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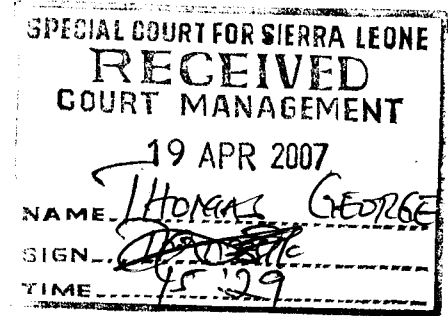
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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown - Sierra Leone

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

Acting Registrar: Mr. Herman Von Hebel

Date filed: 20 April 2006



THE PROSECUTOR

Against

Issa Hassan Sesay
Morris Kallon
Augustine Gbao

Case No. SCSL-04-15-T

PUBLIC

**PROSECUTION RESPONSE TO THE GBAO REQUEST FOR THE GBAO OPENING
STATEMENT TO BE GIVEN AT THE BEGINNING OF THE PRESENTATION OF
EVIDENCE FOR THE THIRD ACCUSED**

Office of the Prosecutor:
Pete Harrison
Charles Hardaway

Defense Counsel for Issa Hassan Sesay
Mr. Wayne Jordash
Ms. Sareta Ashraph
Ms. Chantal Refahi

Defense Counsel for Morris Kallon
Mr. Shekou Touray
Mr. Charles Taku
Mr. Melron Nicol-Wilson

Defense Counsel for Augustine Gbao
Mr. Andreas O'Shea
Mr. John Cammegh

I. INTRODUCTION

1. The Prosecution files this Response to the “Gbao Request for the Gbao Opening Statement to be given at the Beginning of the Presentation of Evidence for the Third Accused,” (“Request”).¹

II. SUBMISSIONS

2. Rule 84 of the Rules of Procedure allows for each party to make an opening statement at the beginning of his case. The rule states:

At the opening of his case, each party may make an opening statement confined to the evidence he intends to present in support of his case. The Trial Chamber may limit the length of those statements in the interests of justice.

3. At the pre-defence conference held on 20 March 2007, the Chamber stated the following in regards to the procedure for the presentation of evidence in the RUF case:

The Defence case will start with the opening statements by the Defence for the first accused, followed by Defence for the third accused. After the conclusion of the opening statements, the Defence for the first accused will proceed to call the Defence witnesses, followed by the Defence for the second and third accused, respectively.²

4. In *Delalic et al*, it appears that upon completion of the Prosecution evidence, the co-accused were permitted to give opening statements after the completion of the evidence of the co-accused named immediately prior in the Indictment, and just before the calling of their own witnesses. For example, counsel for the third accused Delic gave an opening statement on 29 June 1998, after the defence evidence for Delalic and Mucic, however the statement was 3 transcript pages in length.³
5. At the pre-defence conference for the CDF, held on 11 January 2006, the Chamber decided that the first order of business for the conduct of the defence phase of the trial would be the opening statements by the second accused followed by the third accused,

¹ *Prosecutor v. Sesay Kallon Gbao*, SCSL-04-15-T-754, “Request for the Gbao Opening Statement to be Given at the Beginning of the Presentation of Evidence for the Third Accused”, 16 April 2007.

² Transcript 20 March 2007, p. 79 (lines 18-24).

³ *Prosecutor v. Delalic et al*, IT-96-21, Transcript, 29 June 1998, pp. 13359-13362.

<http://www.un.org/icty/trans21/980629IT.htm>. See also a reference to this case on the same point in Jones and Powles, *International Criminal Practice* (3rd ed.), 2003, p. 712.

subject to further rulings by the bench.⁴ There were a number of common witnesses in the CDF defence case, and the rationale for the Chambers decision rests with the concern that common witnesses should not be called for the defence until each party has opened their case.⁵

6. At the opening of the defence case of the AFRC, it was determined that counsel for all three accused would give an opening statement at that time. One of the factors for that decision is that there was a common legal response in terms of the opening for all three accused.⁶
7. The defence for the Third Accused has stated that they may rely upon the military expert of the First Accused.⁷
8. The Prosecution submits that the defence for the Third Accused needs to make a final determination as to the use of **any** common witness prior to the start of the Defence phase of the trial. Should the defence for the Third Accused rely upon a common witness called by the First Accused, for example the First Accused's military expert, that military expert would then be classified as a common witness. In such an instance the Third Accused must give his opening statements prior to presentation of evidence.

III. CONCLUSIONS

8. Should the defence for the Third Accused rely upon the military expert for the first accused or any other common witness, then the Third Accused's request to postpone his opening statement until after the evidence of the First and Second Accused has finished should be denied.

Filed in Freetown, 20 April 2006

For the Prosecution,



Pete Harrison

⁴ *Prosecutor v. Norman, Fofana, Kondewa*, Trial Transcript, 11 January 2006, p. 44.

⁵ *Prosecutor v. Norman, Fofana, Kondewa*, Trial Transcript, 11 January 2006, p. 41.

⁶ *Prosecutor v. Brima, Kamara, Kanu*, Trial Transcript, 5 June 2006, pp. 2-3.

⁷ *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-2004-15-T-753, "Gbao-Filing of Revised Witness List and Revised Indictment Chart in Accordance with Court Order of 28 March 2007", 16 April 2007, para. 13.

Index of Authorities

ORDERS, DECISIONS AND JUDGMENTS

Prosecutor v. Sesay et al, SCSL-04-15-T-754, “Request for the Gbao Opening Statement to be Given at the Beginning of the Presentation of Evidence for the Third Accused”, 16 April 2007.

Prosecutor v. Sesay et al, SCSL-2004-15-T-753, “Gbao-Filing of Revised Witness List and Revised Indictment Chart in Accordance with Court Order of 28 March 2007”, 16 April 2007.

TRIAL TRANSCRIPTS

Prosecutor v. Sesay, Kallon, Gbao, SCSL-2004-15-T, Transcript, 20 March 2007.

Prosecutor v. Norman, Fofana, Kondewa, SCSL-04-14-T, Transcript, 11 January 2006.

Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-T, Transcript, 5 June 2006.

Prosecutor v. Delalic et al, IT-96-21, Transcript, 29 June 1998, pp. 13359-13362.
<http://www.un.org/icty/transe21/980629IT.htm>

TEXTS

Jones and Powles, *International Criminal Practice* (3rd ed.), 2003, p. 712.