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SESI-04-15-T
(32182 — 32195)

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SPECIAL COURT FOR SIERRA LEONE
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TRIAL CHAMBER I

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

Registrar: Herman von Hebel

Date: 6th December 2007

PROSECUTOR Against ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO
(Case No. SCSL-04-15-T)

Public Document

WRITTEN REASONS FOR DECISION ON APPLICATION OF THIRD ACCUSED TO DISPENSE WITH THE MANDATE OF COURT APPOINTED COUNSEL, MR. ANDREAS O'SHEA

Office of the Prosecutor:
Peter Harrison
Reginald Fynn

Defence Counsel for Issa Hassan Sesay:
Wayne Jordash
Sareta Ashraph

Defence Counsel for Morris Kallon:
Shekou Touray
Charles Taku
Kennedy Ogeto

Court Appointed Counsel for Augustine Gbao:
John Cammegh
Prudence Acirokop

TRIAL CHAMBER I ("Trial Chamber I") of the Special Court for Sierra Leone ("Special Court") composed of Hon. Justice Benjamin Mutanga Itoe, Presiding Judge, Hon. Justice Pierre Boutet and Hon. Justice Bankole Thompson;

MINDFUL of a Letter dated the 20th of June 2007 addressed by the Third Accused, Augustine Gbao, requesting the Chamber to withdraw the status of Mr. Andreas O'Shea as Court Appointed Counsel and Lead Counsel in the case against him and to order that his services be dispensed with ("Request for Withdrawal");

MINDFUL of the Response to the Letter by Mr. Andreas O'Shea, dated the 22nd of June 2007;

HAVING HEARD the oral submissions by Mr. John Cammegh, Court Appointed Counsel to the Third Accused, made before the Chamber on the 21st of June 2007;

NOTING the Letter and the Annexes thereto received from the Defence Office on the 22nd of June 2007;

RECALLING the Decision on Application to Withdraw Counsel issued by this Chamber on the 6th of July 2004;

MINDFUL of the Decision on Appeal against Decision on Withdrawal of Counsel issued by the Appeals Chamber on the 23rd of November 2004;

NOTING the oral submissions made by the Principal Defender on the 28th of March 2006;

MINDFUL of the Decision on Application by Counsel for the Third Accused to Withdraw from the Case issued by this Chamber on the 5th of April 2006 and, in addition, of the written reasons for this Decision filed on the 19th of June 2006, appointing Mr. Andreas O'Shea and Mr. John Cammegh as Court Appointed Counsel for the Third Accused;

MINDFUL of this Chamber's Oral Decision issued on the 22nd of June 2007[1] and of the subsequent Decision on Application of Third Accused to Dispense with the Mandate of Court Appointed Counsel, Mr. Andreas O'Shea, filed on the 2nd of July 2007, granting the Application by the Third Accused for withdrawal of the services of Mr. O'Shea and releasing him from any further obligations or duties with respect to the Accused;

[1] Transcript, 22 June 2007, p. 91.

CONSIDERING that, in the said Decisions, the Chamber indicated that a comprehensive and written reasoned Decision would be filed in due course;

NOTING the Decision by the Principal Defender dated the 6th of July 2007, appointing Mr. John Cammegh as Lead Counsel for the Defence Team for the Third Accused;

CONSIDERING the provisions of and **PURSUANT** to Article 17(4)(d) and 17(4)(e) of the Statute of the Special Court for Sierra Leone ("Statute") and of Rules 26*bis*, 44(B), 45, 46 and 54 of the Rules of Procedure and Evidence ("Rules");

THE TRIAL CHAMBER HEREBY ISSUES THE FOLLOWING REASONED DECISION:

I. Procedural Background

1. On the 16th of April 2003, the initial indictment against Gbao was confirmed by Hon. Justice Thompson.[2] On the 4th of April 2003, Gbao made a request for the appointment of Counsel.[3] On 23rd of April 2003[4], Mr Andreas O'Shea was provisionally assigned Counsel for Gbao, which was confirmed on 17th December 2003.[5] He was to be assisted by John Cammegh.

2. On the second day of the RUF trial, the 6th of July 2004, the Chamber dismissed an oral request by the Third Accused to withdraw his Defence Counsel on the basis that he did not recognize the jurisdiction of the Special Court and that he did not want anyone to represent him before the Court.[6] The Chamber denied the Accused's application, holding that the Accused had failed to meet the standard of demonstrating "exceptional circumstances" pursuant to Rule 45(E) to justify the withdrawal. The Chamber emphasized that Defence Counsel has an obligation to conduct the case to finality, and ordered that Defence Counsel "must continue to represent the Accused".[7] Thereafter,

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[2] *Prosecutor v. Gbao*, SCSL-03-09-I, Indictment and Order Approving the Indictment, 16 April 2003.
[3] *Prosecutor v. Gbao*, SCSL-03-09-PT, Request for Legal Assistance, 4 April 2003.
[4] *Prosecutor v. Gbao*, SCSL-03-09-PT, Decision of the Principal Defender, 23 April 2003.
[5] *Prosecutor v. Gbao*, SCSL-03-09-PT, Decision on Assignment of Counsel, 17 December 2003.
[6] Transcript, 6 July 2004, pp. 38-42. On the 6th of November 2003, Counsel for Gbao filed a Preliminary Motion on the Invalidity of the Agreement between the United Nations and the Government of Sierra Leone on the establishment of the Special Court for Sierra Leone (*Prosecution v. Gbao*, SCSL-03-09-PT, Preliminary Motion on the Invalidity of the Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone, 6 November 2003). The Trial Chamber referred the issue to the Appeals Chamber under Rule 72(E) of the Rules). In its Decision, the Appeals Chamber upheld its ruling in the Lome Amnesty Decision, and dismissed the Preliminary Motion (*Prosecutor v. Gbao*, SCSL-04-15-AR72(E), Decision on Preliminary Motion on the Invalidity of the Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone, 25 May 2004).
[7] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Gbao - Decision on Application to Withdraw Counsel, 6 July 2004 , Transcript of 6 July 2004, p. 14 and following. The Trial Chamber's Decision was subsequently upheld by the Appeals

Gbao chose not to attend the RUF Trial proceedings any longer and declined to provide any instructions to his Defence Team.[8]

3. On the 12th of July 2004, the Chamber delivered an oral ruling in which it held that by refusing to appear before the Court on the 7th of July, Gbao had expressly waived his right to be present at the trial, and that the trial should proceed pursuant to Rule 60(A)(i). The Court also ordered that the Gbao Defence continue to represent the Accused, and that the Chief of the Detention Facility should maintain a daily record of Gbao's waiver. [9]

4. On the 4th of August 2004, the Chamber found that while the Accused had not made an explicit statement of intent to represent himself, it was possible that his submissions indicated an implied intent to do so. The Chamber granted leave to the Gbao Defence to appeal its Decision of the 6th of July 2004.[10]

5. In the appeal, the Gbao Defence requested that the Third Accused be accorded his right not to be represented by counsel, and requested that the Trial Chamber be ordered to consider alternative means of safeguarding the rights of the accused.[11] The Appeals Chamber held that the Trial Chamber's decision of the 6th of July 2004 was correct, and that the Accused did not have the right, under Article 17(d)(4)(iii) of the Statute to decide whether or not to have counsel assigned to him after refusing to exercise his rights under Article 17(d)(4)(i) and (ii) to defend himself or obtain legal assistance of his choosing.[12] Accordingly, the Appeals Chamber found the appeal to be lacking in merit, and dismissed it.[13]

6. On the 17th of February 2006, the Accused requested, through various letters addressed to the Trial Chamber that his Defence Counsel, Mr. O'Shea, be withdrawn from the case and a new Counsel be appointed in his place.[14] The Presiding Judge indicated to the Principal Defender, *inter*

Chamber: *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-AR73, Gbao - Decision on Appeal against Decision on Withdrawal of Counsel, 23 November 2004 [*Gbao Appeal* Decision].

[8] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on the Issue of the Refusal of the Third Accused, Augustine Gbao, to Attend Hearing of the Special Court for Sierra Leone on 7 July 2004 and Succeeding Days, 12 July 2004 [*Refusal* Ruling].

[9] *Refusal* Ruling, para 12.

[10] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Application for Leave to Appeal Gbao - Decision on Withdrawal of Counsel, 4 August 2004, para 60.

[11] *Gbao Appeal* Decision, para 33.

[12] *Ibid.*, para 57.

[13] *Ibid.*, para 61.

[14] Exhibits 89A and B.

alia, that the Chamber was not prepared to allow such withdrawal.[15] The Accused then wrote another letter to the Chamber on the 25th of February 2006 stating that he had "totally lost confidence" in his Defence Counsel and reiterating his request to withdraw him from the case.[16]

7. At a Status Conference held on the 27th of February 2006, during which the Accused was present, the Principal Defender made submissions on the developments concerning the representation of the Accused. In particular, the Principal Defender stated that he did not intend to withdraw the assignment of the Defence Counsel but supported the addition of a Sierra Leonean lawyer to the Defence Team. Mr. O'Shea expressed his general agreement with the view of the Trial Chamber and the Principal Defender.[17] From then on, the Accused regularly resumed attending the trial proceedings.

8. Subsequently, on the 24th of March 2006 the Accused sought leave to address the Chamber during the RUF trial proceedings. He stated that he did not want did not trust and/or have confidence in Mr. O'Shea. In response, the Chamber reiterated its opposition to any suggestion of a withdrawal of the lead Defence Counsel on the basis, *inter alia*, that it was in the interest of justice and that of the Accused to maintain the current Defence team, and that the Chamber so far had full confidence in the team considering their professional input and the advanced stage of the trial proceedings.[18]

9. On the 27th of March 2006, Mr. O'Shea made an oral application to be allowed to withdraw from the case pursuant to Rule 45(E) of the Rules. Counsel submitted that his application was premised on the Accused's continuous unwillingness to provide instructions to him as well as various public statements made by the Accused that he had no trust or confidence in him as Defence Counsel. Mr. O'Shea stated that these public statements have caused him a great degree of personal and professional embarrassment and thus constituted exceptional circumstances warranting his withdrawal from this case.[19] On the following day, the Chamber also heard oral submissions from the Principal Defender and the Prosecution and various exhibits were filed.[20] On the 5th of April 2006,

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[15] The Presiding Judge, however, indicated that the Chamber consented to the addition of a competent Sierra Leonean lawyer to the Accused's Defence team due regard being given to the domestic realities of the case (See Exhibit 91). See also Exhibit 92.
[16] Exhibit 93.
[17] Status Conference, Transcript, 27 February 2006, pp. 5-8.
[18] Transcript, 24 March 2006, pp. 2-8.
[19] Transcript, 27 March 2006, pp. 2-35.
[20] Exhibits 89 A and B, 90, 91, 92, 93, 94, 95, 96, 97 and 98.

the Chamber dismissed the application and appointed Mr. O'Shea and Mr. Cammegh as Court Appointed Counsel for the Third Accused.[21]

10. On the 8th of June 2007, Gbao wrote a letter to the Office of the Principal Defender in which he raised the concern that despite having approached his lead counsel, Mr. O'Shea had failed to disclose the fact that he was representing a client before the ICTR. In a letter dated the 14th June of 2007 to Mr. O'Shea, the Office of Principal Defender stated that the Defence Office did not have a rule barring counsel from engaging in the representation of other clients elsewhere, provided that the rights of an Accused to an adequate Defence pursuant to Article 17 of the Statute of the Special Court for Sierra Leone were not infringed. On the 18th June 2007, the legal assistant to Gbao's Defence team informed the Principal Defender that Mr. O'Shea had confirmed to his client that he was lead counsel in a matter before the ICTR.[22]

11. On the 20th of June 2007, the Chamber received a letter by the Accused, requesting that it lift the status of his Court Appointed Counsel, Mr. O'Shea, so that the Accused could dispense with him from the case. In the letter, the Accused referred to various events as a result of which, according to him, Mr. Andreas O'Shea has "broken any remaining confidence" the Accused had in him. In particular, the Accused claims that Mr. O'Shea has on various occasions concealed from him the fact the he is now engaged in defending another Accused before the ICTR. Gbao further asserted that there was lack of communication and coordination within the team which raised issues of concern in his case.

12. On the 21st of June 2007,[23] oral submissions were made in Court by Mr. Cammegh, Gbao's Co-Counsel, who indicated that there was an "irrevocable breakdown in confidence" between the Accused and his lead counsel, Mr. Andreas O'Shea. Mr. John Cammegh stated that in his view the situation was "irredeemable". He indicated that he was committed to continue the case to finality and would be available, if it became necessary, to be present during court proceedings on a full time basis at the resumption of the RUF Trial in September 2007 and that he intended to engage another counsel to also be present on a full time basis.[24] Mr. O'Shea stated that he had been appointed as lead counsel to the case of *Bikindi* before the ICTR. Mr. O'Shea affirmed that this was a case of short

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[21] Written Reasons for this Oral Decision were subsequently filed on the 19th of June 2006 (*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasons on Decision by Counsel for the Third Accused to Withdraw, 19 June 2006 [Written Reasons of 19 June 2006]).
[22] Email from the Legal Assistant of the Gbao Defence Team, 18 June 2007.
[23] Transcript, 21 June 2007, pp. 23-30.
[24] Transcript, 21 June 2007, p. 26.

duration and it would not interfere with his commitments at the Special Court, but noted that he also had another case other than the case before the ICTR.

13. In addition, on the 22nd of June 2007, a letter was submitted by Mr. O'Shea in response to the aforementioned Letter of the Accused,[25] stating that "I have no desire to represent a man who has no faith in my ability and does not wish to be represented by me" and that if the Chamber was satisfied that there was a genuine breakdown in trust and confidence between him and the Accused, he would accept to be released from the case in the interests of justice and in the best interests of the Accused. In addition, Mr. O'Shea indicated that he was indeed representing an Accused person at the ICTR, but that he did not believe that this would affect his ability to continue representing the Accused before this Chamber.[26]

14. On the 22nd of June 2007, upon a request for input by the Chamber, the Defence Office submitted that it has received several complaints against Mr. Andreas O'Shea by the Accused and it had cause to mediate between them in order to facilitate a good working relationship to ensure the continuity of Mr. O'Shea in the trial.[27] In particular, the Defence Office held that from the perspective of the Accused, the relationship between the Accused and Mr. O'Shea "has not been very cordial" but that it had always encouraged Mr. O'Shea and Gbao to try and sort out their differences.[28]

II. APPLICABLE LAW

15. In the Chamber's view, the issue at hand, namely an application for the withdrawal of Counsel from a case pending before the Special Court is governed by a variety of statutory and related provisions, pre-eminently Article 17(4)(d) of the Statute which specifies the fundamental elements of the requirement of ensuring a fair trial, and in particular, specifies the rights of the Accused to a defence, namely:

> (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests

[25] Upon receipt of the letter from the Third Accused, the Chamber requested by means of another letter dated the 21st of June 2007 that Court Appointed Counsel, Andreas O'Shea, provide a written response to the Third Accused within 3 working days.
[26] Letter from Mr. Andrea O'Shea, 22 June 2007.
[27] Letters from Gbao, 18 January 2007, 29 January 2007, 15 February 2007, 27 February 2007, 5 March 2007, 20 March 2007.
[28] Letter from Office of the Principal Defender, 22 June 2007.

of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

16. Of equal prominence, in our view, is Rule 26*bis* of the Rules which requires the Chamber to ensure that the trial proceedings are conducted in a fair and expeditious manner with full respect for the rights of the Accused.

17. In our view, however, the Statute does not specifically state that the right to counsel is also a right to counsel of the Accused's own choosing. Therefore, even though the Accused has a right to a counsel of his choice, a right recognised by the Chamber, the overriding interest of the administration of justice requires that he should not be permitted to seek the withdrawal of his counsel without establishing good cause. The settled principle is that where an Accused consistently shows dissatisfaction with his counsel, the Trial Chamber must examine the reasons for this and determine if these constitute exceptional circumstances amounting to good cause. The Chamber must be satisfied that the reasons are genuine and not frivolous so as to ensure that the course of justice is not compromised.[29]

III. DELIBERATIONS

I. The Jurisdictional Requirement

18. During the course of the RUF trial, the Chamber has already been seized with several applications for the withdrawal of Court Appointed Counsel for the Third Accused. As observed by this Chamber in its most recent Decision on this issue, under the Court's regime of statutory provisions regulating applications for withdrawal of Counsel from a pending case, whether at the instance of the Accused or his Counsel, such applications ordinarily raise issues of a jurisdictional nature requiring a demarcation of the administrative discretion of the Principal Defender to withdraw Counsel from a pending case versus the judicial discretion of the Chamber to order such withdrawal.[30]

19. However, in the context of this application, no such jurisdictional demarcation is in issue, having regard to the fact of Counsel for the Third Accused being Court Appointed Counsel under the inherent jurisdiction of the Trial Chamber. The pertinent distinction here is between "assigned counsel" and "Court Appointed Counsel". Mr. O'Shea falls in the later category.

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[29] *Prosecutor v. Delalic, Mucic, Delic and Landzo*, IT-96-21-T, Decision on Request by Accused Mucic for Assignment of New Counsel (TC), 24 June 1996 [*Celibici* Decision], para 4.

20. Regardless of whether Counsel is appointed by the court or an assigned counsel, the Chamber holds that the right of an indigent accused to choose his counsel is a limited right, and adopts the reasoning of the European Court of Human Rights ("ECHR") that Article 6(3)(c) of the European Convention on Human Rights entitles 'everyone charged with a criminal offence' to be defended by counsel of his own choosing. Nevertheless, notwithstanding the importance of the relationship of confidence between lawyer and client, this right cannot be considered to be absolute. It is necessarily subject to certain limitations where free legal aid is concerned and also where it is for the courts to decide whether the interests of justice require that the accused be defended by counsel appointed by them. When appointing defence counsel, courts must certainly have regard to the defendant's wishes. However, they can override those wishes when there are relevant and sufficient grounds for holding that this is necessary in the interests of justice.[31] The law is now settled on this issue.

21. With particular regard to the situation at hand, it should be noted that the initial Decision of this Chamber to appoint Mr. Andreas O'Shea and Mr. John Cammegh as Court Appointed Counsel for the Third Accused was made to ensure both the fairness and expeditiousness of the trial and with due regard to the particular circumstances of the relationship then between the Accused and Mr. O'Shea, as assigned Counsel.

22. We opine that even though the Chamber recognises that in the performance of their duties Court Appointed Counsel shall, generally, be subject to the relevant provisions of the Statute, of the Agreement, of the Rules, of any other rules, regulations or Codes of Conduct adopted by the Special Court, of the host Country Agreement, of the Directive, and of the codes of practice and ethics governing their profession, and these provisions, as they explicitly apply to Assigned Counsel, apply *mutatis mutandis* to Court Appointed Counsel[32] yet the overriding principles governing the relationship between Court Appointed Counsel and their clients in this jurisdiction derive from those emanating from the exercise of the Chamber's inherent jurisdiction. This is consistent with our prior decision in the *Prosecutor v. Norman, Kondewa and Fofana* and more so our "Consequential Order on the Role of Court Appointed Counsel"[33] in that case. It follows from the jurisprudence of

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[30] See *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasons of 19 July 2006, paras 17-22.
[31] *Croissant v. Germany*, ECHR, No. 62/1991/314/385, 25 September 1992, para 29.
[32] Written Reasons of 19 June 2006, para 47. See also *Prosecutor v. Noman, Fofana and Kondewa*, Case No. SCSL-04-14-T, Consequential Order on the Role of Court Appointed Counsel, 1 October 2004.
[33] *Prosecutor v. Norman, Kondewa and Fofana*, SCSL-04-14-PT "Consequential Order on the Role of Court Appointed Counsel", 1st October 2007.

this Court that any request that fundamentally seeks to vary that initial Decision is subject to review by the Trial Chamber.[34]

23. In addition, as enunciated in our seminal Decision rendered in the *Brima* Case,[35] the Trial Chamber reiterates that it possesses a continuous inherent power to ensure the overall fairness of the proceedings and, in particular, to safeguard the substantive nature of the Accused's right to be adequately represented at trial and the proper fulfilment of such representation by Defence Counsel so appointed.[36]

24. Accordingly, taking into consideration the background of the relationship between the Accused and Mr. Andreas O'Shea as detailed in Section I above, as well as its inherent power, the Chamber is satisfied that, in the circumstances, the present application can be disposed of by this Chamber pursuant to our inherent jurisdiction.

II. Does the Request of the Accused Meet the Requirement of Exceptional Circumstances and Good Cause?

25. It is clearly the law that in the interests of justice requiring that in order to safeguard the rights of an accused to a fair and expeditious trial, Defence Counsel must continue to represent the Accused and conduct the case to finality except where the Accused can show the existence of exceptional circumstances and good cause for this Chamber to rescind the appointment of his Defence Counsel.[37]

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[34] See also, for instance, *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Ruling on Request for Withdrawal of Mr. Tim Owen, as Court Appointed Counsel for the First Accused, 1 March 2005.

[35] *Prosecutor v. Brima*, SCSL-04-16-PT, Decision on Applicant's Motion Against Denial by the Acting Principal Defender to Enter a Legal Service Contract for the Assignment of Counsel, 6 May 2004, para 39. See also *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-PT, Decision on Brima-Kamara Defence Appeal Motion against Trial Chamber II Majority Decision on Extremely Urgent Confidential Joint Motion for the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara, 8 December 2005, paras 78 and 135. Although these Decisions discussed the Trial Chamber inherent power to review an administrative decision of the Registrar, concerning appointment of counsel, they premised such inherent power on the Trial Chamber's role to ensure the fairness of the proceedings and to act in the interest of justice.

[36] See *Prosecutor v. Blagojevic and Jokic*, IT-02-60-T, Decision on Independent Counsel for Vidoje Blagojevic's Motion to Instruct the Registrar to Appoint New Lead and Co-Counsel, 3 July 2003, para 27; *Prosecutor v. Blagojevic, Obrenovic, Jokic and Nikolic*, IT-02-60-PT, Decision on Oral Motion to Replace Co-Counsel, 9 December 2002. See also *Prosecutor v. Hadzihasanoovic, Alagic and Kubura*, IT-01-47-PT, Decision on Prosecution Motion for Review of the Decision of the Registrar to Assign Mr. Rodney Dixon as Co-Counsel to the Accused Kubura, 26 March 2002, paras 18-23; *Prosecutor v. Milosevic*, IT-02-54-T, Decision on Assigned Counsel's Motion for Withdrawal, 7 December 2004, paras 9-12; *Prosecutor v. Milosevic*, IT-02-54-T, Decision on Interlocutory Appeal of the Trial Chamber's Decision on the Assignment of Defence Counsel, 1 November 2004, para 9.

[37] *Refusal* Ruling, para 12. See also *Gbao Appeal* Decision, para 59, which states that "the representation of the Accused from the date of the ruling is now pursuant to the directive of the ruling, that is to say, 'Mr. Andreas O'Shea and other members of his team will continue to represent the Third Accused.'"

26. As observed in Section I, through several letters to the Trial Chamber, Principal Defender and lead counsel, the Accused has indicated his dissatisfaction with his lead counsel over a relatively long period of time. For instance, in June 2006, the Chamber was informed by Gbao that there was no communication and/or coordination between himself and his lead counsel, who had also taken up a new case before the ICTR.[38]

27. It is trite law that counsel has a fundamental duty of diligence and communication with his or client in order to protect the client's best interests. It is therefore of paramount importance that counsel keeps a client informed about the status of a matter before the court in which the client is an interested party and must promptly comply with all reasonable requests for information.

28. However, the Chamber recalls that on the 5th of April 2006, it dismissed an oral application by lead counsel Mr. O'Shea seeking withdrawal from the case and appointed Mr. O'Shea and Mr. Cammegh as Court Appointed Counsel for the Third Accused.[39] It was the Chamber's view that the failure or unwillingness on the part of the Accused to give lead counsel instructions did not in and of itself amount to a sufficient and valid ground or "exceptional circumstances" for granting such an application.[40]

29. In the present circumstances, the Chamber acknowledges that it has been flooded with letters from the Third Accused seeking the withdrawal of counsel based on a loss of trust and confidence, and that there is a compelling need for the Chamber to examine the Third Accused's reasons for dissatisfaction and establish whether these amount to good cause or 'exceptional circumstances' while noting lead counsel's oral application to withdraw.

i) Lack of trust and confidence and breakdown of communication

30. We strongly opine that trust and confidence are among the cardinal elements of the attorney-client relationship. Indeed, a review of the applicable jurisprudence on this issue reveals that where a complete breakdown in trust and confidence between an Accused and his Defence Counsel exists,

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[38] Letter from Augustine Gbao dated 20th June 2006.
[39] As noted, written Reasons for this Oral Decision were subsequently filed on 19 June 2006.
[40] Written Reasons of 19 June 2006, para 29. Also see: *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T, Decision on the Confidential Joint Defence Application for Withdrawal by Counsel for Brima & Kamara and on the Request for Further Representation by Counsel for Kanu, 20 May 2005, paras 34-39, *Prosecutor v. Barayagwiza*, Case No. ICTR-97-19-T, Decision on Defence Counsel Motion to Withdraw, 2 November 2000, para 14 and following; *Prosecutor v. Milosevic*, IT-02-54-T, Decision Affirming the Registrar's Denial of Assigned Counsel's Application to Withdraw, 7 February 2005, para 10.

the possible adverse impact on the right of the Accused might give rise to an exceptional circumstance and thus warrant the withdrawal of the said Counsel.[41]

31. We are of the view that the facts here are quite revealing. The Third Accused has on various occasions made complaints to the Chamber and the Principal Defender, claiming a loss of "total confidence" in Mr. Andreas O'Shea.[42] The Chamber observes that the Principal Defender stated that from the perspective of the Accused, the relationship between the Accused and Mr. Andreas O'Shea "has not been very cordial".[43] In addition, on the 21st of June 2007,[44] Mr. Cammegh, Co-Counsel at the time, made oral submissions indicating that there exists an "irrevocable breakdown in confidence" between the Accused and his lead counsel, Mr. Andreas O'Shea and that the situation was "irredeemable'".[45] The Chamber also takes into consideration Mr. Andreas O'Shea's letter of the 22nd of June 2007 responding to a letter from the Third Accused,[46] stating that "I have no desire to represent a man who has no faith in my ability and does not wish to be represented by me," and expressing his willingness to be released as Lead Counsel if the Chamber was satisfied that there is a genuine breakdown in trust and confidence between him and the Third Accused.[47]

32. The Chamber takes guidance from *Akayesu* where the Chamber held that:

> whereas the Tribunal, without taking a position in the conflict between the accused Akayesu and Mr. Karnavas, notes however that given the present circumstances and the resulting lack of confidence of the accused in his counsel, there was indeed an exceptional case, as provided in paragraph (D) of Article 19 of the Directive, as a condition for replacement of assigned counsel upon decision by a Chamber.[48]

33. Consistent with the above, the Chamber therefore finds that, while it is in no position to attach fault to any party, a considerable breakdown of communication, confidence and trust has occurred between the Accused and his lead counsel and such breakdown could adversely affect the rights of the Accused. In these circumstances therefore, it would be unfair to both the Accused and

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[41] See, for instance, *Celibici* Decision, para 4; *Prosecutor v. Akayesu*, ICTR-96-4-T, Decision on the Request by the Accused for the Replacement of Assigned Counsel, 20 November 1996 [*Akayesu* Decision]; *Prosecutor v. Bagosora*, ICTR-96-7-T, Decision on the Request of the Accused for Change of Assigned Counsel, 26 June 1997; *Prosecutor v. Nzuwonemeye*, ICTR-00-56, Decision of Withdrawal of Ms. Danielle Girard as Co-Counsel for the Accused Francoise-Xavier Nzuwonemeye, 13 October 2005.

[42] Exhibit 93. See also Transcript, 27 March 2006, pp. 2-35.

[43] Letter from Office of the Principal Defender, 22 June 2007.

[44] Transcript, 21 June 2007, pp. 23-30.

[45] Transcript, 21 June 2007, p. 26.

[46] Upon receipt of the letter from the Third Accused, the Chamber requested by means of another letter dated the 21st of June 2007 that Court Appointed Counsel, Andreas O'Shea provides a written response to the Third Accused within 3 working days.

[47] Letter from Mr. Andreas O'Shea to the Principal Defender, 22 June 2007.

[48] *Akayesu* Decision.

counsel to require them to continue in a particularly frustrated lawyer-client relationship. [49] It would likely cause more disruption and not be fair to the Accused nor counsel to maintain that relationship.

34. The Chamber is therefore satisfied that in the circumstances, it can be reasonably inferred that there exists a complete and irreversible breakdown in trust and confidence between the Third Accused Gbao and Mr. O'Shea, which amounts to good cause or 'exceptional circumstances'.

IV. DISPOSITION

For the foregoing reasons, **THE TRIAL CHAMBER,** being seized of the request by the Accused Augustine Gbao

REITERATES its Oral Decision issued on the 22nd of June 2007 and the subsequent Decision on Application of Third Accused to dispense with the Mandate of Court Appointed Counsel, Mr. Andreas O'Shea, dated the 2nd of July 2007;

GRANTS the request of the Third Accused for the Chamber to withdraw Mr. Andreas O'Shea's mandate as one of his Court Appointed Counsel; and, consequently

RELEASES the said Counsel from any further duties and obligations in relation to the Third Accused, Augustine Gbao;

CONFIRMS the appointment of John Cammegh as Court Appointed Counsel for the Third Accused and his appointment as Lead Counsel of the Defence Team of the Third Accused;

RECOGNISES the appointment of Ms. Prudence Acirokop as Co-Counsel for the Third Accused as announced in court by Mr. Cammegh on the 12th of November 2007;

AND, FURTHER

[49] This view was also espoused in the *Celibici* Decision, para 4.

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INSTRUCTS the Registrar, in consultation with the Principal Defender to take the necessary measures to give effect to this Decision and to provide the necessary human and material resources in consultation with Court Appointed Counsel, John Cammegh, to ensure that the trial proceeds without any delay.

Done at Freetown, Sierra Leone, this 6th day of December 2007

Hon. Justice Pierre Boutet

Hon. Justice Benjamin Mutanga Itoe
Presiding Judge
Trial Chamber I

Hon. Justice Bankole Thompson

[Seal of the Special Court for Sierra Leone]