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SCSL-2003-07-PT-064
(1046-1051)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER

Before: Judge Thompson, Presiding Judge
Judge Itoe
Judge Boutet

Registrar: Robin Vincent

Date: 9 July 2003

The Prosecutor Against: **Morris Kallon**

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

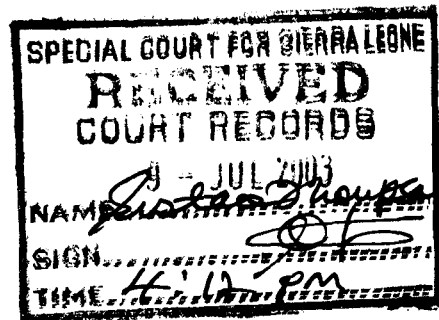
**REPLY TO 'PROSECUTION RESPONSE TO DEFENCE APPLICATION
FOR EXTENSION OF TIME TO FILE REPLY TO PROSECUTION
RESPONSE TO THE FIRST DEFENCE PRELIMINARY MOTION (LOME
AGREEMENT)'**

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. The Defence filed 'Preliminary Motion Based on Lack of Jurisdiction/Abuse of Process: Amnesty Provided by the Lome Accord' ("Preliminary Motion") on 16 June 2003. The Prosecution filed 'Prosecution Reponse to the First Defence Preliminary Motion (Lome Accord)' (*sic*) on 23 June 2003.¹ The Defence were granted an extension of time (30 June 2003) to file its Reply to the Prosecution Response. On 30 June 2003 the Defence filed an 'Application for Extension of Time to File Reply to Prosecution Response to the First Defence Preliminary Motion (Lome Agreement)' ("Application"). The Prosecution filed 'Prosecution Response to Defence Application for Extension of Time to File Reply to Prosecution Response to the First Defence Preliminary Motion (Lome Agreement) on 4 July 2003. ("Prosecution Response" or "Response")
2. The Prosecution Response submits that the Defence Application for an extension of time should be dismissed.
3. It is of significant disappointment that the Prosecution should object to the defence being granted an opportunity to obtain materials which are patently relevant to adequately replying to matters raised in the Prosecution Response.² The position adopted by the Prosecution materially undermines the fairness of these proceedings and exposes the Defence to prejudice in preventing any proper consideration by the Defence of matters arising out of the Lome Agreement.
4. The materials sought could support the innocence or mitigate the guilt of the of the accused by contributing to the success of the accused's Preliminary Motion on the Lome Agreement. Specifically such material is of crucial importance to the Defence to be able to consider:

4.1 The intended application of the amnesty granted in the Lome Agreement.

¹ Note: The Response was received by the Defence, via the Court Registry, on 26 June 2003.

² See Paragraphs 12, 18 and 19 of the Response.

4.2 The extent to which the Government of Sierra Leone is bound by the Lome Agreement.

4.3 The intended effect of the Secretary-General's reservation to the Lome Agreement on the other parties to the Agreement.

4.4 The implementation of and adherence to the Lome Agreement by the parties to it.

4.5 The extent and manner in which the Government of Sierra Leone considered its obligations pursuant to the Lome Agreement when agreeing to the establishment of the Special Court.

5. In *R v Banks*³ Avory J., held that "Counsel for the prosecution throughout a case ought not to struggle for the verdict against the prisoner, but they ought to bear themselves rather in the character of ministers of justice assisting in the administration of justice."⁴ Further Lord Woolf C.J. noted that "the Prosecution Advocate plays an important role and as such may be considered a cornerstone of an open and fair criminal justice system."⁵
6. It appears that the Prosecutor is seeking to actively frustrate the Defence's entirely legitimate request so as to prevent the accused from having the opportunity to obtain materials central to responding to matters raised, for the first time, by the Prosecution in its Response. This approach, in turn, undermines the fairness of these proceedings.⁶
7. It is noted that the Prosecution have made no effort to respond to the letter sent to them by facsimile transmission by the Defence on 30 June 2003 and they have made no effort to expedite matters by even indicating when the documents requested might be made available. The Defence is therefore forced to seek an order from the Trial Chamber for Disclosure – this is dealt with in a separate motion.

³ [1916] 2 KB 621

⁴ See also *Allie Mohammed v The State* (1996) 51 WIR 320

⁵ Forward – Guidelines for Crown Prosecutors (England and Wales) 11 February 2002.

⁶ Article 17 of the Statute of the Special Court of Sierra Leone, Article 14 International Covenant on Civil and Political Rights and Article 7 African Charter on Human and People's Rights.

8. The Prosecution Response notes that the Application was filed “on the last day of the delay initially requested by the Defence to file a Reply to the Prosecution Response”.⁷ It is hoped that there is no implied criticism of the Defence in this statement. The Defence, having received the Prosecution Response on 26 June 2003, were entitled to three days to prepare its Reply. After careful consideration of the points raised in the Prosecution Response it was felt by counsel for the accused that it would be impossible to Reply without first having sight of the documents set out in the letters to the Prosecution and Attorney-General (attached to the Application).
9. The Prosecution Response asserts that “a party cannot under the guise of a Reply bring forth additional arguments in support of the same prayer sought in its own Motion.”⁸ Moreover, it is stated that “the Rules require a party to put all arguments in support of a motion in the motion itself, to enable the other party to address all of those arguments in its response”.⁹
10. At this stage, without having received the documents and materials requested, the Defence has not concluded what the contents of its Reply will be. It is therefore surprising that the Prosecution claims to have some insight into what the Reply will contain. The Defence is well aware of its obligations and what it may and may not include in any Reply. The materials and documents requested by the Defence will enable it to formulate its Reply to points made in the Prosecution Response.
11. It is noted that in its Reply to the Defence Response on Protective Measures the Prosecution sought to introduce additional material by way of two declarations and a letter from President Kabbah. The Trial Chamber held that the declarations presented by the Prosecution in its Reply:

“cannot be considered as fresh evidence, but may only be considered as evidence of a rebutting character, as the declarations only add and

⁷ Prosecution Response para. 4

⁸ Prosecution Response para. 5

⁹ Prosecution Response para. 6

strengthen the line of argument in the Motion, and that the additional declarations do not initiate an entire new line of argumentation.”¹⁰

The materials and documents requested by the Defence from the Prosecution and Government of Sierra Leone will enable to the Defence to present evidence of a “rebutting character” to the Prosecution Response and will only add and strengthen the line of argument in the Motion.

12. The Prosecution Response contends that “most of the documents sought appear to be readily available within the public domain”.¹¹ This is not the case, a reading of the definition of “documentation” contained in both the letter to the OTP and to the Attorney-General should make it clear that the materials sought are most unlikely to be in the public domain.

13. It is clear beyond peradventure that the documents and materials requested by the Defence will enable it to Reply to the points made in the Prosecution Response. Thus, good cause clearly exists for an extension of time to be afforded the Defence to file its Reply once it has received and had time to consider the material requested.

14. By way of closing, the Prosecution Response asserts that “the Amnesty Provisions of the Lome Agreement are wholly irrelevant to these proceedings before the Special Court ...”.¹² The Prosecution Response then simply invites the Trial Chamber to deny the Defence Application for access to crucial documents before filing its Reply and to “render its decision on the record as it now exists”.¹³

15. The Prosecution are effectively inviting the Trial Chamber to conclude its deliberation on this central matter, of fundamental importance to the administration of justice by the Special Court, without granting the Defence an

¹⁰ *Prosecutor v Kallon* ‘Order on Defence Objection filed as Reply Evidence in the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for non-Public Disclosure’ 21 May 2003.

¹¹ Prosecution Response para. 8

¹² Prosecution Response para. 9


¹³ Prosecution Response para. 10

opportunity to Reply to matters raised in the Prosecution Response. Such a course would be untenable and totally contrary to the fair administration of justice.

Conclusion

16. In all the circumstances it is submitted that there is good cause to grant an extension of time to enable the Defence to obtain crucial documents with which to formulate its Reply to the Prosecution Response. It would be both unfair and unjust not to allow the Defence the opportunity to obtain such documents before filing a Reply to Prosecution Response. Not to allow the Defence the opportunity to obtain all relevant documents to formulate a Reply would amount to a gross miscarriage of justice and leave the conduct of proceedings open to serious criticism.

17. In view of the fact that none of the materials or documents requested by the Defence have been forthcoming from either the Prosecution or Government of Sierra Leone, it is requested that the Trial Chamber grant the Defence an extension of time to file its Reply. The date that the Trial Chamber decides that the Defence Reply should be due should allow some time to the Defence to consider the documents and materials to be obtained by the Defence in due course.


Dr James Oury


Dr Steven Powles

London, 9 July 2003.