

552)

SCSL-04-15-T  
(18915-18917)

18915

IN THE SPECIAL COURT FOR SIERRA LEONE

**THE TRIAL CHAMBER**

**Before:** The Trial Chamber

Justice Pierre Boutet, presiding  
Justice Bankole Thompson  
Justice Benjamin Itoe

**Registrar:** Mr Lovemore G Munro SC

**Date filed:** 11 May 2006

**Case No.** SCSL 2004 – 15 – T

**In the matter of:**

**THE PROSECUTOR**

**Against**

**ISSA SESAY  
MORRIS KALLON  
AUGUSTINE GBAO**

---

**PUBLIC**

**GBAO RESPONSE TO PROSECUTION NOTICE UNDER RULE 92bis TO  
ADMIT THE TRANSCRIPTS OF TESTIMONY OF TF1-369**

---

**Office of the Prosecutor**

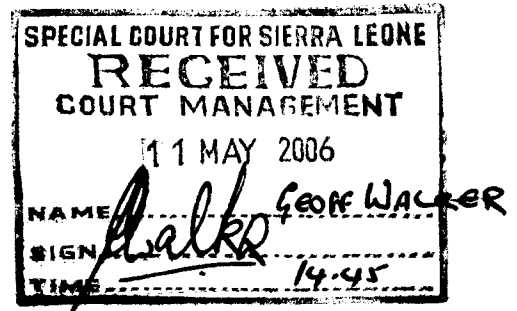
Desmond de Silva QC  
James Johnson  
Peter Harrison

**Court Appointed Counsel for Augustine Gbao**

Andreas O'Shea  
John Cammegh

**Counsel for co-accused**

Wayne Jordash and Sareta Ashraph for Issa Sessay  
Shekou Touray, Charles Taku and Melron Nicol-Wilson for Morris Kallon




1. On 3 May 2006 the prosecution filed its Notice Under Rule 92bis to Admit the Transcripts of Testimony of TF1-369.<sup>1</sup> On 8 May 2006, the Gbao defence applied for an extension of time to respond to this notice until 11 May 2006.
2. The defence cannot at this stage accept the admission of the said transcripts but has no objection to the admission of the cv. These transcripts contain evidence which is opinion evidence, and therefore inadmissible except through an expert.
3. A witnesses status as an expert must first be accepted by the Chamber. In order for an expert to have that status in law he or she must be both an acknowledged expert in the field in which he or she is testifying and secondly must be deemed by the Chamber to have the necessary degree of impartiality for the witness to be accorded such status. These are general principles of law recognised in a number of legal systems, which are confirmed for instance in an oral decision in the case of *Akayesu* before the International Criminal Tribunal for Rwanda.<sup>2</sup>
4. On an analysis of the transcripts the defence is not satisfied at this juncture that these requirements are met. For this issue to be determined, it is submitted that the defence is entitled to put questions to the witness and argument to the Chamber on this aspect of her status. Until this issue is determined following examination of the witness and argument from the parties, it is submitted that the Chamber is not in a position to admit opinion evidence and it is therefore not appropriate to admit these transcripts prior to the witness appearing before the Chamber.

---

<sup>1</sup> SCSL-04-15-T, 544

<sup>2</sup> *Prosecutor v Akayesu*, oral decision of the Trial Chamber of 9 March 1998, referred to in Jones and Powles, *International Criminal Practice*, 3<sup>rd</sup> ed, 2003, par 8.5.695 – p 740.

IT IS THEREFORE REQUESTED: that the Chamber not admit, or defer the question of admission of these transcripts, until the status of this witness has been determined by the Chamber following appropriate questioning of the witness and argument from the parties.



Andreas O'Shea

Court Appointed Counsel for Augustine Gbao