

I, ACTING PRESIDENT OF THE SPECIAL COURT FOR SIERRA LEONE, ("Special Court");
SEIZED of the Appeal by the Truth and Reconciliation Commission for Sierra Leone ("TRC" or "The Commission") and Augustine Gbao ("Accused") against the decision of His Honour Judge Thompson delivered on 3rd November 2003 to deny the TRC's request to hold a public hearing with Augustine Gbao filed on 5 November 2003 ("Appeal");

NOTING that the Prosecution did not file a Response;

NOTING the Decision on appeal by the Truth and Reconciliation Commission for Sierra Leone ("TRC" or "The Commission") and Chief Samuel Hinga Norman JP against the Decision of His Lordship, Mr. Justice Bankole Thompson delivered on 30 October 2003 to deny the TRC's request to hold a public hearing with Chief Samuel Hinga Norman JP filed on 28 November 2003 ("Norman Decision");

NOTING that in the light of the Norman Decision, which was forwarded to Gbao and his defence team, a Court Memorandum dated 1 December 2003 on behalf of the President (Justice Robertson at the time) was forwarded to Defence Counsel for Gbao and the TRC and copied to the Prosecution, requesting clarification before the end of the week of 1-7 December 2003 as to whether or not Gbao intended to proceed with his appeal;

NOTING that Defence Counsel for Gbao responded by e-mail to Court Management on 5 December 2003 as follows: "After due consideration it has been decided that the appeal in Gbao does not need to proceed and in the circumstances it can be treated as withdrawn. I should be grateful if you could let all appropriate parties know this decision."

NOTING that the Chambers Legal Office made a request via Court Management on 8 December 2003 for a formal, signed notification of withdrawal to be filed by the defence team for Gbao;

NOTING that on 11 December 2003, Defence Counsel for Gbao wrote to Court Management by e-mail stating: "We are instructed to advise the Appeal Chamber that Mr Gbao does want the Chamber to rule on his appeal to the President as per the filed Motion. I should be grateful if you would advise the Appeal Chamber accordingly."

NOTING that Defence Counsel for Gbao reiterated in e-mail correspondence with the Chambers Legal Office on 22 March 2004 that Gbao sought a decision on his Appeal that was separate from the Norman Decision;

CONSIDERING that these declarations fell outside the deadline imposed in the Court Memorandum;

CONSIDERING THEREFORE that even if the original withdrawal by way of e-mail did not comply with the appropriate formalities, the deadline for making any other form of declaration had lapsed;

NOTING the argument of Judge Bankole Thompson in his Decision of 3 November 2003 that “the Request of the Commission to conduct a public hearing with the Accused on, as the Request indicates, the key role in the conflict that took place in Sierra Leone a decade ago *clashes fundamentally with, and has grave ramifications for, the cardinal principle that a person accused of crime is presumed innocent until convicted*”;¹

CONSIDERING, on the one hand, the fundamental right of the Accused to be presumed innocent until convicted, and on the other hand, the fundamental right to a fair trial for the Accused as well as for other persons who might as a consequence of an open hearing before the TRC be involved in Special Court matters;

CONSIDERING the overlap with the arguments raised in the Norman case which have been dealt with *in extenso* by the then President Geoffrey Robertson in the Norman Decision;

CONSIDERING that the above-mentioned guarantees, as upheld in the Norman Decision, have to be granted to Gbao as well;

CONSIDERING that the possibilities mentioned in paragraph 41 of the Norman Decision were open to Gbao in the same way, as he was at no stage precluded from swearing an affidavit within the Detention Unit in the presence of a TRC official or presenting the TRC with an unsworn written statement at any time in accordance with the Norman Decision;

CONSIDERING that the TRC has concluded its mandate already and therefore any further dealing with the matter would not seem appropriate;

CONSIDERING that a court shall not act in vain;

HEREBY DECIDE that the Appeal was understood to have been withdrawn in accordance with the imposed deadline, that in any event no interest would be served by reopening the issues at this stage,

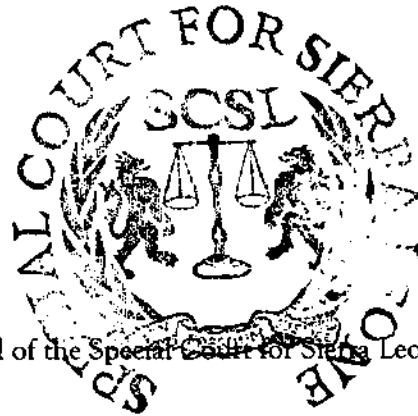
¹ *Prosecutor v Augustine Gbao*, Case No. SCSL-2003-09-PT, Decision on the Request by the Truth and Reconciliation Commission of Sierra Leone to Conduct a Public Hearing with Augustine Gbao, 3 November 2003, para. 11, emphasis in the original.

and that the Norman Decision stands as the Decision of the Special Court on the issue of detainees giving evidence before the TRC.

Done at Freetown this seventh day of May 2004



Justice Renate Winter
Acting President



[Seal of the Special Court for Sierra Leone]