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SCSL-2003-07-PT = 070
(1094-1100)

1094

SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER

Before: Judge Thompson, Presiding Judge
Judge Itoe
Judge Boutet

Registrar: Robin Vincent

Date: 22 July 2003

The Prosecutor Against: Morris Kallon

(Case No. SCSL-2003-07-PT)

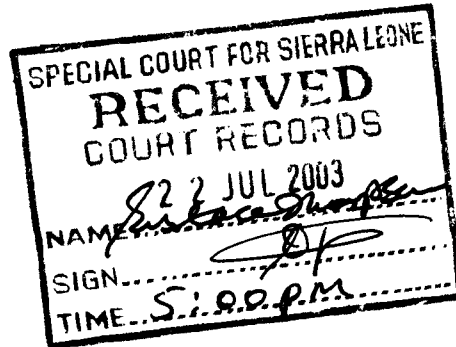
REQUEST FOR SUBPOENA DUCES TECUM

Office of the Prosecutor:

Desmond de Silva QC, Deputy Prosecutor
Luc Cote, Chief of Prosecution
Walter Marcus-Jones, Senior Appellate Counsel
Christopher Staker, Senior Appellate Counsel
Abdul Tejan-Cole, Appellate Counsel

Defence Counsel:

James Oury, Co-Counsel
Steven Powles, Co-Counsel
Melron Nicol-Wilson, Legal Assistant



Background

1. The Defence filed 'Preliminary Motion Based on Lack of Jurisdiction/Abuse of Process: Amnesty Provided by the Lome Accord' ("Preliminary Motion") on 16 June 2003. The Prosecution filed 'Prosecution Reponse to the First Defence Preliminary Motion (Lome Accord)' (*sic*) on 23 June 2003.¹ The Defence were granted an extension of time (30 June 2003) to file its Reply to the Prosecution Response. On 30 June 2003 the Defence filed an 'Application for Extension of Time to File Reply to Prosecution Response to the First Defence Preliminary Motion (Lome Agreement)' ("Application").
2. Attached to the Application were two letters, one to the Chief of Prosecution, Luc Cote, and the other to the Attorney General for Sierra Leone, Mr Eke Ahmed Halloway. Both letters were date 30 June 2003 and requested the disclosure of various documents pertaining to the Lome Agreement.
3. On 1 July 2003 the Defence wrote again to the Attorney-General of Sierra Leone seeking voluntary disclosure of documents pertaining to the establishment of the Special Court. The letter was copied to Luc Cote.
4. The letter of 30 June 2003 to the Attorney-General sought disclosure by the Government of Sierra Leone of the documents requested within 7 days. This was in an effort to expedite proceedings before the Special Court.
5. To date no response has been received from the Attorney-General to the Defence letters of 30 June and 1 July 2003. Accordingly, the Defence now turns to the Trial Chamber to assist the Defence with obtaining the materials requested by issuing a *subpoena duces tecum* to the Attorney-General of Sierra Leone.

¹ Note: The Response was received by the Defence, via the Court Registry, on 26 June 2003.

Rule 54 of the Rules

6. Rule 54 of the Special Court Rules provides:

At the request of either party or of its own motion, a Judge or Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

Terms of Subpoena

7. In order to enable the Defence to prepare its Reply to the Prosecution Response it is requested that the Trial Chamber issue a *subpoena duces tecum* to the Attorney-General of Sierra Leone in the following terms:

The Attorney-General shall disclose to the Defence for Morris Kallon within 7 days of receipt of this *subpoena* [or any other time period that the Trial Chamber deems appropriate] the documentation set out below.

For the purpose of this *subpoena* 'documentation' shall mean, but is not limited to, correspondence, minutes of meetings, agendas, attendance note, memorandums.

Agreement on Ceasefire in Sierra Leone – 18 May 1999 [Annex 1 to Lome Agreement dated 7 July 1999]

- (i) Documentation regarding negotiations in the context of this Agreement both prior to and in specific regard to it as between the Government of Sierra Leone and the RUF.

Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone [Lome Agreement] dated 7 July 1999

- (ii) Documentation regarding the negotiations from the conclusion of the Ceasefire Agreement on 18 May 1999 (see above) and the commencement of the meeting in Lome on 25 May 1999.
- (iii) Documentation regarding the negotiations which took place between the 25 May 1999 and the ultimate signing of the Lome Agreement on 7 July 1999.
- (iv) A copy of the “Declaration in the Final Communique” of the meeting in Lome of the Ministers of Foreign Affairs of ECOWAS dated 25 May 1999.

Part One – Article II Cease-fire Monitoring

- (v) All documentation regarding the RUF in the context of the Cease Fire Monitoring Committees (“CMC”) duty to monitor, verify and report all violations of the ceasefire.
- (vi) All documentation regarding the RUF passing between the CMC and the Joint Monitoring Commission (“JMC”).
- (vii) All documentation regarding investigations and appropriate actions taken by the JMC in the context of reports made by the CMC and otherwise in the context of the RUF.

Part Three – Article IX Pardon and Amnesty

- (viii) All documentation relevant to the implementation of Article IX (paragraphs 1-3 inclusive) of the Lome Agreement on 7 July 1999.

Part Five – Articles XXVI Human Rights Violations

- (ix) All documentation regarding the implementation of paragraph 1 of Article XXVI of the Lome Agreement.

Lome Agreement - Implementation

- (x) Save as to 8 and 9 above, all documentation relevant to the proposed implementation of the Lome Agreement since signing to date.

Security Council Resolution 1315 (2000) [adopted by the Security Council at its 4186th meeting on August 14 2000]

- (xi) Documentation regarding the 23rd Summit of the organisation in Abuja on 28 and 29 May 2000 with specific regard to the situation in Sierra Leone.
- (xii) Copy letter from President of Sierra Leone to the Secretary General dated 12 June 2000 including Suggested Framework (S/2000/786, annex)
- (xiii) All documentation specific to the discussions in the context of resolution 1315.

Report of the Secretary General on the Establishment of a Special Court for Sierra Leone S2000/915 October 4 2000.

- (xiv) All documentation regarding discussions/negotiations held in the context of this Report.

Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone, annexed to the Report of the Secretary General UN Doc S2000/915 October 4 2000 (as amended between the United Nations and Sierra Leone 16 January 2002),

- (xv) All documentation regarding the negotiation and discussions in the context of the Government of Sierra Leone having regard to this Agreement.

Statute of the Special Court of Sierra Leone annexed to the Report of the Secretary-General, UN Doc S2000/915 October 4 2000 as amended by

agreement by the United Nations and the Government of Sierra Leone January 16 2002.

- (xvi) All documentation regarding negotiations and discussions on the part of the Government of Sierra Leone in the context of the Statute.

Reasons why such documents are relevant to the proceedings

8. The Defence requires such documentation from the Government of Sierra Leone in order to respond to points made in the Prosecution Response on the Defence Preliminary Motion. Specifically, such documentation is of crucial importance to the Defence to be able to consider and demonstrate:

- (i) The intended application of the amnesty granted in the Lome Agreement.
- (ii) The extent to which the Government of Sierra Leone is bound by the Lome Agreement.
- (iii) The intended effect of the Secretary-General's reservation to the Lome Agreement on the other parties to the Agreement.
- (iv) The implementation of and adherence to the Lome Agreement by the parties to it.
- (v) The extent and manner in which the Government of Sierra Leone considered its obligations pursuant to the Lome Agreement when agreeing to the establishment of the Special Court.

9. The Trial Chamber is accordingly requested to issue a subpoena to the Attorney-General of Sierra Leone in the terms set out above. The subpoena should be addressed to:

Mr Eke Ahmed Hallway
Attorney-General and Minister of Justice
Third Floor

Guma Building
Freetown
Sierra Leone

1100


10. All documentation to be disclosed by the Attorney-General should be sent to:

Mr James Oury
Oury Clark Solicitors
10 John Street
London WC1N 2EB
United Kingdom

Relief Sought

11. The Trial Chamber to issue a *subpoena duces tecum* to the Mr Eke Ahmed Halloway, Attorney-General of Sierra Leone, in the terms set out at paragraph 7 above.

James Oury


Steven Powles



22nd July 2003.