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SCSL-2003-07-PT -
(1170-1172)

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SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

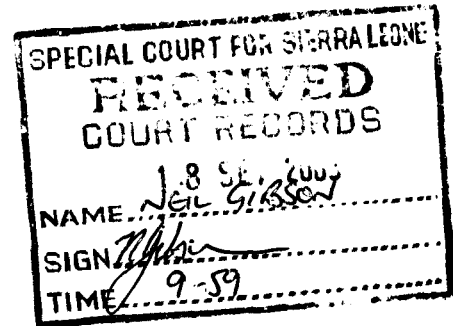
FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 17th day of September 2003



The Prosecutor against

Morris Kallon
(Case No.SCSL-2002-07-PT)

ORDER PURSUANT TO RULE 72 (E)

DEFENCE PRELIMINARY MOTION BASED ON LACK OF JURISDICTION:
ESTABLISHMENT OF SPECIAL COURT VIOLATES CONSTITUTION OF
SIERRA LEONE

Office of the Prosecutor:
Mr. Luc Côté, Chief of Prosecutions

Defence Counsel:
Mr. James Oury
Mr. Steven Powels

THE SPECIAL COURT FOR SIERRA LEONE (“The Special Court”)

SITTING as the Trial Chamber (“The Chamber”), composed of Their Lordships, Judge Bankole Thompson, Presiding Judge, Judge Pierre Boutet, and Judge Benjamin Mutanga Itoe;

SEIZED of the Defence Preliminary Motion of the 16th day of June, 2003 Based on Lack of Jurisdiction: Establishment of Special Court Violates Constitution of Sierra Leone (“The Preliminary Motion”), in relation to the charges against **Morris Kallon** (“The Accused”);

CONSIDERING the Prosecution’s Response to “the Preliminary Motion” dated the 24th day of June, 2003 (“The Response”) and the Defence Reply thereto of the 30th day of July, 2003 (“The Reply”);

CONSIDERING the entire provisions of Rule 72 of the Rules of Procedure and Evidence (“The Rules”);

CONSIDERING, in particular, the provisions of Rule 72 (E) of “the Rules” which provide that “the Chamber” shall refer to the Appeals Chamber for a determination as soon as practicable any preliminary motion which raises a serious issue relating to jurisdiction;

CONSIDERING that “the Defence Preliminary Motion” objects to and contests the jurisdiction of “the Special Court” to try “the Accused” on all the charges contained into the Indictment;

CONSIDERING that the Indictment charges “the Accused” on several counts for Crimes Against Humanity, punishable under Article 2 of the Statute of the Special Court (“The Statute”), Violation of Article 3 Common to the Geneva Conventions and of Additional Protocol II, punishable under Article 3 of “the Statute”, and of Other Serious Violations of International Humanitarian Law, punishable under Article 4 of “the Statute”;

CONSIDERING that “the Accused” submits that in establishing “the Special Court” the Government of Sierra Leone was duty bound to abide by and honour the Constitution of Sierra Leone, 1991;

CONSIDERING that “the Accused” submits that the creation of “the Special Court” by the United Nations and the Government of Sierra Leone has the effect of amending fundamental aspects of the Constitution of Sierra Leone, 1991 for which no referendum has been consequently held;

CONSIDERING, in particular, that “the Accused” submits that in creating “the Special Court”, the Government of Sierra Leone acted unconstitutionally in relying on Section 40 (4) of the Constitution of Sierra Leone, 1991 instead of Section 108;

GIVEN that “the Accused”, in light of the above, argues that “the Special Court” is unconstitutional, an illegal and *ultra vires* institution lacking jurisdiction to try him for any of the counts contained in the Indictment;

THE CHAMBER

FINDS that the foregoing submissions raise a serious issue relating to the jurisdiction of “the Special Court” to try “the Accused” on all the counts of the Indictment that has been preferred against him;


AND THEREFORE, PURSUANT TO RULE 72 (E) OF THE RULES,

REFERS this “Defence Preliminary Motion”, together with the Prosecution’s “Response” and the Defence “Reply” thereto, to the Appeals Chamber of “the Special Court” for determination;

ORDERS that the reference of this Motion to the Appeals Chamber shall not operate as a stay of the trial of “the Accused”;

Done in Freetown, this 17th day of September 2003

The Trial Chamber


Judge Bankole Thompson
Presiding Judge

