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SCSL-2003-09-PT
(646-649)

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IN THE SPECIAL COURT FOR SIERRA LEONE

Before: Judge Bankole Thompson, Presiding Judge

Registrar: Mr Robin Vincent

Date filed: 17th October 2003

Case No. SCSL 2003 – 09 – I

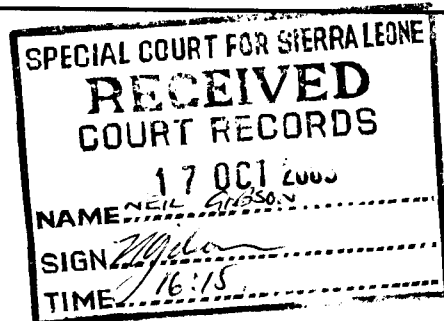
In the matter of:

**AUGUSTINE BAO,
re Application by Truth and Reconciliation for Sierra Leone**

**DEFENCE AGREEMENT AND RESPONSE TO TRUTH AND RECONCILIATION
COMMISSION FOR SIERRA LEONE REQUEST TO CONDUCT A PUBLIC
HEARING WITH MR. AUGUSTINE ATO BAO IN TERMS OF THE SPECIAL
COURT FOR SIERRA LEONE PRACTICE DIRECTION ADOPTED ON 9
SEPTEMBER 2003, AS AMENDED ON 4 OCTOBER 2003**

Legal Defence Team for Mr Gbao

Mr Girish Thanki
Professor Andreas O'Shea
Mr Kenneth Carr
Ms Glenna Thompson
Mr Ben Holden



1. On 10th October 2003, the Truth and Reconciliation Commission for Sierra Leone (hereinafter the Truth Commission) submitted a request for a public hearing in which Augustine Gbao would give testimony. This application was made pursuant to the Practice Direction on the procedure following a request by a State, the Truth & Reconciliation Commission, or other legitimate authority to take a statement from a person in the custody of the Special Court for Sierra Leone of 9 September 2003, as amended on 4 October 2003, and following meetings and discussions between counsel for Mr Gbao and representatives from the Truth and Reconciliation Commission.
2. It is our instructions to permit Mr Bao to give testimony before the Truth and Reconciliation Commission. We have therefore consented to this on certain conditions designed to ensure that the minimum of prejudice to Mr Bao's fair trial before the Special Court for Sierra Leone;
3. Accordingly, it is the position of the Defence for Augustine Bao that he should be permitted to give testimony before the Truth and Reconciliation Commission for Sierra Leone.
4. Further, it is our humble request to the President of the Court and the Truth and Reconciliation Commission that the following defence conditions are respected for this public hearing:
 - (i) That the Chairman of the Commission provide a written assurance to Mr Bao's defence counsel that he will retain full control of the proceedings and, acting in good faith, will fully brief the participants in the proceedings of these conditions and the importance of them, and that he will not permit any breaches of these or other conditions and will generally protect Mr Bao from any intervention which might serve to prejudice Mr Bao's future trial;
 - (ii) That Mr Bao be permitted to retain his right to silence at all times and that he be permitted to withdraw from the proceedings at any time;
 - (iii) That Mr Bao's legal team be permitted to sit with him throughout the proceedings and to have rights of audience for the purpose of intervening at any stage where it becomes necessary to protect Mr Bao's rights and in particular his right to a fair trial before the Special Court;
 - (iv) That before any questions of substance are put to Mr Bao, that he be permitted to be given the opportunity to give an uninterrupted public statement;
 - (v) That only the Commissioners and one designated evidence leader be permitted to ask questions of Mr Bao and that questions be restricted to a maximum of three questions per person asking the questions;
 - (vi) That all questions to be asked be put into writing and sent to Mr Bao's counsel at least 5 days before the hearing and be consented to by counsel for Mr Bao;
 - (vii) That there will be no follow up questions save where it is clear from Mr Bao's response that he did not hear or understand the

- question, in which case the content of the question should not differ in any substantive sense from the question originally put;
- (viii) That cross-examination of Mr Bao is strictly prohibited;
 - (ix) That Mr Bao's legal team be permitted to ask any questions of Mr Bao at the end of any questioning session in order to give them an opportunity to remedy any inadvertent damage which may have been caused to Mr Bao's right to a fair trial before the Special Court;
 - (x) That a copy of any recording or transcript of the proceedings taken by the commission for the purposes of its work or otherwise be provided to defence counsel for Mr Bao within a reasonable time following its production, but no later than 30 November 2003 or 31 days before the date set for the publication of the Truth and Reconciliation Commission's final report, in the event that the Commission's mandate is further extended;
 - (xi) That any transcripts or recordings produced by the Truth Commission should not be passed onto any third party except with the written consent of Defence Counsel for Mr Bao or by order of a judge of the Special Court;
 - (xii) It is to be noted that the Defence for Bao reserve the right to take any legal action necessary to remedy any prejudice to a fair trial caused by any of the activities of the Truth Commission linked to these proceedings. To this end, it is requested that any findings or conclusions of the Truth Commission intended to be published in its final report concerning Augustine Bao's role in the former conflict be copied to counsel for Augustine Bao at least 14 working days before the publication of that report. Defence counsel for Mr Bao undertakes to respect the confidentiality of any such statements save for the purpose of presenting the nature of such statements to a judge for the purposes of any legal proceedings designed to protect Mr Bao's right to a fair trial, should that become necessary;
5. It is hereby requested that the aforesaid public hearing be held on the **29th and 30th October 2003**, this being the only dates on which counsel can guarantee availability in sufficient time for the Truth Commission to complete its work.
 6. Further, having regard to the contents of the Truth Commission's application to the Special Court, submitted 10th October 2003, subject to the pre-approval of the specific questions to be asked, Defence Counsel for Bao is in agreement that questions may emanate from the subject areas outlined in paragraphs 17.1, 17.4, 17.5, 17.6, 17.9, 17.10.2, 17.10.5, 17.10.10, 17.10.11, 17.10.12, 17.10.13, 17.10.14, 17.10.18 and 17.13 of the Truth Commission's application;
 7. However, the Defence for Mr Bao does not consent to questions that emanate from the specific subject areas set out in paragraphs 17.2, 17.7, 17.8, 17.10.1, 17.10.3, 17.10.4, 17.10.6, 17.10.7, 17.10.8, 17.10.9, 17.10.15, 17.10.16, 17.10.17, 17.10.19, 17.10.20, 17.11, 17.12 and 17.14, as it is submitted that these subject areas if explored present a genuine risk of prejudicing Mr Bao's right to a fair trial on the counts set out in his indictment before the Special Court.

8. Further, the Defence for Mr Bao does not consent to questions that emanate from 17.3 partially. Subject to the pre-approval of specific questions to be asked, the Defence for Mr Bao is in agreement that questions may take of the line of an inquiry into any knowledge he had of the intervention of ECOMOG into the Liberian conflict and any consequences of that intervention he perceived for those holding the nationality of any of the troop-contributing countries. The Defence for Mr Bao does not however consent to questions about any encounters that he may personally have had with any individuals, whoever, they might be;
9. Otherwise, we are instructed to inform His Honour and all other interested parties that Mr Bao fully recognises the Truth and Reconciliation Commission for Sierra Leone as a legitimate body under the Lome Accord. Mr Bao supports the role of the Commission as a mechanism for truth, reconciliation and the formation of a proper historical record of the events in Sierra Leone.

Girish Thanki
Andreas O'Shea
Kenneth Carr
Glenna Thompson

