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SCSL-2003-05-PT-018

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SPECIAL COURT FOR SIERRA LEONE

Before: Judge Bankole Thompson
Designated Judge

Registrar: Robin Vincent

Date filed: 14 April 2003

THE PROSECUTOR

v.

ISSA HASSAN SESAY

Case No. SCSL-2003-05-PT

RESPONSE OF DEFENCE OFFICE
TO "EXTREMELY URGENT PROSECUTION MOTION
TO ALLOW DISCLOSURE TO THE REGISTRY AND
TO KEEP DISCLOSED MATERIAL UNDER SEAL UNTIL
APPROPRIATE PROTECTIVE MEASURES ARE IN PLACE"

Office of the Prosecutor

Luc Côté, Chief of Prosecutions
Brenda J. Hollis, Senior Trial Counsel

Defence Office

John R.W.D. Jones, Acting Chief of Defence Office and Legal Advisor
Claire Carlton-Hanciles, Defence Associate
Ibrahim Yillah, Defence Associate
Haddijatu Kah-Jallow, Defence Associate

SPECIAL COURT FOR SIERRA LEONE
COURT RECORDS
RECEIVED
NAME *J. O. Anjany*
SIGNATURE *J. O. Anjany*
DATE *14-4-03* TIME *4:30 PM*

1. Pursuant to Rule 45 of the Rules of Procedure and Evidence (the “**Rules**”) of the Special Court for Sierra Leone (the “**Court**”), the Defence Office files this Response to the “*Extremely Urgent Prosecution Motion to Allow Disclosure to the Registry and to keep disclosed material under seal until appropriate protective measures are in place*”, dated 7 April 2003 and filed by the Registry on 9 April 2003 (“**Prosecution Disclosure Motion**”).

2. This Response is filed on behalf of Issa Hassan Sesay, who has not yet been assigned Counsel. It is anticipated that Accused persons (“**Accused**”), who have either appointed their own Counsel or been assigned Counsel will file their own Responses.

I. The Need for Protective Measures to be Effective

3. The Defence Office naturally shares the concerns of the Office of the Prosecutor (“**OTP**”) for witness protection, which is a significant concern of the Court. Measures for the protection of witnesses must obviously be *effective*. It follows from this that it would be futile if a Motion for the protection of witnesses were rendered ineffective by virtue of disclosure taking place before the appropriate protective measures could be put in place. Accordingly, the Defence Office agrees with the principle that disclosure should not take place until the Chamber has rendered a decision on the *Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure* dated 7 April 2003 and filed by the Registry on 9 April 2003 (“**Prosecution Protective Measures Motion**”). The Defence Office therefore agrees with the terms of the draft Order proposed by the OTP.

4. With respect to the protective measures requested by the OTP, the Defence Office will file a substantive response on the merits of the proposed measures within the deadline set out in Rule 7(C) of the Rules.

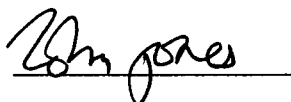
II. The Time-Limit for Filing Preliminary Motions

5. Since the time-limit for filing Preliminary Motions under Rule 72 of the Rules is determined by reference to the date of disclosure, such Motions having to be

brought “*within 21 days following disclosure by the Prosecutor to the Defence of all the material envisaged by Rule 66(A)(i)*” (Rule 72(A)), the Defence Office requests the Chamber, in rendering a decision on the Prosecution Disclosure Motion, to clarify that the 21 day time-limit shall run from the date upon which disclosure to assigned or appointed Counsel has taken place. This is the position set out in the Registrar’s *Practice Direction on Disclosure by the Prosecutor* dated 10 April 2003 (**Annex A**), in particular paragraphs 8 and 9 thereof, and indeed it follows from first principles of logic and fairness. It is submitted that it would assist all Parties for the matter to be clearly settled in an Order or Decision rendered by the Chamber.

Dated this 14th day of April, 2003

DEFENCE OFFICE



John R.W.D. Jones, Acting Chief of Defence Office and Legal Advisor

Claire Carlton-Hanciles, Defence Associate

Ibrahim Yillah, Defence Associate

Haddijatu Kah-Jallow, Defence Associate

Annex A:

Registrar's *Practice Direction on Disclosure by the Prosecutor*

dated 10 April 2003

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SPECIAL COURT FOR SIERRA LEONE

BANK OF SIERRA LEONE • KINGTOM COMPLEX • FREETOWN, SIERRA LEONE

PHONE: (212) 963-9915, EXT. 5160/5162/5163 • FAX EXT.: 5161

2 UN PLAZA • DC2-470 • UNITED NATIONS • NEW YORK, N.Y. 10017

PHONE: (917) 367-2457 • FAX: (917) 367-2459

MEMORANDUM

10 April 2003

TO: The President and all the Judges, The Prosecutor, Defence Office,
Registry Chiefs of Section

FROM: Robin Vincent, Registrar

SUBJECT: PRACTICE DIRECTION ON DISCLOSURE BY THE
PROSECUTOR

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1. In accordance with Rule 33(D), whereby the Registrar may, in consultation with the President (or Vice President in his absence) issue Practice Directions addressing particular aspects of the practice and procedure in the Registry of the Special Court and in respect of other matters within the powers of the Registrar.
2. Considering the nature and functions of staff within the Registry's Defence Office and the request by the Prosecutor for direction as regards procedures for disclosure;
3. Considering Rule 66 (A)(i) on Disclosure of materials by the Prosecutor, whereby the Prosecutor shall, within 30 days of the initial appearance of an accused disclose to the Defence copies of the statements of all witnesses whom the Prosecutor intends to call to testify and all evidence to be presented pursuant to Rule 92bis at trial. Upon good cause shown a judge of the Trial Chamber may order that copies of the statements of additional prosecution witnesses be made available to the Defence within a prescribed time.
4. I hereby direct that all disclosure must be made to counsel for the Accused.
5. In the case of counsel hired by an Accused (or his family) the position is clear, Rule 44 governs the criteria for such counsel being admitted to represent an Accused of the Court. The Names and contact details of such counsel may be found with the Defence Office which will assist in the disclosure process as necessary.
6. In the Case of Accused who have been declared indigent (pending investigation) and where the Judge has instructed the Registrar to assign counsel, disclosure shall be made to assigned counsel. Counsel shall be assigned by letter, which will be

forwarded to the Prosecutor and shall include all relevant contact details of assigned counsel.

7. As long as indigent accused are undergoing the process of being assigned counsel in accordance with Rule 45, the Office of the Prosecutor may bring to the attention of the Registry that the disclosure is available and the Registrar shall certify that such disclosure has been brought to attention and shall personally oversee that all disclosure is sealed and dated.
8. Disclosure will not be deemed to take effect until the materials are unsealed by relevant counsel.
9. Court staff serving in the Defence Office set up in the Registry, fulfil functions as indicated in Rule 45(B)(i), namely initial legal advice and assistance by duty counsel situated within a reasonable proximity to the Detention Facility and available as far as practicable to attend the Facility in the event of being summoned. Only Counsel formally assigned are in a position to receive disclosure.
10. The forgoing shall be published as a Practice Direction in accordance with Rule 33(D).
11. Regards.