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SCSL-04-15-T
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SPECIAL COURT FOR SIERRA LEONE

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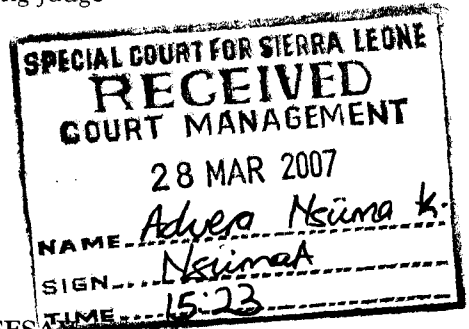
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TRIAL CHAMBER I

Before: Hon. Justice Bankole Thompson, Presiding Judge
Hon. Justice Pierre Boutet
Hon. Justice Benjamin Mutanga Itoe

Registrar: Herman von Hebel, Acting Registrar

Date: 28th of March 2007



PROSECUTOR Against ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO
(Case No. SCSL-04-15-T)

Public Document

**CONSEQUENTIAL ORDERS CONCERNING THE PREPARATION AND THE
COMMENCEMENT OF THE DEFENCE CASE**

Office of the Prosecutor:

James C. Johnson
Peter Harrison

Defence Counsel for Issa Hassan Sesay:

Wayne Jordash
Sareta Ashraph

Defence Counsel for Morris Kallon:

Shekou Touray
Charles Taku
Melron Nicol-Wilson

Court Appointed Counsel for Augustine Gbao:

Andreas O'Shea
John Cammegh

TRIAL CHAMBER I (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”) composed of Hon. Justice Bankole Thompson, Presiding Judge, Hon. Justice Pierre Boutet, and Hon. Justice Benjamin Mutanga Itoe;

RECALLING this Chamber’s Scheduling Order Concerning the Preparation and the Commencement of the Defence Case, issued on the 30th of October 2006 (“Scheduling Order”), ordering each Defence Team to file, no later than the 16th of February 2007, various materials in preparation for the commencement of the Defence case (“Materials”);

MINDFUL of this Chamber’s subsequent Decision and Order on Defence Application for an Adjournment of 16th of February Deadline for Filing of Defence Material, issued on the 7th of February 2007, granting to all Defence teams applications by Defence Counsel for the First and Second Accused for an extension of time to file the said Materials on the 5th of March 2007;

HAVING RECEIVED the Sesay - Filing of Documents in Compliance with Scheduling Order Concerning the Presentation and the Commencement of the Defence Case, Dated 30th October 2006, filed by Defence Counsel for the First Accused, Issa Sesay (“Sesay Defence”) on the 5th of March, 2007;

HAVING RECEIVED the Defence Request for Agreement of Facts, filed by the Sesay Defence on the 8th of March 2007¹ and the Response thereto filed by the Office of the Prosecutor (“Prosecution”) on the 23rd of March 2007;

HAVING RECEIVED the Kallon Defence Filing in Compliance with Scheduling Order Concerning the Preparation and the Commencement of the Defence Case, filed by Defence Counsel for the Second Accused, Morris Kallon (“Kallon Defence”) on the 5th of March 2007;²

HAVING RECEIVED the Gbao - Filing of Defence Materials, filed by Court Appointed Counsel for the Third Accused, Augustine Gbao (“Gbao Defence”) on the 5th of March 2007;³

¹ See also *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Sesay Defence Application for Extension of Time to File a “Joint Statement of Agreed Facts”, 27 February 2007.

² The Materials by the Kallon Defence were initially filed confidentially. A public version of these Materials has been filed on the 19th of March 2007. See *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order to Re-Classify and Review Defence Materials, 7 March 2007.

³ *Ibid.* The Materials by the Gbao Defence were initially filed publicly and re-classified as confidential. A public version of these Materials has been filed on the 19th of March 2007.

HAVING RECEIVED the Gbao - Joint Statement of Agreed Facts and Matters and Joint Statement of Contested Matters of Facts and Law, filed by the Gbao Defence on the 5th of March 2007⁴ and the Prosecution Response to Proposed Agreed Statement of Facts of the Third Accused, filed by the Prosecution on the 8th March 2007;

NOTING the Notification of Objection to Authenticity of the Exhibits Filed by Augustine Gbao, filed by the Prosecution on the 23rd of March 2007;

MINDFUL of the Chamber's Decision on Sesay Defence Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, filed on the 30th November 2006;⁵ of its Decision on Gbao Defence Motion for Immediate Protective Measures and Confidential Motion for Delayed Disclosure and Related Measures for Witnesses, filed on the 1st of March 2007; and of its Decision on Kallon Defence Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure, filed on the 19th of March 2007;

HAVING RECEIVED a Notice from the Kallon Defence on the 19th of March 2007 informing the Chamber that 6 (six) of its witnesses in their current witness list are witnesses residing outside West Africa who have now indicated their willingness to testify at trial for the Second Accused without a screening device from the public gallery;⁶

REITERATING that a Party is under an obligation to seek leave of the Chamber for any variation to the current protective measures previously granted to any of its witnesses;⁷

NOTING that a Status Conference was held on the 27th of October 2006 for the purpose of considering the preparation and presentation of the Defence Case;

NOTING that a Pre-Defence Conference was subsequently held on the 20th of March 2007 for the purpose of further considering the preparation and presentation of the Defence case and, in

⁴ See also *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Gbao Defence Request for Extension of Time for Filing of Joint Statement, 5 March 2007.

⁵ See also *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Sesay Defence Application for Leave to Appeal Decision on Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 1 March 2007;

⁶ *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Notice in Respect of Pending Kallon Defence Protective Measures Application on Areas Dealing with Witnesses Residing Outside West Africa, 19 March 2007. See also *Ibid.*, Transcript, 20 March 2007, p. 85.

⁷ See, for instance, *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Transcript, 28 March 2006, p. 110-124; *Ibid.*, Order to Review Current Protective Measures, 29 March 2006. See also, for instance, *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Ruling on Motion for Modification of Protective Measures for Witnesses, 18 November 2004, para 43.

particular, for considering the Defence compliance with the Scheduling Order;

HAVING HEARD the parties' respective submissions concerning the preparation and presentation of the Defence Case at the said Pre-Defence Conference and **HAVING REVIEWED** the Defence Materials;

REITERATING the Chamber's very serious concern about the total number of witnesses that the Defence intend to call and over the projected length of the Defence Case;⁸

REITERATING that the principle of equality of arms does not entitle an Accused to precisely the same amount of time or the same number of witnesses as the Prosecution and that basic proportionality, rather than strict mathematical equality, generally governs the relationship between the time and the number of witnesses allocated to each Party;⁹

CONSIDERING that sub-Rule 73ter(D) of the Rules vests the Chamber with authority to order reduction of the number of witnesses and provides as follows:

The Trial Chamber or a Judge designated from among its members may order the defence to reduce the number of witnesses, if it considers that an excessive number of witnesses are being called to prove the same facts.

RECALLING that the Chamber has stated that the power to order a reduction in the number of witnesses a party intends to call is an "exceptional power" and should be exercised "only in exceptional circumstances";¹⁰

CONSIDERING that the Defence should advise itself not to call repetitious witnesses or witnesses whose evidence may not enhance the quality of the Defence case, and should strive not to call any such evidence;

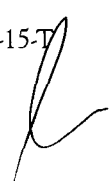
CONSIDERING that the production of witness summaries by the Defence within its Materials is intended to enable the other Defence Teams, the Prosecution and the Chamber to appreciate and understand the nature and content of a witness' proposed testimony;¹¹

⁸ See also *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Transcript, 20 March 2007, p. 71.

⁹ See *Ibid.*, p. 71-72. See also *Prosecutor v. Oric*, IT-03-68-AR73.2, Interlocutory Decision on Length of Defence Case, 20 July 2005, para 7. See also *Prosecutor v. Tadic*, IT-94-1-A, Judgement, 15 July 1999, para 44. See also *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order to the First Accused to Re-File Summaries of Witness Testimonies, 2 March 2006.

¹⁰ *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order to the First Accused to Re-File Summaries of Witness Testimonies, 2 March 2006; See also *Ibid.*, Transcript, 11 January 2006, p. 31.

¹¹ See also Scheduling Order, Order 1(a)(ii).



NOTING that certain witness summaries filed by the Defence do not have sufficient particularization to fulfil the intended purpose of the summaries;

NOTING that in the case of *Prosecutor v. Norman, Fofana and Kondewa*, this Chamber ordered that the witness summaries shall include detailed summaries of the incidents and/or events which a witness is called to testify upon, exact location and date (if available) of these alleged incidents and/or events, position and/or role of a witness in relation to the crimes charged in the Indictment, nexus between the Accused and the proposed testimony of a witness and other details as Counsel deems necessary and would clearly demonstrate the essence of that testimony;¹²

CONSIDERING that the information contained in the Evidentiary Charts¹³ is of fundamental importance for the Trial Chamber, in accordance with its responsibility to manage the trial proceedings and ensure that a fair and expeditious trial is conducted, as well as for the Prosecution, in order to adequately prepare for the rebuttal of the Defence Case;

NOTING that each of the Defence Evidentiary Charts contain certain discrepancies with the respective Defence Witness Lists and the indication therein of the specific points of the Indictment about which each Defence witness will testify;

MINDFUL that Rule 85(C) of the Rules of Procedure and Evidence provides as follows:

The Accused may, if he so desires, appear as a witness in his own defence. If he chooses to do so, he shall give his evidence under oath or affirmation and, as the case might be, thereafter call his witnesses.

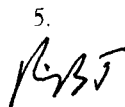
NOTING that each of the Defence Teams has indicated in their respective Materials that the Accused intends to testify at trial as a witness in his own defence but that no final decision on this matter has been made;

CONSIDERING that when an Accused chooses to testify in his own defence the Chamber requires that summary of the facts about which he will testify to be produced;

HAVING RECEIVED on the 26th of March 2007 a Notice filed by the *Sesay* Defence indicating, *inter alia*, that the Defence has disclosed to the Prosecution a summary of the First Accused's intended

¹² *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order to the First Accused to Re-File Summaries of Witness Testimonies, 2 March 2006, Order No. 3. See also *Ibid.*, Consequential Order to the Status Conference of 22 March 2006. The Chamber is cognizant of the fact that, generally, no protective measures were sought by the Defence in that Case.

¹³ See Scheduling Order, Order 1(f).



testimony;¹⁴

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CONSIDERING that all the Defence Teams in their respective Materials have indicated, generally, that they do not intend at this stage to have witnesses common to two or more teams, neither factual nor expert witnesses, although this position is under constant review;

NOTING that, due to the redactions as necessary for reasons of witness protection, the Chamber is not in the position in the circumstances to assess directly whether there are any witnesses common to the Defence teams;

HAVING RECEIVED a Defence joint letter on the 23rd of March 2007 informing this Chamber, *inter alia*, that due to the applicable protective measures regime, the Defence Teams are not in a position to exchange their respective witness lists until in accordance with the 42 days disclosure rule and, consequently, to assess until that moment whether any Defence witness might be common to more than one Defence Team;

CONSIDERING that the procedure contained in Rule 92bis of the Rules, where applicable, could provide a viable alternative to the testimony of *viva voce* witnesses, in particular for witnesses testifying on similar facts or issues;

CONSIDERING that it is in the interest of justice for the Defence to disclose to the Prosecution and the Trial Chamber the order of testimony of the witnesses it intends to call at trial, with sufficient time available for case preparation and investigation and for the effective management of the trial;

REITERATING the determination of the Trial Chamber to ensure that the trial is fair and expeditious and that the proceedings before this Court are conducted in accordance with the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses;¹⁵

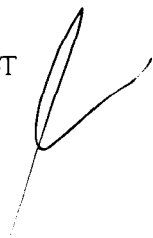
PURSUANT TO Rule 26bis, 54, 65bis, 69, 73ter, 75, 85, 92bis and 94bis of the Rules;

THE CHAMBER ORDERS:

¹⁴ *Prosecutor v. Sesay, Kallon and Gbao*, SCSL04-15-T, Notice of Disclosure of the Summary of Sesay's Evidence and Names of Witnesses in Accordance with Order (C) of the Decision on the Sesay Defence Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 23 March 2007.

¹⁵ See, for instance, *Prosecutor v. Sesay, Kallon and Gbao*, SCSL04-15-T, Consequential Order to the Decision on Further Renewed Witness List, 13 April 2005; *Ibid.*, Order to Prosecution to Provide Order of Witnesses, 15 September 2004.

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1. That each of the Defence teams shall review their respective Materials with a view to reducing their current witness lists,¹⁶ if necessary, avoiding repetitious evidence or calling an excessive number of witnesses to establish the same fact or matter or calling witnesses in relation to crimes or events which do not form part or are outside the timeframe of the Indictment;
2. That each of the Defence Teams shall accordingly file any reviewed and reduced witness list as soon as possible, but in any event no later than Monday, the 16th of April 2007;
3. That each of the Defence Teams shall review the summaries of their witnesses' testimonies, with a view to providing more particulars and sufficient description to enable the Prosecution and the Chamber to appreciate and understand the nature and content of each witness' proposed testimony;
4. That, subject to any protective measures that might have been ordered by the Chamber, the witness summaries shall contain detailed summaries of the incidents and/or events about which a witness is called to testify upon, exact location and date (if available) of these alleged incidents and/or events, position and/or role of a witness in relation to the crimes charged in the Indictment and the nexus between the Accused and the proposed testimony of a witness;
5. That each of the Defence Teams shall reassess the estimated length of examination of their witnesses and shall include such changes in their re-filed reduced witness list;
6. That each of the Defence Teams shall identify and correct all discrepancies in their respective Evidentiary Charts and re-file the said Charts with their reduced witness list;
7. That each of the Defence teams provides to the Prosecution, the other Defence Teams and the Trial Chamber a list of the order of the next 15 witnesses which it intends to call to testify at trial, at least 14 days prior to their expected testimony;
8. That the Defence specifies the language in which the witness will testify and the particular protective measures to be applied for the testimony in Court of each of these witnesses in accordance with the applicable protective measures Decisions;

¹⁶ See Scheduling Order, Order 1(a).

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9. That each of the Defence Teams shall disclose, as soon as possible but no later than two days prior to the commencement of the testimony of a witness, to the other Parties, as the case may be, a copy of the Exhibits, which the Defence intend to tender through the witness;

10. That the Defence shall ensure at all times the availability of at least two standby witnesses in court ready to testify in order to avoid any delays.


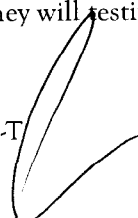
FURTHER ORDERS:

11. That all the Defence Teams continue to discuss their common witnesses, if any, and in particular any possible common expert witnesses. The Defence Teams shall file with the Court as soon as possible, but in any event no later than 5 days from the rolling disclosure of their respective witnesses' identity in accordance with the applicable protective measures regime, a list, if any, of common witnesses, among those already included in their respective witness lists, with a summary of their respective testimonies, the points of the Indictment in respect of which each witness will testify, the estimated length of time each witness will testify, and the language of the testimony;

12. That every 2 months from the date of the present Order the Prosecution and each of the Defence Teams shall file with the Court a Status Report on any additional points of law or facts they have agreed upon, which shall be signed by the Parties;

FURTHER ORDERS the *Kallon* Defence to promptly and formally apply to the Chamber for the variation of any protective measures previously granted by this Chamber to its witnesses referred to in the Notice filed with the Court on the 19th of March 2007;

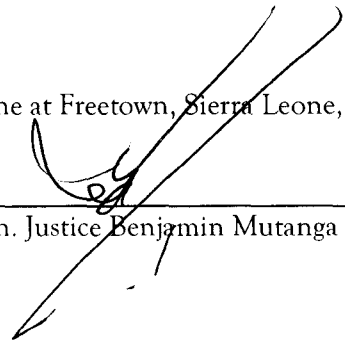
FURTHER ORDERS the *Kallon* and the *Gbao* Defence to finally indicate by no later than Monday, the 16th of April 2007 whether the Second Accused and the Third Accused, respectively, will testify at trial pursuant to Rule 85(C) of the Rules and, if so, **ORDERS** that the Second Accused and the Third Accused shall disclose, as soon as possible but no later than 21 days prior to their testimony at trial, to the other Defence Teams and to the Prosecution and file with the Court a summary of the facts about which they will testify;

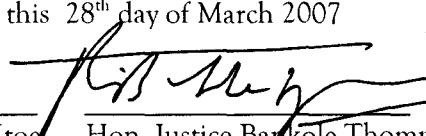


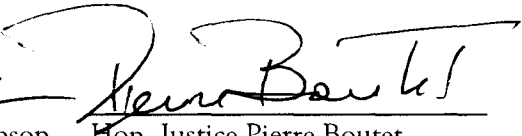
ORDERS that a Status Conference shall be held on Wednesday, the 2nd of May 2007 at 10:00 a.m. and that the Defence case shall commence on Thursday, the 3rd of May 2007 at 9:30 a.m., subject to any further Order by the Chamber.

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Done at Freetown, Sierra Leone, this 28th day of March 2007


Hon. Justice Benjamin Mutanga Itoe


Hon. Justice Bankole Thompson
Presiding Judge
Trial Chamber I


Hon. Justice Pierre Boutet

