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SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

TRIAL CHAMBER I

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

Registrar: Mr. Lovemore G. Munlo SC

Date: 22nd of June 2006

PROSECUTOR	Against	MOININA FOFANA ALLIEU KONDEWA SAM HINGA NORMAN (Case No. SCSL-04-14-T)
		ISSA HASSAN SESAY MORRIS KALLON AUGUSTINE GBAO (Case No. SCSL-04-15-T)

Public Document

**WRITTEN REASONS ON DECISION ON THE PRINCIPAL DEFENDER'S MOTION
FOR A REVIEW OF THE REGISTRAR'S DECISION TO INSTALL
SURVEILLANCE CAMERAS IN THE DETENTION FACILITY**

Office of the Prosecutor:

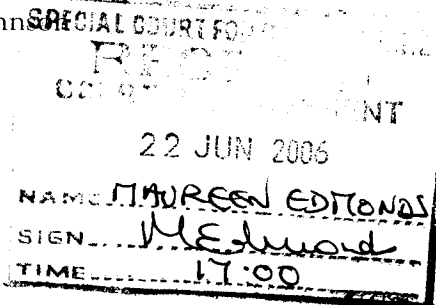
Desmond de Silva QC
Christopher Staker
James John

Court Appointed Counsel for Sam Hinga Norman:

Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.
Alusine Sani Sesay

Court Appointed Counsel for Moinina Fofana:

Victor Koppe
Arrow Bockarie
Michiel Pestman



Court Appointed Counsel for Allieu Kondewa:

Charles Margai
Yada Williams
Ansu Lansana

Defence Counsel for Issa Hassan Sesay:

Wayne Jordash
Sareta Ashraph

Defence Counsel for Morris Kallon:

Shekou Touray
Charles Taku
Melron Nicol-Wilson

Court Appointed Counsel Augustine Gbao:

Andreas O'Shea
John Cammegh

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

SEISED OF the *Principal Defender’s Motion for a Review of the Registrar’s Decision to Install Surveillance Cameras in the Detention Facility of the Special Court for Sierra Leone*, filed by the Principal Defender of the Defence Office (“Principal Defender”) on the 31st January 2006 (“Motion”);

MINDFUL of the fact that this Motion seeks a judicial review of the Registrar’s decision to install surveillance cameras in the Detention Facility of the Special Court for Sierra Leone;

MINDFUL of the *Interim Registrar’s¹ Response to the Principal Defender’s Motion for a Review of the Registrar’s Decision to Install Surveillance Cameras in the Detention Facility of the Special Court for Sierra Leone* filed on the 8th of February 2006 (“Response”);

CONSIDERING the *Reply to the Interim Registrar’s Response to the Principal Defender’s Motion for a Review of the Registrar’s Decision to Install Surveillance Cameras in the Detention Facility of the Special Court for Sierra Leone* filed by the Principal Defender on the 14th of February 2006 (“Reply”);

MINDFUL of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”), Rule 45 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“Rules”) and Rules 3, 41 and 44 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Special Court for Sierra Leone or Otherwise Detained on the Authority of the Special Court for Sierra Leone (“Rules of Detention”);




CONSIDERING this Chamber’s *Decision on the Principal Defender’s Motion for a Review of the Registrar’s Decision to Install Surveillance Cameras in the Detention Facility* filed on the 6th of April 2006 which stated that a comprehensive reasoned written Decision would be published in due course;

THE CHAMBER NOW ISSUES THE FOLLOWING REASONED DECISION:

¹ Mr. Lovemore G. Munlo SC, the then Interim Registrar, has since been named as the Registrar of the Special Court. As a result, he will now be referred to as the Registrar.

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22nd of June 2006

I. BACKGROUND

1. This Motion was filed by the Principal Defender on behalf of all of the detainees currently in detention at the Special Court for Sierra Leone. This Decision, however, concerns only those Accused in the cases of *Prosecutor v. Sam Hinga Norman, Moinina Fofana and Allieu Kondewa* and *Prosecutor v. Issa Hassan Sesay, Morris Kallon and Augustine Gbao* which are proceeding before this Trial Chamber.

2. On the 22nd of September 2005, the Registrar of the Special Court authorised the installation of security cameras within the visitation areas of the Detention Facility at the Special Court. The cameras have no capability to pick up or record any audio.² Legal visits will be excluded from the surveillance monitoring as they will occur in three separate cubicles in the visitation area.³

3. When the detainees were informed of the decision to install the surveillance equipment,⁴ the Principal Defender wrote to the Registrar asserting that the installation violated the rights of the Accused under Article 17 of the Statute.⁵ The then Registrar, Robin Vincent, responded that he believed that the video surveillance cameras were consistent with the Rules of Detention and did not breach Article 17. He stated that the installation would be completed as planned.⁶

4. The Principal Defender sought review of the Registrar's decision by the President of the Special Court. As Court Management Service deemed it an administrative matter, they did not accept filing of the application and it was thereafter sent by the Principal Defender via an interoffice memorandum.⁷ The then Interim Registrar, Lovemore Munlo, responded to the application⁸ and the Principal Defender replied to the Registrar's Response.⁹

5. In response to the Principal Defender's request, the President stated that he could not consider the application as he was not properly seized of it since it had not been "sought by way of a

² See Notice to Detainees of the Chief of Detention, 15 September 2005.

³ Response, para. 3.

⁴ Notice to Detainees, *supra* note 2.

⁵ Interoffice Memorandum from the Principal Defender to the [then] Registrar Robin Vincent, "Notice to Detainees on the Installation of Closed Circuit Television Security System", 16 September 2005.

⁶ Letter from the Registrar Robin Vincent to the Principal Defender regarding video surveillance in the detention facility, 22 September 2005.

⁷ Interoffice Memorandum and Application for a Review of the Registrar's Decision on the Installation of Surveillance Cameras in the Visitation Areas of the Special Court's Detention Facility, 21 October 2005.

⁸ Registrar's Response to the Application for a Review of the Registrar's Decision on the Installation of Surveillance Cameras in the Detention Facility of the Special Court for Sierra Leone, 1 November 2005.

proper application made through the Court Management Section”.¹⁰ The Principal Defender wrote back to the President and urged him to consider the application on its merits since it was addressed to him in his “administrative capacity” and could therefore not have been filed with Court Management. The President responded by noting that the application was made pursuant to his inherent jurisdiction which is part of his judicial power. The President also stated that if the Principal Defender thought that the matter fell within the jurisdiction of the Trial Chamber, then they should not make an application to the President invoking his inherent jurisdiction.¹¹

II. THE SUBMISSIONS OF THE PARTIES

6. The Principal Defender now seeks a review by the Trial Chamber of the then Registrar’s decision authorising the installation of the video surveillance cameras in the visitation area of the Detention Facility on the basis that the video surveillance will violate the detainees’ right to a fair trial under Article 17(4) of the Statute. The Principal Defender also argues that the video surveillance is inconsistent with Rules 24 and 41(B) of the Rules of Detention.¹²

7. In his Response, the Registrar preliminarily submits that the Principal Defender lacks standing to bring this Motion before the Trial Chamber and that it should therefore be dismissed. The Registrar argues that the installation of the video surveillance in no way breaches the fair trial rights of the detainees protected by Article 17 and that the Trial Chamber therefore has no jurisdiction over this matter. He also submits that the acts were lawfully carried out in accordance with the Rules of Detention and were based on legitimate security concerns.¹³

8. In his Reply, the Principal Defender asserts that he has standing before the Court.¹⁴ He then addresses the specific arguments of the Registrar regarding the impact of the video surveillance on the rights of the accused and the security incidents.

⁹ Defence Reply to the Registrar’s Response to the Application for a Review of the Registrar’s Decision on the Installation of Surveillance Cameras in the Detention Facility of the Special Court for Sierra Leone, 7 November 2005.

¹⁰ Letter from the President of the Special Court to the Principal Defender regarding the Interoffice Memorandum of 21 October 2005 Re: Application for a Review of the Registrar’s Decision on the Installation of Surveillance Cameras in the Visitation Areas of the Detention Facility of the Special Court for Sierra Leone, 1 December 2005.

¹¹ Letter from the President of the Special Court to the Principal Defender regarding the letter of 2 December 2005 - Re: Cameras in the Visitation Areas of the Detention Facility, 26 January 2005.

¹² Motion, paras 13-25.

¹³ Response, paras 4-19.

¹⁴ Reply, paras 4-16.

III. LOCUS STANDI OF THE PRINCIPAL DEFENDER

9. Before addressing the issues raised in this Motion, the Chamber deems it necessary to examine the preliminary issue raised by the Registrar regarding the authority of the Principal Defender to file this Motion.

10. The Chamber wishes to emphasise that all of the Accused in the two trial proceedings before this Trial Chamber are represented by teams of Defence Counsel either assigned by the Defence Office or appointed by the Court. It is important to mention that while there have been some changes in the composition of these teams, the defence teams have represented all the Accused since the trials commenced in June and July 2004.

11. As this Trial Chamber stated in its Written Reasons for the Decision on Application for Counsel for the Third Accused to Withdraw from the Case filed on the 20th of June 2006 , a proper interpretation of the Rules makes it apparent that the role of the Principal Defender, once permanent Counsel have been assigned to represent the Accused Persons, is essentially an administrative one.¹⁵

12. This view of the law is supported by this statement in the Decision dated the 8th of December 2005 by the Appeals Chamber of this Court on this issue in the case of the *Prosecutor v. Brima, Kamara and Kanu*:

As a creation of the Registrar, the Defence Office and at its head, the Principal Defender, remain under the administrative authority of the Registrar. Although the Defence Office is given the main responsibility for ensuring the rights of the accused by accomplishing the functions mentioned [in paras 81-82] above, it is supposed to exercise its duty under the administrative authority of the Registrar who, notably, is in charge of recruiting its staff, including the Principal Defender, in accordance with his general responsibility on administration pursuant to Article 16(1) of the Statute.¹⁶

... The delegation given by the Registrar to the Defence Office is therefore limited to certain aspects of the Registrar's responsibility for ensuring the rights of the accused under the Statute, **namely the administrative aspect of**

¹⁵ *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasons for the Decision on Application for Counsel for the Third Accused to Withdraw from the Case, 20 June 2006, paras 41-44.

¹⁶ *Prosecutor v. Brima, Kamara and Kanu*, Case No. SCSL-04-16-AR73, 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, para. 83. See also *id.*: "It results from the Statute and Rules that the Defence Office is not an independent organ of the Special Court, as Chambers, the Office of the Prosecutor and the Registry are pursuant to Articles 11, 12, 15 and 16 of the Statute. See also paras. 80-82.

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the task, which includes notably, assignment, payment, withdrawn and replacement of Counsel. On his part, the Registrar still keeps the responsibility for ensuring certain aspects of the rights of the Accused, notably as regards their rights in detention pursuant to Rule 33(C).¹⁷ [Emphasis added.]

13. In clarifying the role of the Defence Office, this Chamber stated emphatically as follows in our Decision dated the 20th of June 2006 which we earlier referred to:

[T]he proper interpretation to be given to Rule 45 in terms of the role of the Office in ensuring and protecting the rights of suspects and accused persons is that of (i) providing preliminary or tentative legal advice and assistance to suspects and accused persons with a view to their being afforded their right to effective legal representation and defence through the instrumentality of the Assigned Counsel Regime, and (ii) of continuous administrative supervision, under the direction of the Registrar, of the Assigned Counsel Regime to ensure its effectiveness and efficiency in achieving its objectives, namely the effective representation and defence of suspects and accused persons.¹⁸

14. In effect, we opine that once an Accused is represented by a Defence Counsel, either Assigned or Appointed by the Court, it becomes their responsibility to properly represent the Accused before the Court and to ensure that their rights and interests are protected. It is these counsel, and not the Principal Defender, who are considered as the "main custodians" of the rights of the Accused.

15. We further underscored this position in our aforementioned Written Reasons for the Decision on Application for Counsel for the Third Accused to Withdraw from the Case dated the 20th of June 2006 in these terms:

It is, likewise, our view that nothing in Rule 45 empowers the Defence Office to interpose itself between an accused person and his assigned Counsel in terms of ordinarily protecting or defending the latter's rights to a fair trial, which will ordinarily include any matter related to the Accused's detention, this being an integral part of the trial process...¹⁹

16. The Chamber, therefore, finds that the Principal Defender has clearly misconceived the nature of the authority conferred on the Defence Office by Rule 45 by suggesting that it grants him authority to "lead" the defence of the Accused.²⁰ On the contrary, Rule 45(C) states that the Principal Defender is to compile a list of Defence Counsel who themselves will either act as duty

¹⁷ *Id.*, para. 84.

¹⁸ *Prosecutor v. Sesay, Kallon and Gbao*, *supra* note 15 at para. 42.

¹⁹ *Id.*, para. 44.

²⁰ Reply, paras 13-14.




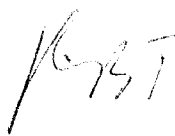

counsel or lead the defence or appeal of an Accused. We hold that the fact that the Assigned Counsel may be from the Defence Office does not alter the fact that the Principal Defender and the Defence Office as a whole have no right to interfere with the solicitor-client relationship that exists between these Assigned Counsel and the Accused and represent the Accused once they have been so assigned by the Principal Defender to these Accused Persons under a Legal Services Contract.

17. We observe that the same misconception regarding the role of the Defence Office is reflected in the document prepared by the Defence Office entitled "Role of the Duty Counsel in the Defence Office" which states that one of the main functions of Duty Counsel is "litigating issues of common interest". While the Defence Office may provide support to the defence teams and serve as a liaison, we reiterate that it is the Assigned or Appointed Counsel who are entrusted with litigating issues on behalf of and in the interest of the Accused.

18. Furthermore, while it is true that the Assigned Counsel may request Duty Counsel from the Defence Office to appear on their behalf in Court in their absence, this is very rarely done is exclusively at the request of the Assigned Counsel and does not in any way affect or derogate from the Assigned Counsel's responsibility for ensuring the defence of the Accused.

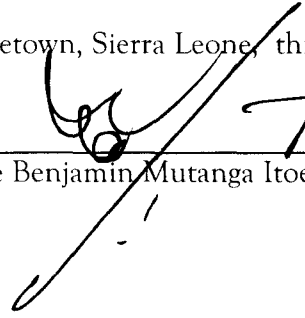
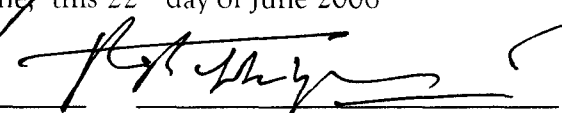
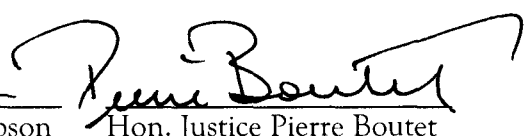
19. Lastly, the Chamber wishes to make it very clear that is inaccurate to suggest that any finding of this Court regarding the *locus standi* of the Principal Defender will "rob" the Accused of legal representation of their Article 17 rights. All of the Accused have defence counsel, either assigned by the Defence Office or appointed by the Court, and it is these counsel that will ensure the legal representation of the Accused in all matters before the Court, including issues relating to detention.

20. In conclusion, therefore, and for the foregoing reasons, we hold that the Principal Defender lacks standing to file this motion. Having thus held, we decline to consider the substantive merits of the Motion.

ACCORDINGLY, and as previously ordered in our Decision of the 6th of April 2006, this Motion is DISMISSED on this ground.

Done at Freetown, Sierra Leone, this 22nd day of June 2006

		
_____ Hon. Justice Benjamin Mutanga Itoe	_____ Hon. Justice Bankole Thompson Presiding Judge Trial Chamber I	_____ Hon. Justice Pierre Boutet

