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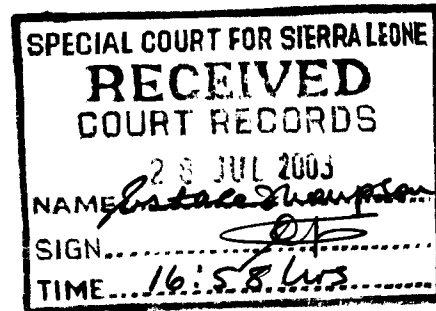
SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER

Before: Judge Thompson, Presiding Judge
Judge Itoe
Judge Boutet

Registrar: Robin Vincent

Date: 28 July 2003



The Prosecutor Against: Morris Kallon

(Case No. SCSL-2003-07-PT)

**DEFENCE REPLY TO 'PROSECUTION RESPONSE TO DEFENCE
REQUEST FOR *SUBPOENA DUCES TECUM***

Office of the Prosecutor:

Desmond de Silva QC, Deputy Prosecutor
Luc Cote, Chief of Prosecution
Walter Marcus-Jones, Senior Appellate Counsel
Christopher Staker, Senior Appellate Counsel
Abdul Tejan-Cole, Appellate Counsel

Defence Counsel:

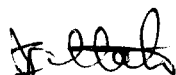
James Oury, Co-Counsel
Steven Powles, Co-Counsel
Melron Nicol-Wilson, Legal Assistant

1. On 22 July 2003 the Defence filed a 'Request for *Subpoena Duces Tecum*' ("Defence Request") for various documents from the Attorney-General of Sierra Leone. The Defence sought a subpoena to be issued to the Attorney-General of Sierra Leone to ensure that various documents of import to the Defence case were provided by the Government of Sierra Leone. On 23 July 2003 the Prosecution filed 'Prosecution Response to Defence Request for *Subpoena Duces Tecum*' ("Prosecution Response").
2. It is firstly submitted that the Prosecution has no standing to respond in this matter. The subpoena sought is to the Attorney-General of Sierra Leone and not the Office of the Prosecutor. The Defence sought disclosure of the same documents from the Office of the Prosecutor in a separate application ('Request for Order of Disclosure from Prosecution' dated 9 July 2003) to which the Prosecution had the right to respond, a right which they in fact exercised (See 'Prosecution Response to Defence "Request for Order of Disclosure from Prosecution"' dated 16 July 2003). The Office of the Prosecutor is not at liberty to respond to the Defence Request for Subpoena – it is not issued to them and they are therefore not entitled to respond.
3. The Prosecution Response refers to "Order on the Defence Application for Extension of Time to file Reply to Prosecution Response to the First Preliminary Motion (Lome Agreement)" ("Trial Chamber's Order") purportedly issued on 16 July 2003.
4. The Defence were not served with a copy of this Order.
5. The first that the Defence heard of it was in the Prosecution Response (received on 23 July 2003). At this point Defence Counsel who was in Freetown was able to receive copy of Trial Chamber Order directly from the Registry at the Special Court. It is hoped that this is the first time that Counsel for the Defence have not been served with crucial documents to the conduct of proceedings. Given that the Court operates under such strict time-tables it goes without mention that it is vital that documents are served upon the Defence in good time.

6. It is submitted that the Subpoena to the Attorney-General should be issued by the Trial Chamber without delay. The Defence have, to date, still not received any response to either of their letters to the Attorney-General seeking voluntary service of the documents.(dated 30 June and 1 July 2003).
7. In such circumstances the Subpoena should be issued forthwith. Time is of the essence and the Defence are keen to continue with the preparation of their client's case. It is hoped therefore that the Trial Chamber will issue the subpoena in the appropriate terms within the next 24 hours.
8. In the event that the Trial Chamber is minded to consider the Prosecution Response in this matter, despite the Prosecution's lack of standing as set out above, it is respectfully submitted that the Trial Chamber's refusal to grant the Defence application for an extension of time to file reply to Prosecution Response on First Defence Preliminary Motion is irrelevant to the question of issuance of the subpoena. Refusal of the extension of time to the Defence to file Reply is no reason not to issue subpoena as asserted by the Prosecution in its Response.
9. Firstly, the Trial Chamber's Order is under appeal – see 'Motion for Leave to Appeal 'Order on the Defence Application for Extension of Time to File Reply to Prosecution Response to the First Defence Preliminary Motion (Lome Agreement)'' ("Defence Appeal"). It is hoped that leave will be granted and the appeal ultimately allowed by the Appeals Chamber. In those circumstances it would be unfortunate to then have to wait and consider at that stage the issuance of the subpoena. Again, time is of the essence and the Defence are keen to keep things moving.
10. Secondly, the documents requested are no doubt of extreme importance to the Defence in consideration of the application of the Lome Amnesty. (See paragraph 5 of Defence Appeal). Even if the Trial Chamber is not minded to delay proceedings pending Defence consideration of all relevant points, it is submitted that the Defence should not be deprived of

the opportunity of considering the issue at some later time, ie on Appeal. It seems obvious that the Trial Chamber's Decision of the Motion on Jurisdiction (Lome Accord) will be appealed by which ever party is unsuccessful. Whichever party appeals, it is submitted that the Defence will be severely prejudiced on appeal if they have still not received the documents sought in the subpoena. It therefore is prudent for the Trial Chamber to issue the subpoena now, thereby facilitating access for the defence to the documents concerned, and avoid further adjournments at the time of appeal.

11. Thirdly, it is submitted that the documents requested, even if not admitted for the purpose of the Preliminary Motion, will be of relevance to the Defence in the preparation generally of the Defendant's trial. Thus the subpoena should be issued in any event to facilitate preparation of the Defendant's case. To do otherwise could lead to substantial delay in the commencement of the trial.
12. In short, the Defence are anxious to move matters forward with considerable urgency. It is hoped that the Trial Chamber will facilitate this by issuing the *subpoena duces tecum* within the next 24 hours.



pp James Oury
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London, 28 July 2003.

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07/28/2003 04:26 PM

To: Ibrahim S Yillah <yillah@un.org>, "Haddijatou Kah-Jallow" <kah-jallow@un.org>, Beatrice Ureche <ureche@un.org>
cc:
Subject: Kallon Reply to Prosecution Response Re Subpoena Duces Tecum

Dear Haddi and/or Ibrahim,

Could you please ensure that the attached Reply to 'Prosecution Response to Defence Request for Subpoena Duces Tecum' is filed before 5pm Freetown time today.

Please accept this e-mail as authorisation to sign the attached response on behalf of the Mr Kallon's Defence.

I thank you in advance for your assistance with this matter.

Kind regards

Steven Powles



Kallon-SubpoenaReply.doc