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SCSL-04-15-T  
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**SPECIAL COURT FOR SIERRA LEONE**

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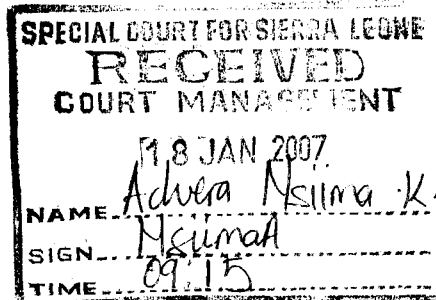
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**TRIAL CHAMBER I**

**Before:** Hon. Justice Bankole Thompson, Presiding Judge

**Registrar:** Mr. Lovemore G. Munlo SC

**Date:** 17<sup>th</sup> of January 2007



**PROSECUTOR** Against **ISSA HASSAN SESAY**  
**MORRIS KALLON**  
**AUGUSTINE GBAO**  
(Case No. SCSL-04-15-T)

Public Document

**ORDER ON DEFENCE APPLICATIONS**

Office of the Prosecutor:

James C. Johnson  
Peter Harrison

Defence Counsel for Issa Hassan Sesay:

Wayne Jordash  
Sareta Ashraph

Registrar:

Lovemore G. Munlo SC

Defence Counsel for Morris Kallon:

Shekou Touray  
Charles Taku  
Melron Nicol-Wilson

Defence Office:

Vincent O. Nmehielle

Court Appointed Counsel for Augustine Gbao

Andreas O'Shea  
John Cammegh

I, HON. JUSTICE BANKOLE THOMPSON, PRESIDING JUDGE OF TRIAL CHAMBER I of the Special Court for Sierra Leone (“Special Court”);

HAVING RECEIVED the Application Seeking Adequate Resources Pursuant to Rule 45 and/or Pursuant to the Registrar’s Duty to Ensure Equality of Arms (Application I – Logistical Resources) and the Application Seeking Adequate Resources Pursuant to Rule 45 and/or Pursuant to the Defence Office/Registrar’s Duty to Ensure Equality of Arms (Application II – Expert Provision), both filed publicly by Counsel for the First Accused, Issa Hassan Sesay, (“Defence”) on the 9<sup>th</sup> of January 2007;

NOTING that, in both motions, the Defence sought an expedited exchange of pleadings in order “to ensure that the Defence preparations are not further delayed or hindered by lack of resources”;<sup>1</sup>

MINDFUL of the Order for Expedited Filing filed on the 10<sup>th</sup> of January 2007;

NOTING the joint Response to Application I – Logistical Resources and Application II – Expert Provision filed by the Office of the Prosecutor (“Prosecution”) on the 12<sup>th</sup> of January 2007 (“Prosecution Response”);

CONSIDERING that the Prosecution Response provides an insight of the Prosecution’s internal administrative arrangements and procedures with regards to the allocation of resources and responsibilities concerning in particular its Investigations Section and case management;

NOTING the joint Response to the said Applications filed by the Defence Office on the 12<sup>th</sup> of January 2007 (“Defence Office Response”) stating, *inter alia*, that the Defence Office “is not the primary party to this application as it is ‘directly under the Office of the Registrar and subject to the general and specific directions of the Registrar’”.<sup>2</sup>

NOTING the Defence Reply to the Prosecution Response filed on the 16<sup>th</sup> of January 2007;

HAVING NOW RECEIVED the Defence Motion Seeking an Immediate Consideration of the Merits of the Defence Motions (for Adequate Resources pursuant to Rule 45 and/or pursuant to the

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<sup>1</sup> Para 2 of both Motions.

<sup>2</sup> Defence Office Response, para 4 citing *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasons for the Decision on Application by Counsel for the Third Accused to Withdraw from the Case, 19 June 2006, paras 40-41. In particular, the Defence Office states that “as Trial Chamber I has ruled, the Defence Office does not enjoy ‘institutional autonomy and independence as a separate organ of the Court’”.



Registrar's Duty to Ensure Equality of Arms (Application I and II) filed publicly by the Defence on the 12<sup>th</sup> of January, 2007 ("Motion for Consideration");

**NOTING** that, by means of a letter delivered to the Chambers on the 15<sup>th</sup> of January 2007, the Prosecution indicated that it does not intend to file a response to the Motion for Consideration;

**CONSIDERING** that the Motion for Consideration seeks an immediate consideration by the Registry and/or the Defence Office of the merits of both Application I - Logistical Resources and Application II - Expert Provision;

**CONSIDERING** that Article 17(4)(c) of the Statute of the Special Court provides that the Accused shall be entitled "to be tried without undue delay";

**CONSIDERING** that Rule 45 of the Rules of Procedure and Evidence ("Rules") directs the Registrar to "establish, maintain, and develop a Defence Office, for the purpose of ensuring the rights of the accused" and that among the functions of the Defence Office is its responsibility to provide "adequate facilities for counsel in the preparation of the defence";

**MINDFUL** that the Appeals Chamber of the Special Court held that "[a]s a creation of the Registrar, the Defence Office and at its head, the Principal Defender, remain under the administrative authority of the Registrar" and that "[a]lthough the Defence Office is given the main responsibility for ensuring the rights of the accused by accomplishing the functions mentioned [in paragraphs 80], it is supposed to exercise its duty under the administrative authority of the Registrar";<sup>3</sup>

**MINDFUL** that, contrary to the assertions contained in the Defence Office Response and as recently stated by this Chamber, the "institutional role of the Defence Office, once Defence Counsel have been assigned or appointed to an Accused person, is essentially to provide legal research as well as *fiscal, logistical and related support services* to Counsel assigned to defend the rights of suspects and of persons accused of crimes falling within the jurisdiction of the Court";<sup>4</sup>

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particular, the Defence Office states that "as Trial Chamber I has ruled, the Defence Office does not enjoy 'institutional autonomy and independence as a separate organ of the Court'".

<sup>3</sup> *Prosecutor v. Brima, Kamara and Kanu*, SCSL04-16-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.

<sup>4</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL04-15-T, Written Reasons for the Decision on Application by Counsel for the Third Accused to Withdraw from the Case, 19 June 2006, para 41. Emphasis added.

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**MINDFUL** that the Appeals Chamber also held that, by creating the Defence Office, the Registrar “did not divest himself of his power and can therefore act *concurrently* with the Principal Defender”<sup>5</sup>

**FINDING** therefore that the Defence Office in its initial Response to the Application has misrepresented its functional role as envisaged by the provisions of Rule 45 as well as by the established jurisprudence of this Court;

**FINDING** that in the circumstances it would also be helpful to have written representations from the Registrar and the Defence Office in order to determine the merits of the Applications;<sup>6</sup>

**FINDING** that, however, in the circumstances the filing of both the Applications is partially defective in that it did not indicate service thereof upon the Registrar in addition and concurrently with the Defence Office;

**SATISFIED** that, due to their respective responsibility and authority in connection with the protection of the rights of the Accused, both the Registrar and the Defence Office should be formally served with the Applications as respondents thereof, if they wish to do so;

**REITERATING** that the fair and expeditious consideration of both the Applications requires the imposition of an expedited timetable for the filing of any remaining written submissions;

**PURSUANT TO** Rule 7(C), 26bis, 27(B), 33, 45, 54 and 73 of the Rules;

**ACCEPT** the filing of the Prosecution Response and the Defence Reply thereto;

**HEREBY ORDER** as follows:

1. The Defence for the First Accused, Issa Hassan Sesay, shall immediately re-file both Application I - Logistical Resources and Application II - Expert Consideration, to be served upon the Registrar, as the first respondent, and the Defence Office, as the second respondent;

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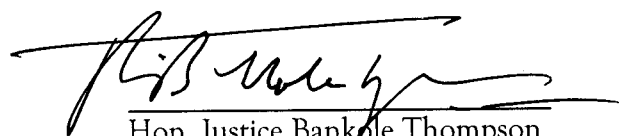
<sup>5</sup> *Prosecutor v. Brima, Kamara and Kanu*, SCSL04-16-AR73, Decision on Brima-Kamara Defence Appeal Motion against Trial Chamber II Majority Decision on Extremely Urgent Confidential Joint Motion for the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara, 8 December 2005, para. 86. Emphasis added.

<sup>6</sup> Rule 33 of the Rules provides for representation from the Registrar to a Chamber on any issue arising in the context of a specific case concerning his functions vis a vis the Court. See, for instance, *Prosecutor v. Brima, Kamara and Kanu*, SCSL04-16-T, Order for a Written Representation from the Registrar pursuant to Rule 33 on Security Measures for a Potential Temporary Release of the Accused Kanu, 22 September 2005. See also *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Request by Samuel Hinga Norman for Additional Resources to Prepare His Defence, 23 June 2004.

- 2. Any Response to the said Applications by the Registrar and the Defence Office shall be filed no later than Monday, the 22<sup>nd</sup> of January 2007 at 12:00 noon; and
- 3. Any Reply by the Defence shall be filed no later than Wednesday, the 24<sup>th</sup> of January 2007 at 4:00pm.

And, consequently, also **DECLARE** that the Motion for Consideration is to be considered moot.

Done at Freetown, Sierra Leone, this 17<sup>th</sup> day of January 2007

  
Hon. Justice Bankole Thompson  
Presiding Judge  
Trial Chamber I

