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SCSL-03-01-T
(31494-31522)



31494

SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE
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Before: Justice Justice Julia Sebutinde, Presiding
Justice Richard Lussik
Justice Teresa Doherty
Justice El Hadji Malick Sow, Alternate Judge

Registrar: Ms. Binta Mansaray

Date Filed: 11 January 2011

The Prosecutor

-v-

Charles G. Taylor

Case No:SCSL-03-01-T

PUBLIC

**SUBMISSION OF THE REGISTRAR PURSUANT TO RULE 33(B) REGARDING
THE DEFENCE MOTION TO RECALL FOUR PROSECUTION WITNESSES
AND TO HEAR EVIDENCE FROM THE CHIEF OF WVS REGARDING
RELOCATION OF PROSECUTION WITNESSES**

Office of the Prosecutor
Ms. Brenda Hollis
Mr. Nicholas Koumjian

Defence Counsel for Charles Taylor
Mr. Courtenay Griffiths
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood

SPECIAL COURT FOR SIERRA LEONE
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COURT MANAGEMENT
11 JAN 2011
NAME Francesca Nyeckah-Smart
SIGN [Signature]
TIME 14:32

BACKGROUND

1. In its 17 December 2010 *Motion to Recall Four Prosecution Witnesses and to Hear Evidence from the Chief of WVS Regarding Relocation of Prosecution Witnesses* (hereinafter referred to as the “Defence Motion”), the Defence requested this Chamber to: (a) recall four prosecution witnesses for further cross-examination on the limited issue of relocation and any issue arising; and (b) call Mr. Vahidy (Chief of WVS) to testify, on the basis that his testimony would provide context to the circumstances surrounding witness relocations.
2. The Defence makes a number of assumptions and unfounded allegations in its submissions, which the Registrar wishes to clarify in order to assist the Chamber in the determination of this Motion. Therefore, the Registrar makes the following submissions addressing, *inter alia*, the following key issues:
 - a. The authority of the Defence investigator whose affidavit served as a basis for the Defence Motion to determine threats against Prosecution witnesses;
 - b. Allegation of systematic denial by the Registrar to respond to the Defence requests and timing of the Defence submissions;
 - c. Allegation of complicity between WVS and the Prosecution and mandate of WVS; and
 - d. The confidential nature of the information sought, which forms an intrinsic part of the protection system set up by WVS;

SUBMISSIONS

Applicable Law

3. Under Article 34 of the Rules of Procedure and Evidence (RPE),

(A) The Registrar shall set up a Witnesses and victims Section which, in accordance with the Statute, Agreement and the Rules, and in consultation with the Office of the Prosecutor, for Prosecution witnesses, and the Defence Office, for Defence witnesses, shall, *amongst other things*, perform the following functions with respect to all witnesses, victims who appear before the Special Court, and *others who are at risk* on account of testimony given by such witnesses, in accordance with their particular needs and circumstances:

- i. Recommend to the Special Court the adoption of protective and security measures for them;
- ii. Provide them with *adequate protective measures and security arrangements* and develop *long- and short-term* plans for their *protection and support*;
- iii. Ensure that they receive relevant support, counselling and other appropriate assistance, *including* medical assistance, physical and psychological rehabilitation, especially in cases of rape, sexual assault and crimes against children.

(B) The Section personnel shall include experts in trauma, including trauma related to crimes of sexual violence and violence against children. Where appropriate the Section *shall cooperate with non-governmental and intergovernmental organisations*. [emphasis added]

a. Authority of the investigator whose affidavit served as the basis for the Defence Motion to determine threats against Prosecution witnesses:

4. The Defence submits in paragraph 2 that WVS has been complicit in the Prosecution's use of relocation as an inducement for witness cooperation and/or testimony. It further submits in Confidential Annex J, which is the statement by Defence Investigator Prince Taylor dated 16 December 2010, that "it has recently come to [his] attention that several witnesses who testified for the Prosecution in the Taylor trial have been or are in the process of being relocated by WVS, after the completion of their testimony for the Prosecution, and at the Prosecution's request", on the basis of promises made by the Prosecution to these witnesses that they would be relocated after their testimony, and regardless of the actual or

putative security threat posed to these witnesses on account of their testimonies, allegedly as an incentive to testify.

5. The Registrar submits that these allegations - made solely on the basis of the statement by a Defence Investigator - are unfounded and extremely serious, as they attack the integrity and independence of the WVS without any credible evidence supporting such allegations. Indeed, throughout its Motion the Defence refers, without providing evidence of it, to “new and compelling information”,¹ “new evidence and unfolding circumstances”², and that it is “in possession of new information” which it could not have obtained before,³ and which, the Defence alleges, the Registry has “*systematically*” declined to provide to the Defence. Indeed, as stated in the Registrar’s letters to the Defence dated 17 and 30 November 2010,⁴ the Registry does not disclose to *either* party any information relating to relocation and/or security arrangements set in place for both Prosecution and Defence witnesses on the basis that such information is confidential and restricted and, as such, must remain solely in the Registrar’s custody and that of relevant delegated officials, such as the Chief of WVS to ensure the long-term well being and security of witnesses. It is submitted that the Registrar has the authority not to disclose such sensitive information, especially in light of Court-issued witness protection orders. Since the confidential information has not been disclosed by the Registrar or the Chief of WVS the pertinent question is who is the source of the information given to the Defence Investigator which is referred to in Confidential Annex J? Moreover the reliability of the information provided by the Defence investigator is an issue, unless he directly interviewed protected Prosecution witnesses, which would then constitute a breach of the Court-issued protection orders.

¹ Defence Motion, para. 1.

² *Ibid*, para. 3.

³ *Ibid*, para. 22.

⁴ Annex A

6. In addition, the Defence investigator makes claims alleging that Prosecution witnesses are being relocated absent any threat against them or threat assessments being conducted by WVS. It is submitted that the Registry, through its WVS Section, protects from either party the information pertaining to the other party's witnesses. Therefore, as a Defence investigator, the author of Confidential Annex J is not and cannot be privy to any information relating to the support and protection provided by WVS to Prosecution witnesses. Moreover the Defence Investigator has no standing to determine whether protection measures were based on threat assessments. Therefore, it is contended that the allegations contained in Confidential Annex J, on the basis of which the Defence is requesting the Chamber to hear evidence from the Chief of WVS and recall four Prosecution witnesses, have no basis and are purely speculative.

b. Allegation of systematic denial by the Registrar to respond to the Defence requests and timing of the Defence submissions:

7. It is further submitted that the timeline of the Defence's requests to the Chief of WVS and subsequently to the Registrar, i.e. spanning over 22 months and sent specifically on:

- a. 26 January 2009, Letter from Courtenay Griffiths, Q.C., to Saleem Vahidy;⁵
- b. 4 October 2010, Email from Logan Hambrick to Saleem Vahidy;⁶
- c. 26 October 2010, Email from Courtenay Griffiths to Saleem Vahidy;⁷
- d. 27 October 2010, Email from Logan Hambrick to Saleem Vahidy;⁸
- e. 12 November 2010, Letter from Courtenay Griffiths, Q.C., to the Registrar;⁹ and
- f. 22 November 2010, Letter from Courtenay Griffiths, Q.C., to the Registrar,¹⁰

⁵ Defence Motion, Annex A.

⁶ *Ibid*, Annex B.

⁷ *Ibid*, Annex C.

⁸ *Ibid*, Annex D.

⁹ *Ibid*, Annex E.

¹⁰ *Ibid*, Confidential Annex I.

shows that the Defence could have brought up this matter to the Chamber's attention during the presentation of its case. This Motion is now triggered by an Affidavit signed by the Defence investigator on 16 December 2010, the day before the filing of the Motion on 17 December 2010. In fact the Motion contains the same information requested in the 4 October 2010 Email from the Defence to WVS. Thus had the Defence exercised due diligence, and legitimately considered the issue to be of such a serious nature, the matter should have been brought to the attention of the Chamber before the close of the Defence case.

c. Allegation of complicity between WVS and the Prosecution and WVS' mandate:

8. Nonetheless, should this Chamber decide to entertain the Defence Motion, the Registrar submits that, unlike what the Defence suggests in paragraph 15 of its Motion - wherein it suggests that Article 16(4) of the Statute and Rule 34 of the RPE "*arguably*" mandates WVS to use relocation as part of security arrangements or long-term protection and support plans - Rule 34 of the RPE gives the Registrar the *unequivocal* mandate, through WVS, to provide for the short- and long-term protection and support to witnesses and victims who appear before the Special Court, as well as "*others who are at risk* on account of testimony given by such witnesses, in accordance with their particular needs and circumstances." The unequivocal language of the Rule is not exhaustive and does not place any limit on measures that must be taken to provide protection and support prior, during and after testimony, as long as they are "adequate".
9. In paragraph 7 of its Motion, the Defence refers to the payment of "post-testimonial benefits provided by WVS to Prosecution witnesses". More specifically the Defence refer to "school fees, relocation/rent, food, money disbursed, health bills, mobile phones, etc..." As stated in the Registrar's letter to Lead Counsel dated 17 November 2010 "the witness and Victims Section does not pay what [the Defence] refer to as "post-testimony benefits" to Defence or

Prosecution Witnesses.” In fact and as elaborated in the Registrar’s letters to Lead Counsel dated 17 November 2010 and 30 November 2010 “the payment of allowances to Defence and Prosecution witnesses is guided by the Court’s obligation to ensure the welfare of the witnesses in accordance with Rule 34 (A) (ii) and (iii), the *Witness Expense Policy*¹¹ and the *Practice Direction on Allowances for Witnesses and Expert Witnesses Testifying in The Hague*.¹² It is submitted that the management of witnesses and victims by necessity involves expenditure and that all expenses incurred by WVS, albeit tailored to meet the particular needs of each witness, are always made in compliance with these established operational procedures.

10. Witnesses who are particularly at risk of facing reprisals (including some insider witnesses) are sometimes required to stay in a safehouse for long periods and/or their movements in and out of the safehouse are severely curtailed, thereby preventing them from engaging in income-generating activities. In such cases, and by necessity, additional care must be provided to ensure that their personal and family needs are met (for instance, one of the duties of WVS is to ensure that the education of the children of the witness is not interrupted because of the severe restrictions placed on the movements of the witness and his family – consequently children are placed in a different school, under a different name, etc.). Notwithstanding, these additional measures can often lead to frustration and disappointment on the part of witnesses, some of whom may have high expectations. In spite of these high expectations, relocation services is only provided when absolutely necessary and on the basis of threat assessments. Indeed, as the Defence pointed out in Confidential Annex J, not all Prosecution witnesses have been relocated and, the Registrar submits, the WVS Section is not currently taking any steps to relocate any un-relocated witness.

¹¹ 1 August 2003 Witness Expense Policy, Annex B.

¹² 8 June 2007, Practice Direction on Allowances for Witnesses and Expert Witnesses Testifying in The Hague, Annex C.

11. Concerning long-term protection and support, whenever relocation is warranted it is resorted to only after the witness has testified and on the basis of threat assessments, first conducted and reported by the investigators of either party, and later by witness protection staff of the WVS Section in whose custody the witness has been placed. Such threat assessments are conducted either after the witness expresses fear of reprisals on the basis of tangible and reliable information and/or has been threatened, and/or been subject to intimidation, directly or indirectly, on account of their testimonies before the Court; or after investigators for the Defence or the Prosecution notify the WVS of tangible threats against a particular witness, requiring further protection measures to be taken. A witness is not simply relocated because one of the parties to the trial “requested” so; however the parties and WVS consult each other on the need for relocation, as mandated by Rule 34 of the RPE. To date, a total of 555 witnesses testified in all four trials before this Court; of them, approximately 160 have received different types of post-testimony assistance, support and protection and support, until such time as they are no longer in the care of WVS.
12. Relocation is a last resort. It is only provided to those witnesses who are considered most at risk on account of their testimonies. There are three types of relocation, i.e. in-country, within the West African region, or outside of Africa. Each type of relocation is assessed and selected on the basis of the type and level of threat against a particular witness for whom relocation is warranted. In all four trials before this Court, the WVS Section has proceeded to relocating Prosecution and Defence witnesses most at risk, and the success of this Court’s witness protection system is very much dependent on the strict confidentiality attached to this process, as has been proven over the years.
13. Further, relocations outside of the African continent require the Registrar to enter into agreements with host countries. Once WVS conducts a threat assessment in support of relocation outside of Africa, the Registrar reviews the application and makes the final decision on whether this particular witness can be relocated and to

which country. The process is long and arduous and cooperation from host countries is often not easy to come by, especially given the known background of many of the insider witnesses who testified before the Court and who require protection on account of their testimony. The host countries' migration authorities also have high confidentiality standards. Therefore, in most instances, the host country sends its own authorities to Sierra Leone to judge the suitability of the proposed relocation, study all evidence available, threat assessments, statements made in Court, and also make their own enquiries regarding the threat. Only after this process is completed can steps towards relocation be taken, which can take a considerable amount of time, often up to a couple of years during which the migration authorities of the host country start putting everything in place to receive the witness and his family. It is respectfully submitted that should the Chief of WVS be ordered to testify and four Prosecution witnesses be re-called for the purpose of obtaining information pertaining to circumstances surrounding the relocation of specific Prosecution witnesses, the risk of compromising the very essence of the effective witness protection system set up by WVS cannot be overemphasised.

14. The Registrar further submits that witness protection and relocation is a recognised practice used worldwide for the security and safety of witnesses who fear reprisals from the persons against whom they have testified, or their supporters. Protective measures give a witness the peace of mind and confidence to testify truthfully without fear of reprisals, threats and intimidation against them and/or their family. WVS is a neutral and independent section of the Registry. It cannot work in isolation and in order to conduct threat assessments to provide adequate protection it must also rely on information and assessments provided by both Defence and Prosecution investigators working with witnesses in the field. These assessments are then analysed by WVS and, if relocation is warranted, the Registrar's approval is sought. Therefore, any recommendation made by investigators of either party to the WVS are originally made for the purpose of

providing immediate protection to witnesses, as mandated under Rules 34 and 39 of the RPE. After all, the witness' vulnerabilities and threats are originally discussed and determined by each party's investigator who establishes the first contact. Protection measures, if deemed necessary by WVS, are then put in place by WVS and also in compliance with Court-issued protection orders. Therefore, the mandatory consultation between WVS and the respective parties cannot be deemed as "complicity", as described by the Defence.

d. Confidential nature of information concerning witness relocation:

15. Threat assessments conducted for the purpose of relocation contain extremely sensitive information and the safety and security of protected witnesses requires the Registry to ensure that such information is not improperly disseminated. The Registrar therefore submits that granting the Defence Motion and compelling the Registry to divulge such sensitive information will breachcompromise the confidentiality attached to these relocations and thereby adversely impact and jeopardise safety and security measures taken for witnesses who are at risk on account of their testimonies.
16. The Registrar's submissions also find support in international jurisprudence. In *Karemera et al.*,¹³ ICTR Trial Chamber III denied the defence motion for disclosure of benefits to a prosecution witness on the basis that benefits provided to witnesses *exclusively* by the Tribunal's WVS Section were provided to all witnesses in accordance with the WVSS Manual of Operations and Guidance, which includes the payment of standard benefits related to transport, accommodation, loss of income, support for minor dependents, basic relocation expenses associated with witnesses who are entitled to protective measures.

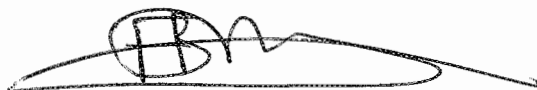
¹³ *Prosecutor v. Karemera et al.* Decision on Joseph Nzirorera's Motion for Disclosure of Benefits to Prosecution Witness ZF, paras 4-5 [the Chamber only distinguished between witnesses under the care of the Prosecution and witnesses under the exclusive care of WVSS for the purpose of assessing the credibility of their testimony, *see Prosecutor v. Karemera et al.*, Oral Decision, T. 8 June 2006, pp. 4, 5.

Further, the Chamber ruled that the sums of money provided by WVSS to witnesses, which is very much dependent on the length of time the witness spends in WVSS' care, the cost of living, exchange rates, etc., is not relevant for the purpose of assessing the credibility of a particular witness.¹⁴

17. The Registrar therefore submits that any reasonable expense incurred by WVS to provide protection and support to witnesses prior to, during and after testimony, as well as any information pertaining to the relocation of particular witnesses have no bearing on the credibility of the witnesses the Defence wishes to recall and cannot therefore be considered exculpatory material. It is further submitted that information relating to post-testimony protection and support provided to some witnesses is of such a sensitive nature that its disclosure would jeopardise the very essence of the witness relocation system and unnecessarily put protected witnesses at risk.
18. In light of the foregoing, the Registrar submits that calling the Chief WVS to testify on issues pertaining to relocation of certain witnesses, and re-calling four Prosecution witnesses to further cross-examine them on the same, may not assist this Chamber in assessing the truthfulness of the testimonies of these witnesses; and would adversely impact and jeopardise safety and security measures taken for witnesses who are at risk on account of their testimonies, and therefore compromise their security. The Registrar therefore respectfully submits that calling the Chief of WVS as a witness and re-calling protected witnesses who may have been relocated would not serve the interests of justice.
19. However, should the Chamber decide that threat assessments concerning relocated witnesses must be made available, the Registrar respectfully requests that such assessments be kept strictly confidential and be solely requested for the benefit of the Chamber in the context of its determination on the merits of the Defence Motion.

¹⁴ *Prosecutor v. Karemera et al.* Oral Decision, T. 8 June 2006, pp. 2-4.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Binta Mansaray', written over a horizontal line.

Binta Mansaray
Registrar
Special Court for Sierra Leone

Annex A



31507

SPECIAL COURT FOR SIERRA LEONE
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Ref/REG/639/2010/SG

17 November 2010

Courtenay Griffiths, QC
Lead Counsel, Taylor Defence Team

Re: Defence Request for Disclosure of Post-Testimony Benefits and Relocation Facilitated by the Registry's Witnesses and Victims Section (WVS) in respect of Prosecution Witnesses

Dear Mr. Griffiths,

I am in receipt of your letter dated 12 November 2010 requesting records of alleged payments of post – testimony benefits and relocation packages provided to Prosecution witnesses upon conclusion of their testimony together with accompanying enclosures.

With reference to Enclosure A – your letter addressed to the Chief of the Witness and Victims Section dated 26 January 2009 – there are two important points I wish to clarify. Firstly, you refer to Rule 68 of the Rules of Procedure and Evidence entitled “Disclosure of Exculpatory Evidence”. However, Rule 68 explicitly regulates the disclosure obligations of the Prosecutor, not the Registrar, concerning exculpatory material. Therefore, please note that the Registrar is under no obligation to disclose information under Rule 68.

Secondly, the Witness and Victims Section does not pay what you refer to as “post-testimony benefits” to Defence or Prosecution witnesses. The payment of allowances to Defence and Prosecution witnesses is guided by the Court's obligation to ensure the welfare of the witnesses in accordance with Rule 34 (A) (ii) and (iii) and the applicable *Practice Direction on Allowances for Witnesses and Expert Witnesses Testifying in The Hague* of 8 June 2007.

Concerning your request for information regarding the relocation of Prosecution witnesses please note that the Registry as a matter of policy does not disclose information in relation to relocation measures and/or security arrangements set in place for Defence and Prosecution witnesses should such measures be deemed necessary following a threat assessment conducted by the Witness and Victims Section. As you know, the Registrar is obliged by Rule and Statute to provide long and short-term plans for the protection and support of witnesses. Therefore, you will appreciate that the information related to the care and protection of both Defence and Prosecution witnesses by the Court, following threat assessments conducted by WVS, must be kept strictly confidential and restricted and, as such, will not be shared with the opposing party in order to avoid compromising the security of these witnesses.

Sincerely,

Binta Mansaray
Registrar
Special Court for Sierra Leone



31508

SPECIAL COURT FOR SIERRA LEONE
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Ref/REG/662/2010/SG

30 November 2010

Courtenay Griffiths, QC
Lead Counsel, Taylor Defence Team

Re: Registrar Response to Defence Reply to Letter Denying Defence Request for Disclosure of Post-Testimony Benefits and Relocation Facilitated by the Registry's Witnesses and Victims Section (WVS) in respect of Prosecution Witnesses

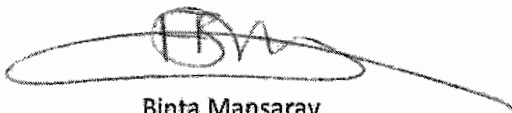
Dear Mr. Griffiths,

I am in receipt of your letter dated 22 November 2010 which elaborates on your 12 November 2010 request for information regarding the relocation of Prosecution witnesses and alleged payments of post-testimony benefits.

In my letter dated 17 November 2010 I advised you that payment of allowances to Defense and Prosecution witnesses is guided by the Court's obligation to ensure the welfare of witnesses in accordance with Article 16 of the Special Court Statute, Rule 34 (A) (ii) and (iii) and the applicable *Practice Direction on Allowances for Witnesses and Expert Witnesses Testifying in The Hague* of 8 June 2007.

With reference to your request for information regarding the relocation of Prosecution witnesses, as I indicated in my previous letter the Registry does not disclose information in relation to relocation measures and/or security arrangements set in place for Defense and Prosecution witnesses should measures be deemed necessary following a threat assessment conducted by the Witness and Victims Section. This includes all confidential information related to agreements with Governments, the continent of relocation and the timing of relocation. Under Rule 34 (A) (ii) of the Rules of Procedure and Evidence the Witness and Victims Section is obliged to provide witnesses with "adequate protective measures and security arrangements and develop long- and short-term plans for their protection and support." To fulfill the obligations set forth in the Special Court's Statute and Rules of Procedure and Evidence and to ensure both the short- and long-term wellbeing of witnesses the Registry does not divulge information related to relocations.

Sincerely,



Binta Mansaray
Registrar
Special Court for Sierra Leone

Annex B



31510

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CONFIDENTIAL

INTEROFFICE MEMORANDUM

9 July 2003

**To: Mr. Robin Vincent
The Registrar**

Mr Vincent 22/7/03

**From: Saleem Vahidy
Chief of WVS**

Saleem Vahidy

Subject: Witness Expense Policy

1. It is proposed that whenever a witness and / or dependents come under the protection of the Court, thereby the Registry, and are relocated to a secure premise, the following will be provided to the witness and dependents through the responsible department of the Registry i.e. the WVS. The only proviso being, that every witness will not be given all the facilities. It will be organised on a need basis.

- (i). Adequate and secure premises to live in.
- (ii). Basic furniture, linen, crockery, cutlery, kitchen equipment, utensils etc, including regular provision of kerosene for cookers or cooking gas.
- (iii). A small refrigerator, a TV and VCR, (in some cases it might be necessary to provide a satellite dish and tuner).
- (iv). A small generator, where considered necessary, along with regular provision of generator fuel.
- (v). Utility bills for the premises will be taken care of by the WVS.
- (vi). Where considered necessary a mobile phone for emergency contact, along with regular provision of phone cards, up to a maximum of \$ 20 per month.
- (vii). Normal maintenance and repair of the premises.
- (viii). Regular provision of cleaning materials for the premises.
- (ix). Provision of newspapers, and other reading material where required.

2. Every witness will be given a weekly subsistence allowance at the following rate.

An initial allowance, of Le, 50,000 per family, per week.

In addition, the witness and every adult dependent be given Le, 20,000 per week.

Every child be given an additional Le 10,000 per week.

3. A problem arises where witnesses are kept indoors for weeks on end, and this in fact drives them stir crazy, and makes them quite cantankerous and difficult to deal with. Also this fact is brought to the notice of the OTP by the witnesses, and they in turn are constantly requesting us to provide them with occasional outings. Therefore, if approved we may be authorised to take each witness for an outing and a meal once a fortnight. This places an extra burden on our resources and time, but in the long run does make our life easier.

4. Basic medical cover for the witness and dependents to be provided through a nominated Doctor. Since considerations of security and confidentiality are paramount, Dr. Vincent Willoughby has been nominated to deal with all witness medical issues, and he will be billing the WVS directly, any referrals will also be made through him. There is also one more doctor called Dr. Mansour who also assists us from time to time, especially during night hours, when Dr. Willoughby is not available.

5. It is proposed that while the witnesses are under the care of the Court, we provide for the educational needs of the children at the primary and secondary level. Of course due care will be taken regarding names and identities at the time of enrolment, so as not to jeopardise the security of the witness. This is again an expense which perhaps is difficult to justify, but the amounts involved are nominal, and essentially implies provision of school uniforms, and very small amounts as fees.

6. In addition, at times there will be operational requirements, which will have to be given precedence. It is hoped that such occasions will be few, and it is proposed that we have the flexibility to deal with them on a case to case basis.

7. Essentially what is also being sought is a some flexibility within laid down parameters. For example, if a witness is received at very short notice, he / she will be housed temporarily in a guest house (pre-selected for suitability), for the time it takes to find a permanent location. This sometimes tends to push up the costs, but again it is more a case of lack of other options.

8. This is not a comprehensive or final document, and amendments might have to be made as we progress, but it is requested that the above proposals may kindly be approved.

9. Submitted for perusal.

Best regards.

Witness Expense Policy

31512

See Saleem Vahidi's memorandum (attached)

- Items (i) to (viii) inclusive approved.
 - Weekly subsistence to comprise:-
 - initial allowance £ 50,000 per family, per week.
 - witness and each adult dependent £ 20,000 each per week.
 - every child an additional £ 10,000 each per week.
 - basic medical cover
- (on basis of 2 adults, 2 children = £ 110,000 per week)
or USD \$ 200 per month approximately

Note: The payments above, taken in conjunction with those items (i) to (viii) above, will provide a more than reasonable provision.

In addition, but only at the discretion of the Chief of Section and dependant on his professional assessment of the specific circumstances surrounding each individual witness, outings/meals may be provided once or twice per month - but not as a regular in-built part of

the policy.

- Purchase of newspapers, magazines or cigarettes etc. - to be purchased from the allowances above.
- Provision of school fees - if the immediate children of the witness are attending school at the time we take over responsibility for the witness, then we should continue to support their attendance at school if at all possible.
However, if a child (or the children) is/are not attending school when we take responsibility for the witness, then it will be a matter for the witness and his family to decide whether to utilise any part of the weekly allowance to send the child/ren to school.

To summarise, whilst the basic provisions, with the weekly allowance, are reasonable (and not capable of being seen as inducements) the issue of the purchase of anything else remains a matter of choice for the witness.

1/8/03: SAV

Annex C



SPECIAL COURT FOR SIERRA LEONE

**Practice Direction on Allowances for Witnesses and Expert
Witnesses Testifying in The Hague**

Adopted on 8 June 2007

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PREAMBLE

The Registrar of the Special Court for Sierra Leone,

Considering the Statute of the Special Court for Sierra Leone as annexed to the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone, signed on 16 January 2002, and in particular Article 16 (4) thereof;

Considering the Rules of Procedure and Evidence of the Special Court for Sierra Leone as applicable pursuant to Article 14 of the Statute, and in particular Rules 33, 34, 69, 71, 75, 85, 90 and 94 *bis* thereof;

Considering the Headquarters Agreement between the Special Court for Sierra Leone and the Kingdom of the Netherlands, signed on 19 June 2006, and in particular its preamble;

Noting that proper assistance to witnesses should be provided throughout the legal process and that inconvenience to witnesses should be minimized;

Noting the need for witnesses and expert witnesses to know the types and amounts of allowances they shall be provided for the days spent on travels and away from home, in connection with testifying;

Noting that by testifying, witnesses and expert witnesses should not lose physically, mentally and financially and that they should be able to testify in the best physical and mental conditions;

Hereby issues with the approval of the Council of Judges the Practice Direction on Allowances for Witnesses and Expert Witnesses Testifying in The Hague as follows:

BASIC PROVISIONS

Article 1 – Definitions

(A) Under this Practice Direction, the following terms shall mean:

Agreement	The Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, signed in Freetown on 16 January 2002;
Chambers	The Chambers of the Special Court referred to in Article 12 of the Statute;
Expert Witness	A person who gives or is due to give expert testimony before a Chamber as a result of being called by the parties in accordance with Rule 94 <i>bis</i> of the Rules; and/or as a result of being summoned by a Judge or a Chamber in accordance with Rule 54 of the Rules;
Finance Section	The Finance Section of the Registry of the Special Court;



Parties	The Prosecutor or the Defence;
Practice Direction	The Practice Direction on Allowances for Witnesses and Expert Witnesses;
Registrar	The Registrar of the Special Court appointed pursuant to Article 16 of the Statute;
Rule 71 witness	A person who, under Rule 71 of the Rules, gives a deposition;
Rules	The Rules of Procedure and Evidence of the Special Court for Sierra Leone, as first amended on 7 March 2003 and as amended thereafter;
Special Court	The Special Court for Sierra Leone established by the Agreement;
Statute	The Statute of the Special Court for Sierra Leone annexed to the Agreement;
Travel Unit	The Travel Unit of the Registry of the Special Court;
Witnesses and Victims Section	The Witnesses and Victims Section referred to in Rule 34 of Rules; and
Witness	A person who gives or is due to give testimony before a Chamber as a result of being called by the parties; summoned by a Judge or a Chamber under Rule 54 of the Rules; or ordered by a Chamber to give testimony by deposition under Rule 71 of the Rules or via communications media, including video and closed-circuit television, under Rule 85 of the Rules.

(B) In this Practice Direction, the masculine shall include the feminine and the singular the plural, and vice versa.

Article 2 – Responsibility for Payment of Allowances

(A) The costs of allowances necessarily and reasonably incurred by witnesses and expert witnesses as a result of testifying before a Chamber shall be met by the Special Court as set out in the Practice Direction, subject to the budgetary provisions, rules and regulations, and practice set by the Special Court.

(B) The Finance Section shall ensure the payment of all allowances for all witnesses and expert witnesses. The Witnesses and Victims Section shall provide the Finance Section with the necessary information to enable such payments, including but not limited to the country of residence of the witnesses.

Article 3 – Delegation of Authority

The Registrar may delegate any of his authority under the provisions of this Practice Direction to the Chief of the Witnesses and Victims Section.

Article 4 – Accommodation

The Special Court shall provide and arrange accommodation for witnesses when required in The Hague, and during travel to and from The Hague.

Article 5 – Meals

The Special Court shall provide and arrange meals for witnesses who require accommodation.

WITNESSES ALLOWANCES**Article 6 - Attendance Allowance**

- (A) The Special Court shall provide witnesses an attendance allowance as compensation for wages, earnings and time lost as a result of testifying. Witnesses shall not be required to submit a request or any supporting documentation in order to receive the attendance allowance.
- (B) The attendance allowance shall be calculated by multiplying:
- (i) the daily salary of United Nations personnel at the General Services 1 Step 1 level in the country in which the witness is residing at the time he testifies, or for witnesses residing in countries in which there are no United Nations personnel present, a daily wage rate as determined by the Registrar; by
 - (ii) the number of days the witness testifies, including days spent on travels and away from home, in connection with testifying. A part of a day used in connection with testifying shall be considered a full day for the purpose of calculating the attendance allowance.

Article 7 – Daily Subsistence Allowance

(A) The Special Court shall provide witnesses with 10% of the Daily Subsistence Allowance applicable in The Hague, as established by the United Nations when such witnesses are provided with accommodation and meals. This amount shall be provided for expenses for the days witnesses testify and days spent on travel.

(B) The Special Court shall provide witnesses the Daily Subsistence Allowance applicable in The Hague, as established by the United Nations when such witnesses make their own arrangements for accommodation and meals, for the days witnesses testify, including days spent on travel.

Other Allowances for Witnesses**Article 8 – Travel**

(A) The Special Court shall provide and arrange transportation necessary for witnesses to travel to and from the location where they testify, including arrangements and costs for any travel documents which may be required.



- (B) Travel shall be based on:
- (i) an economy class round trip air ticket by the most direct and economical route or within limits laid down by or subject to prior authorisation of the Registrar;
 - (ii) a public transportation ticket by the most direct and economical route or within limits laid down by and subject to prior authorisation of the Registrar; or
 - (iii) fixed rates as established by the United Nations Schedule of Rates of Reimbursement for Travel by Private Motor Vehicle applicable to different groups of countries and territories, per kilometre travelled on the outward and return travels by the most direct and economical route, on presentation of a statement of travel expenses using the form provided by the Registry.
- (C) Travel by plane envisioned in paragraph (B) (i) shall be provided only for witnesses residing in countries outside The Hague.
- (D) Travel arrangements shall be made by the Travel Unit, for all witnesses testifying before the Special Court in The Hague.

Article 9 – Accompanying Support Persons

- (A) In exceptional circumstances, based on an assessment and request by the Witnesses and Victims Section, the Registrar may authorise support persons to accompany a witness to and from the location where he testifies where:
- (i) the witness is a child under eighteen years old;
 - (ii) the witness is over sixty years old;
 - (iii) the witness is seriously ill, particularly vulnerable, and/or seriously traumatized; and/or
 - (iv) without the presence of the support person, the witness would not be able, or would be seriously hampered to travel and appear by himself to testify.

- (B) The Special Court shall provide accompanying support persons the same allowances as the witness they accompany except the portion of the Daily Subsistence Allowance covering accommodation when accommodation is shared with the witness.

Article 10 – Accompanying Dependants

- (A) In exceptional circumstances, based on an assessment and request by the Witnesses and Victims Section, the Registrar may authorise dependants to accompany a witness to and from the location where he testifies when dependants are not able to be without the witness during his absence from home.
- (B) The Special Court shall provide accompanying dependants the same allowances as the witness they accompany except:



- (i) the attendance allowance; and
- (ii) the portion of the Daily Subsistence Allowance covering accommodation when accommodation is shared with the witness.

Article 11 – Medical Expenses

(A) The Special Court shall provide witnesses with medical treatment by a qualified medical institution or professional if they are sick or injured during the days they testify, including days spent on travels and away from home, in connection with testifying. In exceptional cases, the medical treatment shall be provided before and/or after witnesses travel from home provided that such medical treatment is connected with testifying.

(B) Medical treatment shall cover only injuries and opportunistic diseases and illnesses, and shall not cover the treatment of long-term or permanent illnesses.

Article 12 – Childcare and Other Forms of Care

(A) Based on an assessment and request by the Witnesses and Victims Section, the Registrar may authorise the payment of childcare expenses or the payment for other forms of care for dependants of witnesses to enable them to testify. Such requests shall be submitted before witnesses testify.

(B) In determining whether to grant payment, the Registrar shall consider such factors as:

- (i) The existence of a direct link between a witness testifying and the availability of childcare or other forms of care; and/or
- (ii) The availability of alternative arrangements for childcare or other forms of care.

(C) Witnesses shall be provided an amount determined by the Registrar based on supporting documentation submitted by the witnesses to the Witnesses and Victims Section.

(D) All decisions of the Registrar under this Article will be communicated to the witness in timely manner.

Article 13 – Other Allowances

Based on an assessment and request by the Witnesses and Victims Section, including supporting documentation, the Registrar may authorise the following allowances:

- (i) Farm assistance allowance to compensate for time lost as a result of testifying to cover farm-related tasks including but not limited to planting, maintaining and harvesting;
- (ii) Residence security allowance depending on the nature and extent of the threat. A threat assessment shall be conducted by the Witnesses and Victims Section after consultation with the relevant party;

- (iii) Appropriate clothing to enable witnesses to testify;
- (iv) Compensation for extraordinary losses, including loss of income, for witnesses who will suffer or who have suffered undue hardship as a result of testifying; and/or
- (v) Educational/vocational support for child witnesses under eighteen years old in order to ensure psychosocial stability related to testifying.

Rule 71 Witnesses

Article 14 – Allowances

(A) Rule 71 witnesses who are not required to travel to and from the locations where the deposition is to be taken shall not be entitled to any allowance except the attendance allowance under Article 6 or the daily subsistence allowance under Article 7 depending on their country of residence, medical expenses under Article 11, and the allowance for childcare and other forms of care under Article 12.

(B) Rule 71 witnesses who are required to travel to and from the locations where the deposition is to be taken shall be entitled to the same allowances as other witnesses, depending on their country of residence.

EXPERT WITNESSES

Article 15 – Attendance Allowance

(A) The Special Court shall provide expert witnesses with an attendance allowance as compensation for wages, earnings and time lost as a result of testifying. Expert witnesses shall not be required to submit a request or any supporting documentation in order to receive the attendance allowance.

(B) The attendance allowance shall be calculated by multiplying:

- (i) The daily attendance allowance; by
- (ii) The number of days the expert witness testifies, including days spent on travels and away from home in connection with testifying, excluding weekends. A part of a day used in connection with testifying will be considered a full day for the purpose of calculating the attendance allowance.

(C) The daily attendance allowance envisioned in paragraph (B) (i) shall be a fixed rate of \$ 200, regardless of the country in which the expert witness is residing at the time he testifies. This allowance shall be updated regularly as the Registrar deems necessary, but shall be reviewed at minimum on an annual basis.

Article 16 – Daily Subsistence Allowance

The Special Court shall provide expert witnesses the Daily Subsistence Allowance for The Hague as established by the United Nations when expert witnesses make their own

arrangements for accommodation and meals, for the days expert witnesses testify, including days spent on travels and away from home, in connection with testifying.

Article 17 – Travel

(A) The Special Court shall provide and arrange transportation necessary for expert witnesses to travel to and from the location where they testify, including arrangements and costs for any travel documents which may be required.

(B) Travel shall be based on:

- (i) an economy class round trip air ticket by the most direct and economical route or within limits laid down by or subject to prior authorisation of the Registrar;
- (ii) a public transportation ticket by the most direct and economical route or within limits laid down by and subject to prior authorisation of the Registrar; or
- (iii) fixed rates as established by the United Nations Schedule of Rates of Reimbursement for Travel by Private Motor Vehicle applicable to different groups of Countries and Territories, per kilometre travelled on the outward and return travels by the most direct and economical route, on presentation of a statement of travel expenses using the form provided by the Registry.

(C) Travel by plane envisioned in paragraph (B) (i) shall be provided only for expert witnesses residing in countries other than The Hague.

(D) Travel arrangements shall be made by the Travel Unit, for all witnesses testifying before the Special Court in The Hague.

FINAL PROVISIONS

Article 18 – Amendments

(A) The Registrar may amend the Practice Direction with the approval of the Council of Judges.

(B) Without prejudice to the rights of witnesses in any pending case, an amendment of the Practice Direction shall enter into force seven days after the day of issue of the amendment.

Article 19 – Entry into Force

This Practice Direction shall be deemed to have entered into force upon approval by the Council of Judges.

E. W. D. H.
Herman von Hebel
Acting Registrar
8 June 2007

