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SCSL - 2003 - 07 - PT - 047
(663 - 666)

THE SPECIAL COURT FOR SIERRA LEONE

Before: The Trial Chamber
Registrar: Robin Vincent
Date filed: 19 June 2003

THE PROSECUTOR

v.

MORRIS KALLON

Case No. SCSL-2003-07-PT

APPLICATION FOR LEAVE TO SUBMIT *AMICUS CURIAE* BRIEFS

Office of the Prosecutor

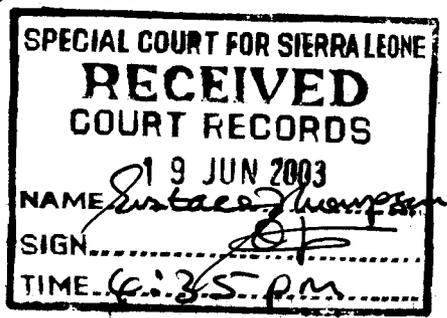
Luc Côté, Chief of Prosecutions
Brenda J. Hollis, Senior Trial Counsel

Counsel for the Accused

James Oury
Steven Powles

Defence Office

John R.W.D. Jones, Acting Chief of Defence Office and Legal Advisor
Claire Carlton-Hanciles, Defence Associate
Ibrahim Yillah, Defence Associate
Haddijatu Kah-Jallow, Defence Associate
Sam Scratch, Defence Intern



I. INTRODUCTION

1. On 16 June 2003, Counsel for Morris Kallon filed two preliminary motions, pursuant to Rule 72 of the Rules of Procedure and Evidence (the “**Rules**”) of the Special Court for Sierra Leone (the “**Special Court**”): a “Preliminary Motion Based On Lack Of Jurisdiction/Abuse Of Process: Amnesty Provided By Lomé Accord” and a “Preliminary Motion Based On Lack Of Jurisdiction: Establishment of Special Court violates Constitution of Sierra Leone.”
2. The Defence Office hereby seeks leave to make submissions on the issues of jurisdiction raised by Counsel for Morris Kallon.

II. THE LAW APPLICABLE TO *AMICUS CURIAE* SUBMISSIONS

3. Rule 74 of the Rules provides:

“Rule 74: Amicus Curiae¹

A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to any State, organization or person to make submissions on any issue specified by the Chamber.”

4. The International Criminal Tribunal for the former Yugoslavia (the “**ICTY**”) and the International Criminal Tribunal for Rwanda (the “**ICTR**”) have both invited *amicus curiae* submissions, pursuant to Rule 74 of their Rules of Procedure and Evidence, on a range of issues. See, in particular, at the ICTY, the *Order Submitting the Matter to Trial Chamber II and inviting Amicus Curiae*, issued in the *Blaškić* case on 14 March 1997, in which Judge McDonald directed that a hearing on the issuance of a *subpoena duces tecum* be held before the Trial Chamber “*considering the significance of the issues to be addressed*” and invited requests for *amicus curiae* briefs on a number of specified questions. At the ICTR, the Trial Chamber, on 9 February 2001, granted the request of the Kingdom of Belgium to appear as *amicus curiae* in the case of *Laurent Semanza*, to make submissions on the scope of Common Article 3 to the Geneva Conventions and Additional Protocol II. The Trial Chamber stated that it might be useful to “gather

¹ It is not entirely clear to the Defence Office whether the current title of Rule 74 is “*Amicus Curiae*” or “*Intervenors*”, as there are two versions in circulation.

additional legal views on the scope of the applicability of Article 3 common of the four Geneva Conventions and Additional Protocol II.”

- 5. In the *Milošević* case at the ICTY, the Trial Chamber appointed *amicus curiae* to the accused, stressing that the *amicus* were not representing the accused but were to assist in the proper determination of the case. See *Order Inviting Designation of Amicus Curiae*, 23 November 2001, in which the Trial Chamber set out the parameters and issues upon which the *amicus* were invited to assist. It is submitted that the role of the Defence Office with respect to each Accused to whom Counsel has been assigned or appointed is comparable to that of the *amicus curiae* in *Milošević*, namely the Office retains the right and duty to make submissions to assist in the proper determination of the case.

III. THE FUNDAMENTAL IMPORTANCE OF THE ISSUES AT STAKE

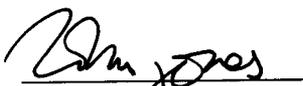
- 6. The questions of whether the establishment of the Special Court violates the Constitution of Sierra Leone and/or violates the Lomé Accord and whether it is an abuse of process for the Court to prosecute crimes pre-dating the Lomé Accord are of fundamental importance to proceedings before the Special Court. Careful deliberation after the fullest debate is required in order for them to be properly resolved. It is submitted, therefore, that it is “*desirable for the proper determination of the case*” for the Chamber to have the benefit of *amicus curiae* submissions on these issues.
- 7. The Defence Office of the Special Court has expertise in Sierra Leonean law (two of the Duty Counsel are admitted to practice in Sierra Leone), as well as expertise in international criminal law. Moreover, members of the Office have been researching the issues raised in the motions by Counsel for Kallon for a considerable period of time, pursuant to the mandate of the Defence Office set out in Rule 45 of the Rules. The Defence Office considers, for these reasons, therefore, and bearing in mind the Office’s historical significance as the first “public defender’s office” to be established in an international court or tribunal, that it is in the interests of justice for leave to be granted to the Defence Office to make submissions on these issues.

IV. **CONCLUSION**

8. For the above reasons, the Defence Office seeks leave to make submissions on the issues of jurisdiction raised in the preliminary motions filed by Counsel for Morris Kallon on 16 June 2003.

Dated this 19th day of June 2003.

DEFENCE OFFICE



John R. W. D. Jones, Acting Chief of Defence Office and Legal Advisor

Claire Carlton-Hanciles, Defence Associate

Ibrahim Yillah, Defence Associate

Haddijatu Kah-Jallow, Defence Associate

Sam Scratch, Defence Intern