

688.)

SCSL-04-15-T
(25750 - 25784)

25750

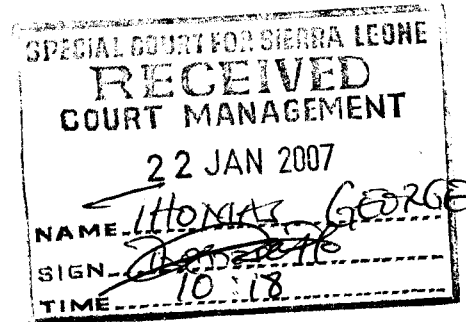
THE SPECIAL COURT FOR SIERRA LEONE

BEFORE:

Hon. Justice Bankole Thompson, Presiding
Hon. Justice Benjamin Itoe
Hon. Justice Pierre Boutet

Registrar: Mr Lovemore G. Munlo, SC

Date filed: 22 January 2007



Issa Hassan Sesay

-v-

The Registry

Case No: SCSL-2004-15-T

Logistical Resources

Joint Response of the First and Second Respondent to Application Seeking Adequate Resources Pursuant to Rule 45 and/or Pursuant to the Registrar's Duty to Ensure Equality of Arms (Application I).

Registrar (First Respondent)
Mr Lovemore G. Munlo SC

Principal Defender (Second Respondent)
Mr Vincent O. Nmehielle

Defence Counsel
Mr Wayne Jordash
Ms Sareta Ashraph

I. INTRODUCTION AND PROCEDURAL BACKGROUND

1. On 9 January 2007, Mr. Wayne Jordash and Ms. Sareta Ashraph, Counsel for Mr. Issa Hassan Sesay (hereinafter “the Sesay Team”), filed two applications before Trial Chamber I 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 *Application II – Expert Provision*).¹
2. In both motions, the Sesay Team named the Office of the Principal Defender (“Defence Office”) as the sole party and requested an order for expedited exchange of pleadings which order was granted on 10 January 2007 by the Honourable Justice Bankole Thompson, Presiding Judge, Trial Chamber I.²
3. On 12 January 2007, the Defence Office filed a joint response to the two applications stating that it is not the “primary party” to the applications.³ On the same day, the Defence filed their Reply to the Defence Office Response.⁴
4. On 17 January 2007, Trial Chamber I issued an Order on the Defence Applications directing the Sesay Team to re-file their applications naming the Registrar and the Defence Office as first and second respondents respectively.⁵ The Chamber further ordered that any Response to the said applications by the Registrar and the Defence Office be filed by noon on 22 January 2007.
5. This Response is hereby filed jointly by the Registrar and the Defence Office in compliance with the Trial Chamber’s Order on the Defence Applications.
6. In order to comprehensively address the issues, this Response will address the specific issues raised by the Sesay Team in *Application I – Logistical Resources*. A separate Response is filed in respect of *Application II – Expert Provision*.

¹ *Prosecutor v. Issa Hassan Sesay, Morris Kallon, Augustine Gbao*, SCSL-04-15-T-673, “Application seeking adequate resources pursuant to Rule 45 and/or pursuant to the Defence Office/Registrar’s duty to ensure equality of arms” (*Application I-Logistical Resources* and *Application II-Expert Provision*), 9 January 2007.

² See *Prosecutor v. Issa Hassan Sesay, Morris Kallon, Augustine Gbao*, SCSL-04-15-T, “Order for Expedited Filing”, 10 January 2007.

³ *Prosecutor v. Issa Hassan Sesay, Morris Kallon, Augustine Gbao*, SCSL-04-15-T-676, “Response to Application Seeking Adequate Resources Pursuant to Rule 45 and/or Pursuant to the Registrar’s Duty to Ensure Equality of Arms” (*Application I and II*), 12 January 2007.

⁴ *Prosecutor v. Issa Hassan Sesay, Morris Kallon, Augustine Gbao*, SCSL-04-15-T-677, “Defence Motion Seeking an Immediate Consideration of the Merits of the Defence Motion for Adequate Resources Pursuant to Rule 45 and/or Pursuant to the Registrar’s Duty to Ensure Equality of Arms” (*Applications I and II*), 12 January 2007.

⁵ See *Prosecutor v. Issa Hassan Sesay, Morris Kallon, Augustine Gbao*, SCSL-04-15-T-681, “Order on Defence Applications”, 17 January 2007.

II. RESPONSE TO THE SESAY MOTION ON LOGISTICAL RESOURCES

A. General Remarks About the Roles of the Registry and the Defence Office

7. Under Rule 45 of the Rules of Procedure and Evidence of the SCSL, the Registrar was directed to establish, maintain and develop a Defence Office “for the purpose of ensuring the rights of suspects and accused persons”. The Defence Office fulfils this function by, among other things, providing initial legal advice by duty counsel situated reasonably close to the detention facility; legal assistance as may be ordered by the Court in accordance with Rule 61 if the accused is without means, as the interests of justice may require; and *adequate facilities for counsel in the preparation of the defence*.
8. In the discharge of these functions, the Defence Office seeks to act as autonomously as possible within the administrative and budgetary parameters set by the Registry in order to uphold the letter and spirit of Article 17 of the Statute of the Court – consistent with the doctrine of “equality of arms.” Since its establishment, the Defence Office has consistently championed the Defence cause, including engaging the Registry at every available opportunity to allocate more resources for the Defence of the accused persons currently before the Court.

B. Considerations

a. Jurisdiction of the Trial Chamber

9. The Sesay Team entered into a Legal Services Contract (“LSC”) with the Defence Office on 1 October 2005. Under the LSC, the Sesay Team undertook to provide legal services for the accused and to conduct his defence in return for certain remuneration.
10. Under the LSC, the Defence Office undertook to provide logistical support to the various defence teams to enable them to perform their work. In the main, the Defence Office provides office space, office equipment and other types of support as specified in the LSC. This support includes funding to hire experts and investigators based on the requests by the respective defence teams. Such funds are not part of the specific allocations made available to each team, but mentioned as a separate item in the LSC.

11. Annex 2 of the LSC - Contract Specifications - states:

Logistical support will be provided to members of Defence Teams, for the performance of their work under the Legal Service Contract and the Contract Specification, to the extent specified in this Annex. In order to receive such support, all members of Defence Teams shall respect the Rules, Directives and Policies established by the Special Court for the provision of such support.

12. Based on this undertaking, the Defence Office is obliged to provide logistical support to the defence teams, under the provision of the LSC itself. The Defence Office and the Registrar therefore do not contest the need for the Sesay Team to receive logistical support that will aid the defence of their client. In fact, a close reading of the application confirms that the Sesay Team is only disputing the level of logistical support that the Defence Office and the Registry can provide.

13. In their application, the Sesay Team contends that the Registry/Defence Office has failed to provide adequate resources to effectively defend their client, given the size and complexity of their case.⁶ More specifically, the applicants claim that the Defence Office has failed to fulfil its obligations to provide certain resources. It is significant that the applicants did not claim to have been denied the logistical resources promised to them under the LSC; but rather that what was provided by the Defence Office is inadequate to meet the needs of their case.⁷ The specific requests and the action taken by the Defence Office and the Registrar will be dealt with in Paragraph B (b) below.

14. Article 4 of the LSC states:

Defence Counsel may submit a request to the DOSCSL for payment of Special Considerations. Such Special Considerations may include payment for additional fees [...] or the provision of services of an exceptional nature. Requests for Special Considerations will be dealt with through the same procedure as that of the Settlement of Disputes.

15. Article 9 of the LSC, which deals with Settlement of Disputes, states:

Except for appeal of decisions in accordance with Article 19 of the DOSCSL Contract Specification, *any dispute between the DOSCSL and Contracting Counsel arising out of the interpretation or application of this Agreement which is not settled by negotiation shall be subject to the procedure contained in Article 22 of the Directive on the Assignment of Counsel.*

16. Article 22 of the Directive on the Assignment of Counsel states:

⁶ See Sesay Team Motion, para. 1.

⁷ See Sesay Team Motion, para. 6.

25754

Any dispute between the Principal Defender and Assigned Counsel or Contracting Counsel, arising out of the interpretation or *application* of the Provisional Assignment Agreement or *Legal Service Contract*, which is not settled by negotiation shall be submitted to arbitration by a single arbitrator agreed to by both parties. Should the parties be unable to agree on a single arbitrator within thirty days of the request for arbitration, then each party shall proceed to appoint one arbitrator and the two arbitrators thus appointed shall agree on a third. Failing such agreement, either party may request the appointment of the third arbitrator by the President of the Special Court. The decision rendered in the arbitration, including payment for the costs of the arbitration, shall constitute final adjudication of the dispute.⁸

17. By not invoking the provisions of Article 4 and, subsequently Article 9 of the LSC, it is respectfully submitted that the Sesay Team has not exhausted the remedies available to them pursuant to the LSC to secure appropriate funding for their experts from the Defence Office/Registry.⁹
18. Furthermore and in any event, even outside of the domain of the LSC, administrative decisions by the Registry are amenable to review by the President of the Special Court pursuant to his supervisory function over the Registrar under Rule 19(A) of the RPE. The mere fact that the fair trial rights of the accused may be implicated does not necessarily mean that the matter may not be addressed administratively under the President's inherent supervisory jurisdiction.¹⁰
19. While a violation of the fundamental rights of an accused person under Article 17 may be reviewed by a Trial Chamber pursuant to its inherent jurisdiction to ensure a fair trial for each accused,¹¹ a Chamber's exercise of such review powers is the exception rather than the rule.¹² Indeed, it is well established in the jurisprudence of international criminal courts that judicial review of administrative decisions by the Registry, and by implication

⁸ Directive on the Assignment of Counsel (adopted on 1 October 2003).

⁹ On the basis of this same provision, the Sesay Team has requested arbitration on an issue of interpretation of the LSC. The parties are working on selecting a suitable arbitrator.

¹⁰ This position is consistent with the practice of other international tribunals. For example, see *The Prosecutor v. Ferdinand Nahimana, Hassan Ngeze, Jean Bosco Barayawiza*, ICTR-99-52-I, "Decision on the Defence Motion for Declaratory relief from Administrative Measures Imposed on Hassan Ngeze at the UNDF", 9 May 2002.

¹¹ See *Prosecutor v. Brima*, SCSL-2004-16-PT, "Decision on Applicant's Motion against Denial by the Acting Principal Defender to Enter a Legal Service Contract for the Assignment of Counsel", 6th May 2004, paras. 55-65 (The Chamber held that it had authority, based on its inherent jurisdiction, to review the legality or reasonableness of the Registrar's administrative decisions on detention matters, particularly in the light of the mandatory provisions of Article 17(4)(d) of the *Statute of the Special Court*) and *Prosecutor v. Norman*, SCSL-04-14-T, "Decision on Confidential Motion on Detention Issue", 2nd March 2005 paras. 8-10, 14, 17, (affirming that the Chamber may, in limited circumstances in the interests of justice, review decisions of the Registrar where they may affect the fundamental trial rights of an accused and hence negatively impact on the guarantees under Article 17).

¹² *Prosecutor v. Taylor*, SCSL-03-01-PT-110, "Decision on Defence Oral Application for Orders Pertaining to the Transfer of the Accused to The Hague", 23 June 2006.

its delegates, is only available in exceptional circumstances and cannot be used as a substitute for a general power of review.¹³

20. In view of the above, it is submitted that issues raised in the Defence request fall within the administrative preserve of the Registrar and that the submission to the Trial Chamber is premature.

b. Response Regarding the Specific Logistical Resources Requested

21. In view of the above, should the Trial Chamber, however, wish to assess the extent of the specific logistical resources requested by the Defence against the support provided by the Defence Office and Registry, we wish state the following.
22. The Defence Office avers that it has no independent budget of its own, and therefore can only distribute what has been allocated by the Registry for all defence teams. The Defence Office has always ensured that the request of the various defence teams, including the Sesay Team, is met on the basis of the resources available. This has been done to address the needs of the various defence teams, keeping in mind that no single defence team is entitled to deplete the resources meant for all the defence teams. The Sesay Team has benefited from these resources more than most other teams, including special requests by the Defence Office for additional financial and other allocations from the Registry (see Annexes A and B).
23. The Registry and the Defence Office submit that it is misleading for the Sesay Team to assert that we have refused to provide resources to them. As will be demonstrated below, the Defence Office has not only met its contractual obligations under the LSC, but has exceeded them.

(i) Second Office (approximately 15 x 7 feet)

24. In its relevant part, entitled *Offices*, Annex 2 of the LSC states that “three offices in the Registry compound” will be reserved for use by members of Defence Teams only. This means that none of the Defence Teams in the Court were entitled to a single office space, with a commensurate set of facilities for mail and internet access (See Annex C). Rather,

¹³ *Prosecutor v. Taylor*, SCSL-03-01-PT-137, “Decision on Urgent and Public Defence Motion Requesting Removal of Camera from Conference Room”, 30 November 2006.

each of these three offices was to be shared by all members of the various defence teams for each of the trials.

25. In other words, all three RUF defence teams (namely Sesay, Kallon and Gbao) were entitled to the use of **one** office (with each team having one desk). Similarly, the CDF and AFRC teams were entitled to one office each. Initially, all the RUF teams were in one office as envisaged under the LSC. The Defence Office motivated a proposal for the Registry to provide more containers for the defence teams. This allowed the allocation of an office for each of the teams. Through the efforts of the Defence Office, the Sesay Team has therefore received more than what they were initially entitled to.
26. Moreover, based on requests of various defence teams, the Defence Office has engaged the relevant sections of the Registry to provide more office space. Unsuccessful attempts have been made by the current Principal Defender to secure a container to meet the needs of defence counsel.

(ii) Second Network Computer

27. In its relevant part, entitled Equipment, Annex 2 of the LSC states

Each office reserved for Defence Teams will be equipped with one computer, serving as a 'Public Station' and one printer. The Public Station will have a generic user name and password [...].

Each Defence Team shall work on laptop computers provided by the Defence Team. Except in an emergency situation and if resources are available, the SCSL will not provide laptops or computers to members of Defence Teams for their work.

28. Despite these clear terms, upon the request of the Sesay Team, the Defence Office has gone beyond its contractual obligations to assist in meeting the computer needs of their team. This includes giving up a work station meant for office staff and interns to enable the work of a Legal Assistant to the Sesay Team. (See Annexes D and E). Still, if the computer provided is inadequate, the Sesay Team could submit a request for Special Consideration to the Registry.
29. The Registrar and the Defence Office note that the Sesay Team, in its submission, compares its own office space and computers with that of the Defence Office. We wish to note that the office space and equipment of Staff Members of the Defence Office is in full compliance with the established regulations and policies of the Special Court.

25757

(iii) One Vehicle for the Team's Sole Use

30. The Registrar and the Defence Office do not dispute the principle that an allocation of a vehicle specifically to the Sesay Team or, for that matter, any other single defence team presently conducting investigations, would facilitate their respective defence cases. However, and as stated above, this matter needs to be viewed in light of the LSC.
31. In its relevant part, entitled *Transportation, Travel and Living Accommodation*, Annex 2 of the LSC states that members of the defence teams "can arrange for travel by themselves or request assistance from the Special Court". Almost invariably, the defence teams request the assistance of the Defence Office to facilitate up-country investigations. Though the Defence Office always supports such requests by the defence teams, the Transport Section provides the use of a vehicle and a driver to the team, based on availability.
32. Regarding paragraphs 13 and 14 of the Defence submission, the Defence Office agrees that the Sesay Team should have the ability to trace its witnesses. The Defence Office has requested the Registry and the Transport Section to give more priority to the defence during the defence phase. (See Annex F). The Transport Section has been more than accommodating in this respect.

(iv) A Witness Management Officer For Sesay Team

33. The LSC makes no provision for the Defence Office to provide a witness management officer. However, the Principal Defender on his own initiative established and recruited the positions of Witness and Outreach Support Assistants to aid in the preparation of the defence case.
34. Upon recruitment of the Witness Support Assistant, the Defence Office advised all defence teams "to approach [him] for whatever services that [they] may require in the preparation of [their] case" (See Annex G). The CDF and the AFRC teams have been very grateful for this officer's assistance. Indeed, it was only as recently as December 2006 that the Sesay team made any request to this officer, when he was on leave, and on 9 January 2007 after he had resigned his post. Throughout this period, his functions were being performed by another staff member. This contradicts the applicant's claim that no assistance has been rendered by this officer. The Defence Office assures the Sesay Team

JS758

that the services provided by the Witness Support Assistant will be made available to all RUF teams.

(v) Funding for Investigator with International Experience

35. Article 23 (Investigators) of the LSC (Contract Specifications) provides:

Investigators will be approved by the DOSCSL and employed on the basis of Short-Term Service Agreements (SSA). [...] Investigators will be paid directly by the DOSCSL from funds allocated for that purpose. Those funds are limited and where investigation fees or expenses exceed the allocated funds, the Contracting Counsel is required to submit the excess amount as part of Stage Plans.

36. The Defence Office has a limited budget for investigations. To ensure an equitable distribution of the available resources, the Defence Office has provided investigators for defence teams to the extent that resources meant for other defence teams are not adversely affected. The Defence Office has provided parity in allocating resources to all defence teams. The Defence Office has provided as adequate funding as possible in the light of its limited budget and has amply supported the Sesay Defence Team in its investigative and other logistical needs (See Annex H).

III. CONCLUSION AND PRAYER FOR RELIEF

37. For the reasons stated in this Response, the Registry and the Defence Office respectfully request that this Honourable Chamber dismiss the motion by the Sesay Team. This matter does not fall within its jurisdiction as available administrative remedies are yet to be exhausted by the applicants.

38. In the alternative, the Registrar and the Defence Office respectfully submit that the Trial Chamber should dismiss the Sesay Team's motion as it is without merit. Indeed, the applicants contended but failed to substantiate that their client's Article 17 rights were violated because inadequate resources were provided to them.

25759

Respectfully submitted,



For

Lovemore G. Munlo SC

Registrar

NIGEL ADAMS
LEGAL ADVISOR TO THE REGISTRAR

22 January 2007



PP Vincent O. Nmeielle

Principal Defender

Annexes

- A. Inter-Office Memo dated 6 October 2006 from the Principal Defender to Chief of Administrative Services Subject Request for Additional Resources for the RUF Legal Defence Team.
- B. Inter-Office Memo dated 23 August 2006 from the Principal Defender to All Lead Defence Counsel and Defence Teams Subject Continued Remuneration of Defence Counsel Beyond the Contracted \$400,0000 Per Case.
- C. E-mail from Sylvain Roy to All Defence Teams dated 16 February 2004 Re Mail and Internet Access.
- D. Inter-Office Memo dated 3 November 2006 from Lead Counsel for Sesay Team Request to use computers that are not currently being utilized by the Defence Office.
- E. Inter-Office Memo dated 6 November 2006 from the Deputy Principal Defender to Lead Counsel for Sesay Team Re Request to use computers that are not currently being utilized by the Defence Office.
- F. E-mail from Deputy Principal Defender to Transport Officer dated 7 July 2006 Re Vehicle for Investigations.
- G. Principal Defenders E-mail dated 28 September 2005 to All Defence Teams Re New Staff.
- H. Inter-Office Memo dated 14 December 2006 from Principal Defender to Sesay Defence Team Subject Re: Your Request for International Investigator for 6 Months, Military Experts, and your Sole Use of the Defence Office Vehicle from January to May 2007 for Up-Country Investigations.

Annex A

25761




25762

SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
OFFICE OF THE PRINCIPAL DEFENDER
PHONE: +39 0831 257210 or +232 22 297210 or +1 212 963 9915 Ext: 178 7210
FAX: +39 0831 257299 OR +232 22 297299 OR +1 212 963 9915 EXT: 178 7299

INTEROFFICE MEMORANDUM

To: Engda Desta, Chief of Administrative Services.

From: Vincent O. Nmehielle, Principal Defender. 

Cc: Lovemore G. Munlo, SC, Registrar; Elizabeth Nahamya, Deputy Principal Defender; Charles Jalloh, Legal Advisor.

Date: 6 October 2006.

Subject: Request for Additional Resources for the RUF Defence Teams.

In view of the envisaged financial support from the German Government to the Special Court, I write to submit a request for additional financial resources for the legal teams involved in the defence of former Revolutionary United Front (RUF) members in addition to any other consideration of the Defence Office in this initiative.

The need for additional resources for those specific defence teams arises from the complexity of the Prosecution's case against the three accused, which complexity can be determined in part by examination of, among other things, the following factors:

- the position of the accused within the political/military hierarchy;
- the large number and nature of counts in the Prosecution's indictments (currently 17);
- the fact that certain aspects of their cases raise novel legal issues;
- the geographical scope of the cases, including the multiple crime bases from throughout Sierra Leone referred to in the indictments;
- the complexity of legal and factual arguments involved; and
- the number and type of witnesses and documents involved.

At the eve of the expected opening of the defence case, we propose that a lump sum of \$375,000 (\$125,000 per team) in a single contractual services account be made available to cover the costs of additional investigation, consultants, experts and additional Sierra Leonean lawyers for each of the three teams (currently only one of the three RUF teams have Sierra Leonean defence counsel, a situation that ought to be remedied for a fair defence given the obvious local dimension of the RUF trial). Indeed, the Defence Teams have labored under very limited resources in very critical trials unlike the Prosecution.

Besides ameliorating the challenges currently faced by the RUF defence counsel, the provision of local investigators and additional Sierra Leonean counsel for each of the teams will also assist in achieving the need for a formidable human resource legacy from the Special Court to Sierra Leone's impoverished law and justice sector.

25763

I will really appreciate your kind consideration of this request. We must try as justice mechanism to see that every effort has been made to afford the accused persons a strong and formidable defence in facing the serious indictment against them.

Kind regards.

25764

Simone Monasebian/SCSL

02/15/2005 01:06 PM

To: Andrew Collingwood/SCSL@SCSL

cc: Robin Vincent/SCSL@SCSL, Elizabeth Nahamya/SCSL@SCSL

bcc:

Subject: DEFENCE SECTION NEEDS FOR 05/06

Dear Andrew

Pursuant to your request of today at the Section Chief's meeting that we provide to you or material needs by Wednesday 16 February. I can answer as follows:

1. Two extra cars for the Defence along with two drivers (but if we cannot have two more than at least one)
2. A Printer in the Detention Facility (there was one before for Norman but apparently it was removed and when the three computers were given to all 9 detainees for usage the printer was not returned.
3. One tape recorder and 36 blank audio cassette tapes and six changes of batteries for the same
4. One Storage cabinet for the Defence Office
5. One Large File cabinet for the Defence Office

Also we need the following to be prepared for when and if Taylor and co-defendants are apprehended (assuming three new accused) (The other cases will not be completed, nor will their appeals, thus none of the nine half containers will be free for the new teams for new arrests, and it would be a breach of confidentiality and entirely unworkable for trials to share half containers):

6. Three half containers
7. Three more computers for those containers
8. Three more tables for those containers
9. Three more desks for those containers
10. Nine more guest chairs for those containers
11. Three more executive/computer chairs for those containers
12. Three more file cabinets for those containers
13. Three more tall cabinets with shelving for those containers

Since etc

Simone Monasebian
Principal Defender

25765

Annex B



25766

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PRINCIPAL DEFENDER
TOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
PHONE: +39 0831 257000 or +232 22 297000 or +39 083125 (+Ext)
UN Intermission 178 7000 or 178 (+Ext)
FAX: +232 22 297001 or UN Intermission: 178 7001

INTEROFFICE MEMORANDUM

To: All Lead Defence Counsel and Defence Teams
From: Vincent Nimchielle, Principal Defender
Cc: Robin Vincent, Registrar; Paul Packham, Chief of Administrative Support Services
Date: 23 August 2005
Subject: Continued Remuneration of Defence Counsel Beyond the contracted \$400,000 Per Case

As many of you will recall, based on discussions and email exchanges that I have had with you on the state of the budget for Defence counsel's continued remuneration, there has been some concern as to the correct position regarding the contract sum of \$400,000 allocated to the case of each of the accused persons at the beginning. Some of you understand it that that amount was for a period of 8 months, representing the pre-trial phase. On the other hand, the Budget Office of the court and the Registrar, maintain that the amount is for the duration of the trial because the Legal Services Contract (LSC) which you signed, does not have a limited duration but a life span that ends with the trial unless the contract is terminated as provided in the LSC.

Further to my promise to engage with the Registrar on this issue and the continued remuneration of counsel on the exhaustion of the allocated \$400,000, I held a meeting with the Acting Registrar, the Chief of Administrative Support Services and the Deputy Principal Defender on 8 August 2005 (the Registrar was on leave) in which we looked into the LSC and the budget implication for the continued remuneration of Defence Counsel till the end of trial beyond the allocated sum of \$400,000. At that meeting, it was stressed that the Registry's interpretation of the LSC remains that the sum of \$400,000 was meant to last for the duration of the trial, as the trial was expected to be a short one in view of the envisaged limited life span of the court. However, counsel could still be remunerated beyond the \$400,000 under the Special Consideration clause, as stipulated in the Addendum to the LSC. Thus, continued remuneration of counsel beyond the allocated sum would constitute a Special Consideration on the same terms and conditions as in the LSC based on Counsel's submission of detailed Case/Stage Plans subject to complete and satisfactory performance as determined by the Defence Office. Thus, the Registry maintains that payments beyond \$400,000 depend on Special Considerations and so no payments above \$400,000 can be made without Special Considerations being requested and granted.

Please note that continued remuneration of counsel is just one type of special consideration and thus counsel will still be entitled to request other forms of special consideration as recognized in the LSC "due to the complex nature of the case or unforeseen costs, or the



25767

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PRINCIPAL DEFENDER
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
PHONE: +39 0831 257000 or +232 22 297000 or +39 083125 (+Ext)
UN Intermission: 178 7000 or 178 (+Ext)
FAX: +232 22 297001 or UN Intermission: 178 7001

provision of services of an exceptional nature," which will normally arise either at the end of the pre-trial phase, within trial, or at the end of trial itself. As things stand therefore, Lead Counsel/Teams could take action as follows:

1. Request Special Consideration for pre-trial work supported by adequate motivation and work done over and above that contained in the case/stage plan. All Teams are entitled to this after 31 October 2004 where applicable.
2. Request Special Consideration for continued remuneration on the exhaustion of the allocated \$400,000 (which some teams have already exhausted and others are nearing) on the same terms and conditions as contained in the LSC. This will require new or modified Case/stage plans to last till the end of trial. It will be on this basis that the Defence Office will present a budget for continued remuneration of counsel to the Registrar this financial year, which ends on 31 June 2006. The Defence Office will inform teams as to the state of their budget for this purpose from time to time.
3. Request Special Consideration in the same manner as 1 above, but this time for trial work, which request has to be made at the end of trial pursuant to the addendum to the LSC.
4. Ensure that bills presented represent work done, as the Defence Office will strictly scrutinize all bills and will not tolerate over-billing.

I am hoping that this memo has clarified the position of things for all counsel. May I use this opportunity to thank you for all your commitment and dedication to your clients' cases, despite the circumstances in which you carry on your work. I urge you to continue to put up the best possible defence you can on their behalf and the defence office will continue to do its best in consultation with the Registry to assist you.

Thank you for time.

25768

Annex C



"Caroline Haywood"
<carrie@no6.co.uk>
16/02/2004 13:17

To: "Sylvain Roy" <roy@un.org>
CC:
Subject: RE: Mail and Internet Access

Case / SESAY
25769

Received with thanks!

-----Original Message-----

From: Sylvain Roy [mailto:roy@un.org]

Sent: Monday, February 16, 2004 1:13 PM

To: James.Oury@ouryclarksolicitors.com; ayotunde@sierratel.sl; a_goshea@yahoo.co.uk; mpestman@bfkw.nl; kfleming@qldbar.asn.au; stejansie@yahoo.com; girishthanki@tntlw.co.uk; cfmarginai@yahoo.com; s.powles@doughtystreet.co.uk; vkoppe@bfkw.nl; mnicolwilson@yahoo.co.uk; benholden2003@yahoo.co.uk; gem982002@yahoo.co.uk; nollkaemper@jur.uva.nl; Quincy Whitaker; w.jordash@doughtystreet.co.uk; wessel.knoops@xs4all.nl; Liesbeth Zegveld; gatejan@aol.com; rogbaneh@yahoo.com; clayson@no6.co.uk; theodora@sierratel.sl; SCSL Defence-Brima; SCSL Defence-Fofana; SCSL Defence-Gbao; SCSL Defence-Kallon; SCSL Defence-Kamara; SCSL Defence-Kanu; SCSL Defence-Kondewa; SCSL Defence-Norman; SCSL Defence-Sesay; Zoran Abraham

Cc: Claire Carlton-Hanciles; Haddijatou Kah-Jallow; Ibrahim S Yillah; Sylvia Pyne-Caulker; Phoebe Knowles

Subject: Mail and Internet Access

Dear all,

With the start of trials almost upon us, we are continuing to try improving the facilities provided to all of you for work related activities.

As you know, Defence Teams have been provided with 3 double rooms, in the Defence Office block, to use as office space during your stay in Freetown. In these rooms, each team will have access to a telephone and a computer connected to the Court network. This computer will give you access to your SCSL e-mail address (Defence-"name of your client"@un.org), the possibility to use software such as Word, access to a secure drive for you to store information, access to the internet and Court Record. On the other hand, some of you have indicated that you would prefer using your own laptop to do your work, as this would allow you to carry your information when you leave the court and would allow you to import information from outside means such as diskettes and CD (something that can not be done using the computers connected to the Court network). Furthermore, most of you have indicated that it would be convenient for you to be able to access your SCSL e-mail address (Defence-"name of your client"@un.org) from abroad.

On these issues, I am please to report that we will shortly be in of position of accommodating both. From 1 March, in addition to the use of the computer connected to the Court network and available for use by your team, you will now be able to plug-in your laptop on arrival at the court. This will give you independent and possibly faster internet access, for research purposes, but will not provide you with access to the Court network. This will still have to be done using the computer connected to the Court network. On remote access, I am also please to report that this is now possible. By connecting to the internet, from your home or office, you can now access you SCSL e-mail address. In order to enable this service, you will need to contact, via e-mail, Mr. Abraham (see address above) who will then indicate to you the steps to follow and log-in procedure. You will also need to contact him, possibly via telephone, to receive your original password. If you are satisfied with this service, I would recommend that we look at the possibility of using only that address for service of court documents, as this address does not have the

25770

capacity limitations that web based e-mail systems (hotmail, yahoo etc) have.

I hope that you will find these services of use in facilitating your work with the court.

Best regards

Sylvain Roy
A/Principal Defender
Special Court for Sierra Leone
Jomo Kenyatta Road
New England, Freetown
Sierra Leone
Tel: +1-212-963-9915 ext 178-7020 (NY line)
+232-22-297020 (SL line)
+39-0831-257020 (Italy line)
Mobile: +232 (0)76 654 029
Fax: +1-212-963-9915 ext 178-7001
e-mail: roy@un.org

2577H

Annex D

25772



SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
SESAY DEFENCE TEAM

PHONE: +39 0831 257214 OR +232 22 297214 OR +1 212 963 9915 Ext: 178 7214
FAX: +39 0831 257299 OR +232 22 297299 OR +1 212 963 9915 EXT: 178 7299

INTEROFFICE MEMORANDUM

To:	Ms. Elizabeth Nahamya, Deputy Principal Defender
Cc:	Mr Lansana Dumbuya Acting Duty Counsel, RUF
From:	Ms. Wayne Jordash, Counsel, Sesay defence team
Date:	3 rd November 2006
Subject:	Request to use computers that are not currently being utilised

Dear Elizabeth

Further to a very helpful discussion on the 1st November between the Principal Defender and Andrew Perfect and an informal discussion of the same date between Andrew and yourself, I write to request that members of the Sesay Defence team be permitted to use computers that are not currently being utilised by the Defence Office.

It is my understanding that there are currently computers in the Defence Office Room not being used every day by personnel from the Defence Office. It would greatly assist our case preparations if members of the Sesay Defence team were able to use some of this spare capacity.

The Sesay Defence team are presently involved in final preparation work for a variety of up country investigation trips. When members of the team are away from Freetown the pressure in the small Sesay Defence office eases. However, when there are several members of the team in Freetown, as now, it would greatly assist us to be able to use any spare computers that the Defence Office might have.

I am unsure precisely what else you might require in this request. I do not wish to restate the many resource problems which Sesay Defence has. I am confident that you know our difficulties well.

However, if I can be of any further assistance please do not hesitate to get in touch.

25773

Warm regards

Wayne Jordash

25774

Annex E



25775

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PRINCIPAL DEFENDER

10M. KENYATTA ROAD - FREETOWN
PHONE: +232 22 29 7210 FAX: +232 22 29 7001
EMAIL: SCSL-DEFENCE@UN.ORG

INTEROFFICE MEMORANDUM

To: Mr. Wayne Jordash-Lead Counsel for Sesay

From: Ms. Elizabeth Nahanwa-Deputy Principal Defender, SCSL *E. Nahanwa*

Cc: Mr. Vincent Nnchielle- Principal Defender, SCSL
Ms. Haddijatou Kah-Jallow, Duty Counsel, SCSL

Date: 6 November 2006

Subject: **REQUEST TO USE COMPUTERS THAT ARE NOT CURRENTLY
BEING UTILISED BY THE DEFENCE OFFICE**

I acknowledge receipt of your Inter-Office memorandum dated 3 November 2006, which I received today, requesting the use of some unutilized computers within the general Defence Office

The Defence Office is solidly behind you in your endeavour to provide your clients with the best representation without any hindrance. As you are aware, the computers are intended for use by Defence interns, whom we are expecting soon. In the meantime, your Team can utilize one of the computers on a temporary basis.

Considering that other Defence teams may have similar requests and, being cognizant of issues pertaining to fair and equitable sharing of resources among all teams, one computer will temporarily be reserved to cater for such eventuality. The Defence Office will expect your Team's cooperation whenever the computer is needed back.

In view of the fact that the room is being used by both staff of the Defence Office and interns, there are applicable security measures that would attach to the user in order to fit that person in a shared room schedule. Please advise me via e-mail the name of the person, who will be using the computer as there are some logistical details that we need to work on.

Regards.

25776

Annex F

25777

Elizabeth Nahamya/SCSL

07/07/2006 01:44 PM

To: Lee Panter/SCSL@SCSL

cc: Abdulai Abubakarr Bah/SCSL@SCSL,
nmehiellev@law.wits.ac.za, Vincent Nmehielle/SCSL@SCSL

bcc:

Subject: Fw: Vehicle for investigations

Dear Lee

Could you do everything possible to add at least two vehicles to those provided for the Defence? There is an impending transportation crisis as the Defence cases progress as most of the teams are now busy with investigative work before the onset of the serious rainy season.

As you may be aware, the Defence Office also needs transport for its staff just like other Sections and it is not possible to accommodate the needs of the Defence Teams and those of the Office given the limitation of two cars accorded to the Defence.

I am copying you an e-mail from Counsel for Kanu so that you may understand better the reason for this urgent request, the seriousness of the request as well as the difficulty being faced by the Teams in operating within the current limitations.

Thank you for your kind consideration.

Elizabeth

25778

Annex G

25779

Bockarie Marrah/SCSL
01/19/2007 09:51 AM

To Charles Jalloh/SCSL@SCSL, Lansana
Dumbuya/SCSL@SCSL
cc
bcc
Subject Fw: ARRIVAL OF NEW DEFENCE OFFICE STAFF

Hi,
PD's e-mail introducing me and explaining my role.
Regards,

----- Forwarded by Bockarie Marrah/SCSL on 01/19/2007 09:49 AM -----

Vincent Nmehielle/SCSL
09/28/2005 02:15 PM

To SCSL Defence-Brima/SCSL@SCSL, SCSL
Defence-Fofana/SCSL@SCSL, SCSL
Defence-Gbao/SCSL@SCSL, SCSL
Defence-Kallon/SCSL@SCSL, SCSL
Defence-Kamara/SCSL@SCSL, SCSL
Defence-Kanu/SCSL@SCSL, SCSL
Defence-Kondewa/SCSL@SCSL, SCSL
Defence-Norman/SCSL@SCSL, SCSL
Defence-Sesay/SCSL@SCSL
Elizabeth Nahamya/SCSL@SCSL, Claire
Carlton-Hanciles/SCSL@SCSL, Haddijatou
cc Kah-Jallow/SCSL@SCSL, Charles Jalloh/SCSL@SCSL,
John Amara/SCSL@SCSL, Bockarie Marrah/SCSL@SCSL
Subject ARRIVAL OF NEW DEFENCE OFFICE STAFF

Dear colleagues:

I want to use this opportunity to inform you of the arrival of three new defence office staff and request that you give them access to your issues in the performance of their duties and that you approach them for whatever services that you may require in the preparation of your case. They are as follows:

1. Mr. Charles Jalloh, Legal Advisor: He will mainly be involved in researching legal questions that may be brought to his attention and to serve as legal advisor to the Principal Defender on general issues, particularly on human rights and international criminal law.
2. Mr. Boackarie Marrah, Witness Support Assistant: He is the witness desk person for the Defence Office and will be responsible in contacting you on your witness update. He will work in collaboration with the WVS to provide services to defense witnesses. You should cooperate with him on the number of your witnesses, preparation needs of such witnesses, whether they are final or potential witnesses, whether they require protection or not and all other issues pertaining to witnesses.
3. Mr. John Amara, Defence Outreach Assistant: He is primarily the outreach desk person for the defense office. All requests for out reach by defence teams will be handled through him. He will work in close cooperation with the Outreach Section of the court in this regard.

Please give your full cooperation to the above staff.

Thank you for your time.

Vince

25780

Vincent O. Nmehielle
Principal Defender of the Special Court
Office of the Principal Defender
The Special Court for Sierra Leone
Jomo Kenyatta Road, New England
Freetown, Sierra Leone
Tel : +1-212-963-9915 Ext. 178 7039
 +232-22-297-039 (SL Line)
 +39-083 125-7039 (Italy Line)
 +232(0)76 800-080 or +232(0)76 816-568 (Mobile)
Fax: +1-212-963-9915 Ext. 178 7299

25781

Annex H


25782



SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
OFFICE OF THE PRINCIPAL DEFENDER

PHONE: +39 0831 257210 or +232 22 297210 or +1 212 963 9915 Ext: 178 7210
FAX: +39 0831 257210 or +232 21 297299 OR +1 212 963 9915 EXT: 178 7299

INTEROFFICE MEMORANDUM

To: The Sesay Defence Team. 

From: Vincent Ninchielle, Principal Defender

Cc: Mr. Lovemore G. Munlo SC, Registrar
Mr. Herman von Hebel, Deputy Registrar;
Ms. Elizabeth Nahamya, DPI
Mr. Engda Desta, CASS
Ms Haddijatou Kah-Jallow, RUF Duty Counsel

Date: 14th December 2006

Subject: Re: Your Request for International Investigator for 6 Months, Military Experts, and your Sole use of the Defence Office Vehicle from January to May 2007 for Up-Country Investigations

Your various requests on the above subject contained in your inter-office memoranda of 12 December 2006 and your email of 14 December 2006 refer. I hereby respond to the requests as follows:

1 International Investigator for 6 Months

It is important for me to point out that with the limited resources available to the Defence Office in facilitating the work of Defence Teams in the interest of the accused persons; we have tried to utilize the resources in a way that ensures that it is spread among all Defence teams based on needs and requests. In this regard, the Defence Office has previously provided your team with a total of 6 months of international investigation based on your requests and motivation. This led to the appointment of three such investigators for the said period based on your recommendation. The most recent of such appointment is Mr. Banos Nicolas Alexandrous whose two-month appointment as international investigator for your team expires on 20 December 2006. In addition to the international investigators appointed for your team, we have also provided your team the services of a legal Consultant for a two-month period and an Anthropology expert for

two-months. You have also made a request for Military experts, which are under consideration and will be addressed hereunder.

While the Defence Office would wish to provide your team every service requested, the ability to provide such service is limited by available resources and the need to service other Defence Teams with the same needs. We are in agreement that attention should now be focused on the RUF Defence case, but in such a way that enables each Defence team in the RUF trial to be reasonably serviced with the limited resources available. I had expected that the initial appointment of international investigators for your team would have yielded significant results in the preparation of your defence relating to the specific request you now make. This appears not to be the case.

I cannot guarantee that you would be provided additional resources for international investigation within the period you have requested, as currently available resources in this area must be used to meet the needs of other teams as well in this regard. I am engaging with the Administration for additional resources to continue to meet the investigative needs of Defence teams. As soon as funds are made available in this regard, we will endeavour to provide additional international investigation resources for your team and others as may be necessary.

2. Request for Military Experts

I have also evaluated your request for military experts for a total of 21 weeks (5.25 months) for your two proposed experts whom you indicate would serve as co-experts to produce one report. I have no doubt that Dr. Cornish and Col. Wilkinson qualify as experts and that they could provide very useful expertise in your defence of the accused person. Unfortunately, we cannot provide your team expert service for more than 8 weeks (2 months). As you know, experts engage in fact-finding and the writing of their report. After that, if they testify on their report, they become the responsibility of WVS. From the practice of the Court, we do not envisage the period with the Defence to extend beyond 8 weeks. Most of the expert services we have provided to other teams were for 6 weeks duration. I advise that you determine how the two experts will work and how you would want the approvable 8 weeks to be allocated between them.

3. Request for your Sole use of the Defence Office Vehicle from January – May 2007

I have also received your request for your sole use of the Defence Office vehicle for up-country investigations from January – May 2007 as "an additional vehicle to that provided by transport." Please be informed that the vehicle officially allocated to my office is not available for use by Defence teams for up-country investigations. Be rest assured, however, that the Defence Office will continue to engage and work with the Transport Section of the Court to provide vehicles to facilitate the up-country investigations of all Defence teams equally as we have always done. It is important to note that your team has generously benefited from this facilitation effort.

I hope I have clarified the position regarding your said requests.

25784

Kind regards.