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SCSL-04-16-ES
(2077-2085)

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SPECIAL COURT FOR SIERRA LEONE

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TRIAL CHAMBER II

Before: Justice Teresa Doherty, Presiding
Justice Richard Lussick
Justice Julia Sebutinde
Justice El Hadji Malick Sow, Alternate Judge

Registrar: Ms. Binta Mansaray

Date Filed: 10 February 2011

The Prosecutor

Against

**Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu**

Case No: SCSL-04-16-ES

PUBLIC WITH CONFIDENTIAL ANNEX

**SUBMISSION OF THE REGISTRAR PURSUANT TO RULE 33(B) REGARDING
THE PROSECUTION MOTION FOR AN INVESTIGATION INTO CONTEMPT
OF THE SPECIAL COURT FOR SIERRA LEONE**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. James C. Johnson
Ms. Leigh Lawrie
Mr. Nathan Quick

Counsel:

Mr. A. F. Serry-Kamal

Office of the Principal Defender:

Ms. Claire Carlton-Hanciles

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| SPECIAL COURT FOR SIERRA LEONE | |
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| COURT MANAGEMENT THE HAGUE | |
| 10 FEB 2011 | |
| NAME | ALHASSAN FORWATH |
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| TIME | 13:50 |

BACKGROUND

1. In its 31 January 2011 *Motion For an Investigation into Contempt of the Special Court for Sierra Leone* (hereinafter referred to as the “Prosecution Motion”), the Prosecutor requested this Chamber, in accordance with Rule 77 (C) (iii), to direct the Registrar to appoint an experienced independent counsel to investigate the possible contemptuous conduct prohibited by Rule 77 (A) (ii), Rule 77 (A) (iv) and Rule 77 (B) by individuals, including those identified in the Prosecution Motion and others whose identity may be revealed during the investigation, in relation to, *inter alia*, the following conduct:
 - a) Disclosure of information, including the identity and other information concerning protected witnesses;
 - b) Intimidation, bribery, or other interference with a witness who has given evidence in proceedings before a Chamber of the Court; and
 - c) Violation of protective measures orders issued by a Chamber of the Court.

2. The Registrar considers that it is incumbent on the Special Court to ensure the protection of all witnesses who testify during judicial proceedings. It is essential that witnesses who testify in open court and protected witnesses believe that they can testify openly without fear of retaliation or harassment in the short- or long-term. Therefore, all allegations reported to the Registrar regarding any form of interference with a witness or the violation of the Court’s protective measures are responded to immediately by the Registry. Regarding the allegations set out in the Prosecution Motion the Registrar makes the following submissions in order to alert the Chamber to the prompt action taken by the Registrar and to assist the Chamber in the determination of this Motion.

SUBMISSIONS

Applicable Law

3. The obligations of the Registrar in relation to witnesses and victims are set out in the Statute of the Special Court for Sierra Leone and the Rules of Procedure and Evidence. Pursuant to Article 16 (4) of the Statute of the Special Court for Sierra Leone, the Registrar is responsible for the Witness and Victims Unit within the Registry. The Unit provides *inter alia*;

“...protective measures and security arrangements ... and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses.”

4. Rule 34 of the Rules of Procedure and Evidence (RPE) further expands on the functions of the Witness and Victims Unit. Rule 34 declares:

(A) The Registrar shall set up a Witnesses and Victims Section which, in accordance with the Statute, the Agreement and the Rules, and in consultation with the Office of the Prosecutor, for Prosecution witnesses, and the Defence Office, for Defence witnesses, shall, amongst other things, perform the following functions with respect to all witnesses, victims who appear before the Special Court, and others who are at risk on account of testimony given by such witnesses, in accordance with their particular needs and circumstances:

- i. Recommend to the Special Court the adoption of protective and security measures for them;
 - ii. Provide them with adequate protective measures and security arrangements and develop long- and short-term plans for their protection and support;
 - iii. Ensure that they receive relevant support, counselling and other appropriate assistance, including medical assistance, physical and psychological rehabilitation, especially in cases of rape, sexual assault and crimes against children.
- (B) The Section personnel shall include experts in trauma, including trauma related to crimes of sexual violence and violence

against children. Where appropriate the Section shall cooperate with non-governmental and intergovernmental organizations.

5. In the Prosecution Motion at Confidential Annex C the Prosecution has attached a Memorandum (hereinafter referred to as "the Prosecution Memorandum") which reports alleged contact by one of the RUF convicts. At Paragraph 29 of the Prosecution Motion it is noted that "[t]o the knowledge of the Prosecution, the Registrar *did* investigate the incidents reported in the memorandum and apparently determined that there was not an immediate threat to Prosecution witnesses."¹
6. The Registrar submits that the Prosecution Memorandum was sent by email to the Office of the Registrar on Friday 8 October 2010. On Monday 11 October 2010 the Registrar communicated by email to the Prosecutor that the allegations are taken very seriously and informed the Prosecutor of the two immediate steps taken by the Registrar to follow up on the allegations.
7. First, on Friday 8 October 2010 a meeting was held with Ms. Adele Temple Officer in Charge Witness and Victims Unit to discuss the matter and to provide Ms. Temple with a copy of the Prosecution Memorandum. Ms. Temple was instructed to establish immediate phone contact with the witnesses involved to determine their wellbeing. Ms. Temple was also requested to send, as soon as possible, a Protection Officer to meet with the witnesses and investigate the allegations set out in the Prosecution Memorandum. The Investigation Report submitted by the Witness and Victims Unit to the Registrar on 15 October 2010 is attached at **Confidential Annex A**.
8. Second, on 11 October 2010 the Registrar had a conference call with Ms. Mary Gahonzire Commissioner, General Rwanda Prisons Service and Emmanuel K. Misingo Director of Operations and Procedures, Rwanda Prisons Service. The

¹ *The Prosecutor Against Brima, Kamara, Kanu*, SCSL-04-16-ES, Public Corrigendum to "Public with Confidential Annexes Prosecution Motion for an Investigation into Contempt of the Special Court for Sierra Leone," 1 February 2011.

Registrar informed the Director General of the allegations set out in the Prosecution Memorandum and emphasized how seriously she viewed such allegations. Since October 2010 the Registry has been in constant communication with the Commissioner General.

9. On 17 December 2010 the Prosecution filed an urgent Motion with the President of the Special Court for Sierra Leone to investigate contempt of the Special Court. Without prejudice to any Decision by the President and in the interests of ensuring the safety, security and wellbeing of witnesses referred to in the 17 December 2010 Motion, the Witness and Victims Unit contacted the mentioned witnesses. The Witness and Victims Unit continue to follow up with witnesses regarding their protection, welfare and any report that may relate to contemptuous conduct.
10. The Registrar submits that all allegations reported, to her and/or the Witness and Victims Unit, of the disclosure of information concerning a protected witness; conduct that intimidates, offers bribes, or otherwise interferes with a witness; and/or conduct that violates any protective measures ordered by the Special Court for Sierra Leone are treated as extremely serious and are dealt with accordingly by the Registry.
11. In light of the foregoing and in accordance with Rule 77 (C) should the Chamber decide that there is reason to believe that a person(s) may be in contempt of the Special Court, and therefore pursuant to Rule 77 (C) (iii) directs the Registrar to appoint an experienced independent counsel to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings, the Registrar wishes to inform the Chamber that an independent counsel will be selected and appointed as soon as possible.

Respectfully submitted,



Binta Mansaray
Registrar
Special Court for Sierra Leone



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Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the *Confidential* Case File.

Case Name: **The Prosecutor – v- Brima et al**
Case Number: **SCSL-04-16-ES**
Document Index Number: **688**
Document Date **10 February 2011**
Filing Date **10 February 2011**
Document Type: **Confidential Annex A**
Number of Pages: **3** Page Numbers from: **2083-2085**

- Application
- Order
- Indictment
- Decision
- Other**

Document Title:

Public with confidential Annex submission of the Registrar pursuant to Rule 33(B) regarding the Prosecution motion for an investigation into contempt of the Special Court for sierra Leone

Name of Officer:

Alhassan Fornah

Signed: 