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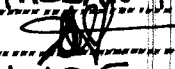
SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

IN THE APPEALS CHAMBER

Before: Hon. Justice Renate Winter, President
Hon. Justice Jon Kamanda
Hon. Justice George Gelaga King
Hon. Justice Emmanuel Ayoola

Registrar: Mr. Herman Von Hebel

Date filed: 28 April 2009

SPECIAL COURT FOR SIERRA LEONE	
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28 APR 2009	
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THE PROSECUTOR

Against

ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO

Case No. SCSL-04-15-A

PUBLIC

PROSECUTION'S NOTICE OF APPEAL

Office of the Prosecutor:

Stephen Rapp
Dr Christopher Staker
Mr Vincent Wagona
Dr Nina Jørgensen
Mr Reginald Fynn
Ms Elisabeth Baumgartner
Ms Régine Gachoud

Defence Counsel for Issa Hassan Sesay

Mr Wayne Jordash
Ms Sareta Ashraph

Defence Counsel for Morris Kallon

Mr Charles Taku
Mr Kennedy Ogeto

Defence Counsel for Augustine Gbao

Mr John Cammegh
Mr Scott Martin

1. Pursuant to Article 20 of the Statute of the Special Court and Rule 108 of the Rules of Procedure and Evidence, the Prosecution files this Notice of Appeal setting forth its grounds of appeal against the “Judgement” of the Trial Chamber dated 2 March 2009¹ in Case No. SCSL-04-15-T, *Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao* (the “**Trial Judgement**”).

First Ground of Appeal: Continuation of the joint criminal enterprise after April 1998

2. The Trial Chamber erred in law and/or erred in fact in finding that the common plan, design or purpose / joint criminal enterprise between leading members of the AFRC and RUF ceased to exist some time in the end of April 1998.
3. On the Trial Chamber’s own findings and/or the evidence before it, the only conclusions open to any reasonable trier of fact are:
 - (i) that the common plan, design or purpose / joint criminal enterprise between leading members of the AFRC and RUF continued to exist at least until the end of February 1999;
 - (ii) that Sesay, Kallon and Gbao remained participants in the common plan, design or purpose / joint criminal enterprise throughout that period;
 - (iii) that the following crimes were within the intent of the participants in that common plan, design or purpose / joint criminal enterprise, including Sesay, Kallon and Gbao:
 - (a) the crimes that the Trial Chamber found, in paragraphs 1512, and 1516 to 1608 of the Trial Judgement, to have been committed in Freetown and the Western Area;
 - (b) the crimes referred to in paragraph 2065 of the Trial Judgement, which were found by the Trial Chamber to have been committed in Kono District after the end of April 1998;

¹ The full written Trial Judgement was issued on 2 March 2009, after verdict was pronounced in open court, and a written “Judgement Summary” was issued, on 25 February 2009.

- (c) the crimes referred to in paragraph 2156 (Items 5.1.2 and 5.1.3) of the Trial Judgement, which were found by the Trial Chamber to have been committed in Kailahun District, to the extent that such crimes were committed after the end of April 1998;
- (iv) alternatively to (iii) above, that the crimes referred to in sub-paragraph (iii)(a) to (c) above were the natural and foreseeable consequence of the effecting of the common plan, design or purpose / joint criminal enterprise.
4. The Prosecution requests the Appeals Chamber to reverse the Trial Chamber's findings that the common plan, design or purpose / joint criminal enterprise between leading members of the AFRC and RUF ceased to exist sometime in the end of April 1998, and to revise the Trial Judgement by adding further findings that Sesay, Kallon and Gbao are each individually responsible under Article 6(1) of the Statute for committing, as participants in a joint criminal enterprise, the crimes referred to in paragraph 3(iii) above.
5. The Prosecution does not seek the remedy in paragraph 4 above in respect of the crimes found by the Trial Chamber, in paragraphs 1498 to 1500 of the Trial Judgement, to have been committed in Koinadugu District; the crimes found by the Trial Chamber, in paragraphs 1506 to 1507 of the Trial Judgement, to have been committed in Bombali District; or the crimes found by the Trial Chamber, in paragraphs 1609 to 1612 of the Trial Judgement, to have been committed in Port Loko District, in view of the fact that the Trial Judgement contains no specific crime base findings in respect of those crimes.
6. The Prosecution also requests the Appeals Chamber to make any resulting amendments to the disposition provisions of the Trial Judgement, and to increase the sentences imposed on Sesay, Kallon and Gbao to reflect the additional criminal liability.

Second Ground of Appeal: Acquittal of Gbao on Count 12

7. The Trial Chamber erred in law and/or erred in fact in finding that Gbao is not individually responsible for the conscription and use of child soldiers as charged in Count 12 of the Indictment.
8. The Prosecution requests the Appeals Chamber to reverse the Trial Chamber's acquittal of Gbao on Count 12 of the Indictment and to substitute a conviction, and to revise the Trial Judgement by adding further findings:
 - (i) that Gbao is individually responsible under Article 6(1) of the Statute for committing, as a participant in a joint criminal enterprise, the crime of conscription and/or use of child soldiers referred to in paragraphs 1708 and 1747 of the Trial Judgement, to the extent that such crimes were committed up to the end of April 1998; and
 - (ii) if the Prosecution's First Ground of Appeal is allowed by the Appeals Chamber, that Gbao is individually responsible under Article 6(1) of the Statute for committing, as a participant in a joint criminal enterprise, the crime of conscription and/or use of child soldiers referred to in paragraphs 1708 and 1747 of the Trial Judgement, to the extent that such crimes were committed beyond the end of April 1998;
9. The logical consequence of the remedy in paragraph 8 above may be that Sesay and Kallon also satisfy the elements under Article 6(1) of the Statute for committing, as participants in a joint criminal enterprise, the crime charged in Count 12. However, the Prosecution does not seek any revision of the Trial Judgement to reflect joint criminal enterprise responsibility of Sesay and Kallon on Count 12 as the Trial Chamber convicted Sesay and Kallon on Count 12 under Article 6(1) on the basis of planning.
10. In the alternative to paragraph 8 above, on the Trial Chamber's findings and/or the evidence that was before the Trial Chamber, the only conclusion open to any reasonable trier of fact is that Gbao was responsible for aiding and abetting or planning the crime of conscription and/or use of child soldiers referred to in paragraphs 1708 and 1747 of the Trial Judgement. The Prosecution requests the Appeals Chamber to reverse the Trial Chamber's acquittal of Gbao on Count 12

of the Indictment and to substitute a conviction, and to revise the Trial Judgement by adding further findings that Gbao is individually responsible under Article 6(1) of the Statute for aiding and abetting or planning the conscription and/or use of child soldiers crimes.

- 11. The Prosecution also requests the Appeals Chamber to make any resulting amendments to the disposition provisions of the Trial Judgement, and to increase the sentences imposed to reflect the additional criminal liability.

Third Ground of Appeal: Acquittals of Sesay, Kallon and Gbao on Count 18

- 12. The Trial Chamber erred in law and/or erred in fact in acquitting Sesay, Kallon and Gbao on Count 18 (taking of hostages, a war crime under common Article 3 and Additional Protocol II).
- 13. The Trial Chamber erred in law in finding, at paragraph 1964 of the Trial Judgement, that “The offence of hostage taking requires the threat to be communicated to a third party, with the intent of compelling the third party to act or refrain from acting as a condition for the safety or release of the captives”.
- 14. This error led the Trial Chamber, at paragraphs 1965 to 1969 of the Trial Judgement, to find that the Prosecution had failed to prove an essential element of the crime of hostage taking.
- 15. Additionally and alternatively, the Trial Chamber erred in finding, at paragraph 1965 of the Trial Judgement, that “There is ... no evidence of any conduct on the part of the RUF which could be construed as implicitly threatening to a third party that the peacekeepers would be harmed or communicating an implicit condition for their safety or release”. The findings of the Trial Chamber and the evidence before it includes evidence of such implicit threats and/or communications of implicit conditions.
- 16. On the basis of the Trial Chamber’s findings and/or the evidence before it, the only conclusion open to any reasonable trier of fact is that the elements of hostage taking as charged in Count 18 of the Indictment are satisfied in relation to the peacekeepers detained by RUF fighters as referred to in paragraph 1962

and paragraphs 1812-1815, 1822, 1835, 1840-1842, 1848, 1857, 1863-1868 and 1890 (ii), (iii), (iv), (v), (vi), 1891, 1894, 1895 (i), (ii), 1897, 1902 of the Trial Judgement, and that the criminal responsibility of Sesay, Kallon and Gbao for the hostage taking is established, as charged in the Indictment.

17. The Prosecution requests the Appeals Chamber to reverse the Trial Chamber's acquittal of Sesay, Kallon and Gbao on Count 18 of the Indictment and to substitute a conviction on Count 18 for each of the accused.
18. The Prosecution also requests the Appeals Chamber to make any resulting amendments to the disposition provisions of the Trial Judgement, and to increase the sentences imposed on Sesay, Kallon and Gbao to reflect the additional criminal liability.

Sentences

19. The Prosecution does not appeal, as such, against the "Sentencing Judgement" of the Trial Chamber dated 8 April 2009 in Case No. SCSL-04-15-T, *Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao* (the "Sentencing Judgement"). However, the remedies sought by the Prosecution in respect of the above Grounds of Appeal against the Trial Judgement include requests that the Appeals Chamber increase the sentence imposed on each of the three Accused, to reflect their additional criminal liability.

Filed in Freetown,
28 April 2009
For the Prosecution,



Stephen Rapp, Prosecutor