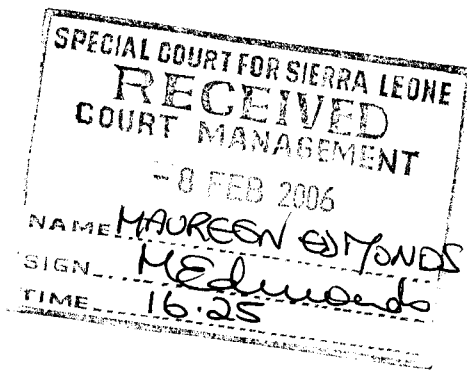


SSG

SCSL-04-14-T
(14912 - 14931)

14912

**SPECIAL COURT FOR
SIERRA LEONE**



Case No: SCSL-2004-14-T

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

Interim Registrar: Lovemore Munlo SC

Date: 8th February 2006

THE PROSECUTOR Against Sam Hinga Norman
Moinina Fofana
Allieu Kondewa

PUBLIC DOCUMENT

**INTERIM REGISTRAR'S RESPONSE TO 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**

Vincent Nmehielle
Principal Defender

Lovemore Munlo
Interim Registrar

I. Introduction

1. The Interim Registrar submits that the installation of video surveillance cameras is a legitimate use of the power of the Registrar and the Chief of Detention to maintain the security and good order of the Detention Facility as provided by Rule 3 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).

2. The Interim Registrar further submits that the rights of the detainees have not been interfered with and that there is no evidence in this application that the detainees have in any way had their fair trial rights under Article 17 of the Statute of the Special Court for Sierra Leone compromised.

3. It is proposed that the video surveillance cameras, which do not have any sound recording capacity, will be placed in the visitation section of the detention facility but not in the three separate cubicles in the visitation area which are used exclusively for legal visits. These cubicles are enclosed by a door with a glass viewing panel in it.

II. Standing of the Principal Defender

4. The Interim Registrar submits as a preliminary point that the application by the Principal Defender in this motion¹ is beyond his power. The powers of the Principal Defender were discussed in the Appeal Chamber decision of 8th December 2005 in the matter of *The Prosecutor Against Alex Tamba Brima, Brima Bazzy Kamara and Santige Borbor Kanu, SCSL-2004-16-AR7, 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*. At paragraph 84 of the decision it rejects the notion that the Defence Office bears the primary responsibility for ensuring the rights

¹ SCSL-04-14-T-548

of the accused pursuant to Article 17 of the Statute of the Special Court. It went on to say that;

“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 the task, which includes notably, assignment, payment, withdrawal and replacement of counsel. On this 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)”

5. It is submitted that the Defence Office (the Principal Defender) therefore has no relevant individual authority under the legislation of the Special Court and therefore has no standing to bring this motion² seeking review, as that power rests with the Registrar who is the respondent in this motion³.

6. Even if it is accepted that the Principal Defender has a specific authority as “the protector of fair trial rights” under the legislation of the Special Court, it is clear that for each of the detainees counsel have been assigned to conduct the trials or assigned by the court as their representatives. It is for counsel for the accused to defend the detainees and to protect their fair trial rights not the Principal Defender who assigned them this responsibility, with the authority of the Registrar. The counsel for the detainees are therefore the ones who may bring an action to protect fair trial rights, not the Principal Defender.

7. It is therefore submitted that the Defence Office, in this case the Principal Defender, has no standing to bring this motion before the trial chamber and the motion⁴ should be dismissed.

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³ SCSL-04-14-T-548

⁴ SCSL-04-14-T-548

III Response to Arguments of the Principal Defender

8. In paragraphs 13 to 17 of the motion⁵ of the Principal Defender it is argued that the fair trial rights of the detainees have been compromised because they will not be able to “obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him or her”.

9. It is the submission of the Interim Registrar that this right set out in Article 17 (e) of the Statute of the Special Court is in no way breached by the installation of video surveillance cameras. One only has to look at the rights of detainees under the “Body of Principles of All Persons Under Any Form of Detention or Imprisonment”⁶ Principle 18(4) which states that interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official. Clearly this sets a regime that is different from that of the prosecution simply due to the security needs that necessarily follow from the process of detention or imprisonment. The right that the Principal Defender submits is breached is clearly subject to these requirements. It is in this light that Principle 18(4) has been drawn to ensure the detainee’s rights are respected.

10. The Principal Defender asserts that with the installation of the video cameras the detainees fear that potential witnesses will be averse to appearing on their behalf. He merely asserts this and presents no evidence to support this assertion and it therefore must be rejected.

11. The Principal Defender also submits at paragraph 18 that the detainees reasonably hold a view that their fair trial rights are being interfered with again without presenting any evidence of this.

⁵ SCSL-04-14-T-548

⁶ Adopted by General Assembly resolution 43/173 of 9 December 1988

12. The Interim Registrar has in no way breached either the rights expressed under Article 17 of the Statute or the Principles on Detention and Imprisonment. It is also to be noted that the Principles apply to detainees as well, so the argument that there are special rights due a detainee due to presumption of innocence has no basis.

13. The Principal Defender in paragraphs 19 to 21 has argued that Rule 24 of the Rules of Detention governs the use of video surveillance in all of the detention facility. The Principal Defender has misunderstood the application of the Rule. It clearly applies only to video surveillance of the detainee in their cells and not to any other part of the detention facility.

14. This was made clear to the Principal Defender in a letter of response from the Honourable Justice Raja Fernando, President of the Special Court for Sierra Leone, annexure 9 of the Principal Defender's motion⁷, where the Honourable President states at page three, second paragraph;

“With reference to Point 6/, Rule 24 of the Rules of Detention is not applicable to the current matter: this rule concerns cameras in cells, whilst your letter referred to cameras in the visitation area.”⁸

15. Rule 24 of the Rules of Detention is very clear and there is no ambiguity. It refers specifically to the use of video surveillance in cells and not to any other part of the detention facility. It is also clear by inference that video surveillance cameras are used in detention facilities and that Rule 24 seeks to regulate their use in cells for privacy reasons. Those reasons do not apply to the rest of the detention facility, including visitation areas.

16. The fact that the ICTY does not use video surveillance in visitation rooms is a matter for them but it should be noted that there is video surveillance in the visitation area of the ICTY. It is also to be noted that the Special Court for Sierra Leone is a tribunal situated

⁷ SCSL-04-14-T-548

⁸ Letter to Dr. Vincent Nmehielle, Principal Defender dated 26th January 2005. Incorrectly dated and should have been 2006. Annexure 1.

in the country where the conflict took place. The ICTY is not. The Special Court therefore has special security issues to deal with because of its peculiar situation.

17. A number of incidents have occurred at the court in its life time in particular the passing of documents, drugs and other unauthorised articles to and from the detainees and the time that these things are likely to have been done is during visits in the visitation area. In July 2005 a defence investigator visiting a detainee to deliver documents was searched before he entered the Facility and a mobile phone was found hidden in his sock. Other incidents have included;

- a. In 2004 and 2005, there have been a number of incidents in which one detainee has violated the Rules of Detention relating to communications with the media by causing documents to be published without obtaining the consent of the Registrar. It is the belief of the Chief of Detention that documents have been passed to visitors by the detainee and secretly taken out of the Facility;
- b. Attempts have been made by visitors to smuggle suspected drugs and other unauthorised items into the Facility; and
- c. On 6 October 2005, a detainee attacked contractors installing the video surveillance cameras in the Detention Facility. The detainee threw a stone hitting one contractor on his head and another contractor was sprayed in the eyes with insecticide.

18. Most recently on the 2nd January 2006 a serious incident took place in the visitation area of the detention facility with one of the detainees. The detainee was complaining about the refusal of a visit from a person pending a security review and in the process assaulted a national staff member. He had to be restrained by two other national staff members. He also smashed all the window panes in visitation area two and threatened an international staff member with a broken pane of glass and had to be restrained again so that the international staff member could safely leave the area being in fear of his life.

19. It is in these circumstances that the need for proper video surveillance is required to prevent the types of offences indicated and to be able to quickly respond to emergency situations.

20. The Principal Defender's arguments at paragraphs 24 and 25 mirror the fair trial arguments that have been made previously and the Interim Registrar relies on his arguments at paragraphs 4 to 12. The Interim Registrar would also point out that video surveillance cameras will not be placed in the visitation cubicles in the visitation area which are used exclusively for legal visits.

IV Conclusion

21. It is respectfully submitted by the Interim Registrar that the Principal Defender has no statutory standing under the legislation of the Special Court or standing as counsel for the detainees to be able bring this motion⁹ alleging interference affecting fair trial rights of the detainees.

22. It is the respectful submission of the Interim Registrar that there is no evidence upon which the Trial Chamber can conclude that the fair trial rights of the detainees have been interfered with by the decision to install video surveillance cameras in the visitation area of the detention facility. In those circumstances it is respectfully submitted that the Trial Chamber has no jurisdiction to rule upon the decision of the Interim Registrar, a decision made under his authority conferred by the Rules of Detention.

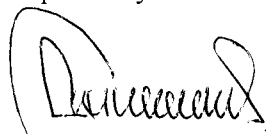
23. It is further submitted that the acts complained of are acts being lawfully carried out by the Interim Registrar under authority conferred by the Rules of Detention.

24. The Interim Registrar therefore submits that the reliefs sought by the motion¹⁰ of the Principal Defender should be dismissed.

⁹ SCSL-04-14-T-548

¹⁰ SCSL-04-14-T-548

Respectfully submitted at Freetown

A handwritten signature in black ink, appearing to read 'Lovemore Munlo SC', written in a cursive style.

Lovemore Munlo SC

Interim Registrar

List of Authorities

1. The Prosecutor Against Alex Tamba Brima, Brima Bazzy Kamara and Santige Borbor Kanu, SCSL-2004-16-AR7, *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.*
2. Body of Principles of All Persons Under Any Form of Detention or Imprisonment, Adopted by the General Assembly resolution 43/173 of 9 December 1988.
3. 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).

Annexure

1. Letter dated 26 January 2006 from the President of the Special Court to the Principal Defender.



Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988).

SCOPE OF THE BODY OF PRINCIPLES

These principles apply for the protection of all persons under any form of detention or imprisonment.

USE OF TERMS

For the purposes of the Body of Principles:

- (a) "Arrest" means the act of apprehending a person for the alleged commission of an offence or by the action of an authority;
- (b) "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence;
- (c) "Imprisoned person" means any person deprived of personal liberty as a result of conviction for an offence;
- (d) "Detention" means the condition of detained persons as defined above;
- (e) "Imprisonment" means the condition of imprisoned persons as defined above;
- (f) The words "a judicial or other authority" means a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

Principle 1

All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 2

Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

Principle 3

There shall be no restriction upon or derogation from any of the human rights of persons

under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

Principle 4

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

Principle 5

1. These principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national, ethnic or social origin, property, birth or other status.

2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall always be subject to review by a judicial or other authority.

Principle 6

No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.* No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Principle 7

1. States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.

3. Any other person who has ground to believe that a violation of this Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors of the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

Principle 8

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

Principle 9

The authorities which arrest a person, keep him under detention or investigate the case

shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

Principle 10

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

Principle 11

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

Principle 12

1. There shall be duly recorded:

(a) The reasons for the arrest; (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;

(c) The identity of the law enforcement officials concerned;

(d) Precise information concerning the place of custody.

2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

Principle 13

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively with information on and an explanation of his rights and how to avail himself of such rights.

Principle 14

A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

Principle 15

Notwithstanding the exceptions contained in principle 16, paragraph 4, and principle 18, paragraph 3, communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.

Principle 16

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.
2. If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.
3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in the present principle. Special attention shall be given to notifying parents or guardians.
4. Any notification referred to in the present principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

Principle 17

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.
2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

Principle 18

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.
2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.
3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

Principle 19

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Principle 20

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

Principle 21

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

Principle 22

No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.

Principle 23

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.

2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.

Principle 24

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Principle 25

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

Principle 26

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.

Principle 27

Non-compliance with these principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

Principle 28

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

Principle 29

1. In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.
2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.

Principle 30

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.
2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.

Principle 31

The appropriate authorities shall endeavour to ensure, according to domestic law, assistance when needed to dependent and, in particular, minor members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left without supervision.

Principle 32

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.
2. The proceedings referred to in paragraph 1 of the present principle shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

Principle 33

1. A detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers.
2. In those cases where neither the detained or imprisoned person nor his counsel has the possibility to exercise his rights under paragraph 1 of the present principle, a member of the family of the detained or imprisoned person or any other person who has knowledge of the case may exercise such rights.
3. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.
4. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or, in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 of the present principle shall suffer prejudice for making a request or complaint.

Principle 34

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

Principle 35

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these principles shall be compensated according to the applicable rules or liability provided by domestic law.
2. Information required to be recorded under these principles shall be available in accordance with procedures provided by domestic law for use in claiming compensation under the present principle.

Principle 36

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

Principle 37

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

Principle 38

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.

Principle 39

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

General clause

Nothing in this Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights.

footnotes

- * The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.



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26th January 2005

Dr. Vincent O. Nmehielle,
Principal Defender,
Special Court for Sierra Leone

Re: Your Letter of 2 December 2005 – Re: Cameras in the visitation areas of the
Detention Facility

Dear Dr. Nmehielle,

I acknowledge receipt of your Letter of 2nd December 2005, by which I understand
that you are requesting me to reconsider my letter of 1st December 2005.

Your submissions can be summarised as follows:

- 1/ You submit that the Interoffice Memorandum you sent to me was indeed an
application.
- 2/ You submit that Court Management refused to take the application when the
Defence Office sought to file it because it was not covered under the application for
filing Documents before the Special Court. You add that this position was affirmed by
the Registrar's Legal Office.
- 3/ You submit that Article 1(A) of the Practice Direction refers to documents filed in
accordance with the Rules of Procedure and Evidence, thereby excluding applications
"filed" (sic) before the President in his administrative capacity. You add that this
argument is further buttressed by Article 3 of the Practice Direction which deals with
opening and numbering of case files.
- 4/ You submit that Article 17(2) of the Statute is inapplicable in the matter.
- 5/ You submit that the application made before me in my administrative capacity
does not preclude the Defence Office from filing a Motion before the Trial Chamber if
it deems it necessary.



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6/ You submit that Rule 24 of the Rules of Detention, which makes reference to video surveillance in the cells of the detainees, provides a right to appeal the decision of the Registrar to the President in his administrative capacity and that the Practice Direction cannot apply therefore.

7/ You submit that it would require an amendment of the Practice Direction and all applicable Rules to allow for the filing of applications to the President in his administrative capacity through Court Management.

I will answer your submissions by the following remarks:

With reference to Point 1/, my letter did not challenge that the Memorandum was an application. The reason why I could not consider your application was indeed because it was not properly filed.

With reference to Point 2/, I am afraid that you may have been misled by Court Management, as it was wrong for them to consider that this application was of an administrative nature. Your application was indeed filed on the basis of my "inherent jurisdiction", which falls obviously in the province of my judiciary power. Your initial analysis was correct on that point and you should have insisted to file your application through Court Management.

With reference to Point 3/, Article 1(A) of the Practice Direction which refers to "*documents filed before the Special Court in accordance with the Rules*" shall not be read as limitative. Filing through Court Management is the only way to guarantee the publicity of documents in accordance to Article 4(B) of the Practice Direction, which provides that public documents filed through Court Management "*may be used in press releases and be posted on the official website of the Special Court*". A limitative interpretation of article 1(A) would therefore violate Article 17(2) of the Statute, which is impossible since the Practice Direction was issued pursuant to Rule 33(D) of the Rules of Procedure of Evidence which is applicable by virtue of Article 14 of the Statute. Article 3 of the Practice Direction relates to the opening and numbering of case files and is irrelevant to the present matter. Since the application concerned all the detainees, it should have been filed under the three case numbers under which the detainees are currently on trial.

With reference to Point 4/, you are seeking a judicial review of an administrative decision. The intervention that is requested from me is not "administrative" but judicial: indeed, the procedure followed (Application, Response, Reply) is judicial and my intervention in these administrative matters is not of an administrative nature, but of a judicial one. The application itself was referring to my "inherent jurisdiction", which relates to my judicial capacity. Therefore, Article 17(2) and the Accused's right to a fair and public trial fully applies in this matter.



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With reference to Point 5/, if you indeed consider that the matter falls within the jurisdiction of the Trial Chamber, then there is no point in making an application before me on the basis of my "inherent jurisdiction", which is residual by nature.

With reference to Point 6/, Rule 24 of the Rules of Detention is not applicable to the current matter: this Rule concerns cameras in the cells, whilst your letter referred to cameras in the visitation areas.

With reference to Point 7/, it is precisely on the basis of the Practice Direction and Rules as they stand currently that I rendered my decision. There is therefore no need for further amendment.

For the foregoing reasons, I affirm the decision I made in my letter of 1st December 2005.

Yours sincerely,

Hon. Justice Raja Fernando,
President of the Special court for Sierra Leone

CC: The Registrar