseu*, September 2, 1998. Para. 461.

21. The Defence for Kallon however, fully agrees with the Prosecution that at the end of the day, after the parties' presentation of evidence, the Trial Chamber should "evaluate which of the charges may be retained upon the sufficiency of the evidence"; the obligation of the Prosecution to prove its case beyond reasonable doubt being the deciding factor.

**Personal Jurisdiction**

22. The Defence submits that by virtue of the provisions of Article 1(1) of the Statute of the Special Court, the Special Court only has jurisdiction over **those persons who bear the greatest responsibility** for those serious violations of International Humanitarian Law and Sierra Leonean Law that are within the subject matter of the Special Court. The Defence respectfully submits that Morris Kallon does not fall in that category of persons and is accordingly outside the Jurisdiction of the Special Court.
23. The Defence relies on the "Decision on the Preliminary Defence Motion on Lack of Personal Jurisdiction Filed on behalf of Accused Fofana", rendered 3 March 2004, (the "Decision on Preliminary Motion") in which the Trial Chamber noted that:

"Based on the foregoing findings, the Chamber therefore concludes that the issue of personal jurisdictional requirement, and while it does of course guide the prosecutorial strategy, it does not exclusively articulate prosecutorial discretion, as the Prosecution has submitted. [*Emphasis added*]"

*Prosecutor vs. Sesay, Kallon and Gbao SCSL-2004-15-PT*

In addition, the Trial Chamber noted the following:

“It should be emphasized that in the ultimate analysis, whether or not in actuality the Accused is one of the persons who bears the greatest responsibility for the alleged violations of International Humanitarian Law and Sierra Leonean law is an evidentiary matter to be determined at the trial stage.”

24. The Defence for Kallon submits that in view of the above-mentioned decision any failure on the part of the Prosecution to prove that Morris Kallon falls within the personal jurisdiction of the Special Court should lead to an acquittal. The Defence therefore submits that the prerequisite onus on the Prosecution is to prove that Morris Kallon falls within the category of those who bear the greatest responsibility as a first step before issues of culpability for the offenses charged against him could be considered.

**Criminal Responsibility Article 6(1) And 6(3)**

25. The Consolidated Indictment charges the Accused Kallon and his Co-Accused with Criminal Responsibility under both Article 6(1) and Article 6(3) of the Statute arguing that International Law allows charging with, and convicting for, alternative forms of responsibility, as long as the factual allegations are sufficiently precise to permit the Accused to prepare his defence on either or both alternatives.
26. The Prosecution further submits that in the interest of justice, the Trial Chamber should consider both forms of Criminal Responsibility in order to fully reflect the criminal culpability of the Accused persons and should it choose to convict only under Article 6(1), the position of the Accused as superior should be considered as an aggravating element.

*Prosecutor vs. Sesay, Kallon and Gbao SCSL-2004-15-PT*

27. The Defence for Kallon submits that charging the Accused with Command Responsibility under Article 6(3) and Individual Responsibility, Article 6(1) which also covers responsibility under a Joint Criminal Enterprise is procedurally unfair, for uncertainty and vagueness since at one breath, the Prosecution is alleging that the Accused is directly responsible for planning and actually committing as principal, and at the same time alleging responsibility based on accessory liability under Article 6(1) and liability for participation in a Joint Criminal Enterprise under Article 6(1) as well as Command Responsibility under Article 6(3) for the commission of the same offence charged. The four-edged sword as it were, used by the Prosecution prejudicially deprives the Defence of knowing clearly the case it has to meet contrary to the view expressed by the Prosecution.
28. The Defence submits that in the Case of the *Prosecution vs. Milosevic*, Case No. IT-01-51-16 (Nov. 22. 2001) (alleging that *Milosevic* participated in a Joint Criminal Enterprise, whose purpose “was the forcible and permanent removal of the majority of non-Serbs, principally Bosnian Muslims and Bosnian Croats, from large areas of the Republic of Bosnia and Herzegovina”), the Indictment for purposes of certainty and clarity had to state that, “by using the word ‘committed’ in the indictment, the Prosecutor does not intend to suggest that the accused physically committed any of the crimes charged personally” . ‘Committed’ in the indictment refers to participation in a Joint Criminal Enterprise as a co-perpetrator.” See Para. 5.
29. The Defence contrary to the Prosecution submission, further relies on the principles adumbrated in the ICTY cases of *Kronojenac* and *Stakic* where it was held that a Trial Chamber should select whether direct or command responsibility better characterizes the Accused’s conduct after an evaluation of the totality of the

*Prosecutor vs. Sesay, Kallon and Gbao SCSL-2004-15-PT*

evidence presented, in order to reflect the criminal culpability of each Accused person.

30. The Defence for Kallon further maintains that it is presently unsettled whether an Accused can be convicted based on the theory of command responsibility and direct responsibility for the same crime (the case of *Prosecutor vs. Vasiljevic* ICTY Appeal Chamber, IT-98-32-A outlines the approaches taken by various ICTY Trial Chambers in its Judgment of 25<sup>th</sup> February, 2004).
31. On the issue of Joint Criminal Enterprise, the Defence fully agrees with the proposition in the Prosecution's Pre-Trial Brief that the degree of participation required of an Accused in a Joint Criminal Enterprise **must be significant**.

**Specific Defences**

32. It is denied that Morris Kallon has command responsibility in terms of the Statute and further that he committed and/or participated in activities individually or in concert with others whether in the RUF or the AFRC, which will constitute a crime under International Law or Sierra Leonean Law.
33. The Defence therefore submits that Morris Kallon, never "planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute" and as such cannot be held individually responsible for the commission of crimes under Article 6(1) of the Statute.
34. Further the Defence maintains that the Testimonial evidence disclosed and the factual allegations contained in the Prosecution's brief do not in anyway support or prove direct criminal responsibility on the part of Kallon under article 6(1) in

*Prosecutor vs. Sesay, Kallon and Gbao SCSL-2004-15-PT*

the commission of any of the offences charged in the indictment either as part of a Joint Criminal Enterprise to commit any crime or otherwise.

35. In this regard, the accused rejects the Prosecution's argument of a common plan between him and any alleged actual perpetrator to commit any offence anywhere within the territory of Sierra Leone during the period under review. The accused was not a member of any criminal enterprise or scheme and did not participate in any crime resulting from any alleged enterprise.

36. It is further denied that Morris Kallon is responsible (whether individually or as a Commander or by participating in a Joint Criminal Enterprise) for any of the count alleged in the indictment, specifically:

- Terrorizing the civilian population and collective punishment. (Count 1&2),
- Unlawful killings. (Count 3-5),
- Sexual violence. (Count 6-9),
- Physical violence. (Count 10&11),
- Use of child soldiers. (Count 12),
- Abductions and forced labour. (Count 13),
- Looting and burning. (Count 14),
- Attacks on UNAMSIL Personnel. (Count 15-18).

37. The Defence reserves the right to enter a Special Defence on behalf of Morris Kallon and would inform the Court about any specific defence it hopes to rely on. It should be noted, however, that failure of the Defence to provide the notice mentioned in Rule 67(A)(ii) does not limit the right of an Accused to rely on a special defence pursuant to Rule 67 (B) of the Rules.

*Prosecutor vs. Sesay, Kallon and Gbao SCSL-2004-15-PT*



**Shekou Touray**  
**Melron Nicol-Wilson**  
**Lansana Dumbuya**

**1<sup>st</sup> July, 2004.**