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(673 - 695)

**THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN - SIERRA LEONE**

Before: Judge Bankole Thompson  
Judge Itoe  
Judge Boutet

Registrar: Mr. Robin Vincent  
Date filed: March 23, 2004

**THE PROSECUTOR**

**Against**

**ALEX TAMBA BRIMA also known as TAMBA ALEX BRIMA  
also known as GULLIT**

**CASE NO. SCSL-2004-16-PT**

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**MOTION FOR EXCLUSION OF PROSECUTION'S WITNESS  
STATEMENTS AND STAY ON FILING OF PROSECUTION WITNESS  
STATEMENTS PURSUANT TO RULES 5 AND 66(A)(I) -**

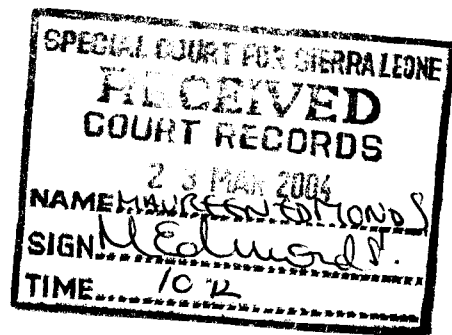
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**Office of the Prosecutor:**

Mr. Luc Cote  
Mr. Robert Petit  
Mr. Paul Fynn  
Mr. Abdul Tejan-Cole  
Ms. Leslie Taylor  
Ms. Boi-Tia Stevens  
Mr. Christopher Santora  
Ms. Sharon Parmar

**Defence Counsel**

Mr. Terrence Terry  
Mr. Karim Khan  
Mr. Kojo Graham



The Accused the Applicant herein Tamba Alex Brima brings this Motion before the Trial chamber seeking specific reliefs referred to below against the Prosecution in this case for the latter's past and continuing breach and violations of Rule 66(A)(i) of the Rules of Procedure and Evidence of the Special Court of Sierra Leone, and Article 1 of the Practice Direction on Disclosure by the Prosecution Pursuant to Rule 66 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.

## **I. INTRODUCTION**

A. This Motion is filed as a sequel to the legal submissions made before the Honourable Trial Chamber by Defence counsel at the status conference, convened on March 8, 2004, at which the defence contended that the Prosecution was in breach of the letter and spirit of Rule 66(A)(i) of the Rules of Procedure and Evidence of the Special Court of Sierra Leone, the principal rule governing the production of evidence, and within the context of this Motion, the disclosure of evidentiary materials by the Prosecutor to the Defence.

B. The Motion seeks to enforce the provisions of Rule 66(A)(i) of the Rules of Evidence and Procedure regarding the time limits for disclosure by the Prosecution, record the Defence's objections to non-compliance of the Prosecution with the aforesaid rules, followed by a prayer seeking the consequential statutory relief under the said Rule 5 of the Rules of Procedure and Evidence for non-compliance.

## **II ARGUMENT**

### **RULES**

- i) Rule 73 of the Rules of Procedure and Evidence of the Special Court of Sierra Leone. (Attached as Index of Attachment **ONE**).
- ii) Rule 66(A)(i) of the Rules of Procedure and Evidence of the Special Court of Sierra Leone. (Attached as Index of Attachment **TWO**).
- iii) Rule 5 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone. (Attached as Index of Attachment **THREE**).

### III INHERENT JURISDICTION

The Inherent Jurisdiction of the Trial Chamber of the Special Court for Sierra Leone.

### IV ARTICLES

Article 1 of the Practice Direction on Disclosure by the Prosecution Pursuant to Rule 66 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone. (Attached as Index of Attachment **FOUR**).

### V FACTUAL BASIS FOR THE MOTION

The factual basis for this motion originates from the prosecution's continuous violations of the provisions of Rule 66(A)(i) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone. On or around March 17, 2003 the Applicant herein made his initial appearance before Judge Benjamin ITOE, sitting as a single Judge of the Trial Chamber, in accordance with Rule 61 of the Rules of Procedure and Evidence regarding the initial appearance of accused persons and their plea. After the initial appearance of the accused the Prosecution was required by law to disclose specified evidentiary materials to the Defence within 30 days after the initial appearance. On the available facts, the 30 day period envisaged by the said Rule 66(A)(i) has expired by the effusion of time, yet the Prosecution has nevertheless continued to disclose evidence of the nature specified in the said Rule 66(A)(i) without an Order of the Trial Chamber and in the absence of any evidence showing a proof of good cause.

The defence will rely on the affidavit of Ayo Max-Dixon sworn to on the 22<sup>nd</sup> day of March, 2004 at 11.30 o'clock in the forenoon which is hereby attached as Index of Attachment FIVE. The Defence will also rely on paragraphs 2 to 10 inclusive of the said affidavit of Ayo Max-Dixon.

### VI. LEGAL BASIS FOR THE MOTION

1. The enabling authority for this Motion is rooted in Rule 73(A) of the Rules of Procedure and Evidence of the Special Court of Sierra Leone which

states as follows:

*“ Subject to Rule 72, either party may move before a Trial Chamber for appropriate ruling or relief after the initial appearance of the accused. The Trial Chamber, or a Judge designated by the Chamber from among its members, may rule on such motions having heard the parties in open Court. The Trial Chamber may request that the parties submit written submissions in support of a motion ”.*

2. Rule 66(A)(i) of the Rules of Procedure and Evidence provides as follows:

*“ Subject to the provisions of Rules 53, 69, and 75, the Prosecutor shall:*

- (i) *Within 30 days of the initial appearance of an accused, disclose to the Defence copies of the statements of all witnesses whom the Prosecutor intends to call to testify and all evidence to be presented pursuant to Rule 92 bis at trial. Upon good cause being shown, a judge of the Trial Chamber may order that copies of the statements of additional prosecution witnesses be made available to the defence with a prescribed time. “*

3. The operative elements of the preceding rule are two-fold:

- i) That the Prosecutor **SHALL** (*emphasis is mine*) within 30 days of the **INITIAL APPEARANCE** (*emphasis is mine*) of an accused, disclose to the Defence copies of the statements of **ALL** (*emphasis is mine*) witnesses whom the Prosecutor intends to call to testify and **ALL** (*emphasis is mine*) evidence to be presented pursuant to Rule 92 bis.
- ii) Upon **GOOD CAUSE** (*emphasis is mine*) being shown, a judge of the Trial Chamber **MAY ORDER** that copies of the statements of additional prosecution witnesses be made available to the defence within a prescribed time.

4. The defence submits further that the word “shall” in the aforesaid Rule 66(A)(i) commands a mandatory effect. The accused made his initial appearance in this case on or around March 17, 2003. It is exactly one year and five days today since the accused made his initial appearance and yet the

Prosecution continues to unleash an unceasing avalanche of witness statements, most recently yesterday, March 18, 2004, when an additional 280 pages of witness statements were served on the Defence. Prior to that, voluminous witness statements were served in June 2003, and at various times in the months of February and March of 2004, respectively.

5. The Defence submits that the Prosecution is in clear breach of the first leg of Rule 66(A)(i) of the Rules of Evidence and Procedure which requires that, all such statements be made available to the defence within 30 days of the initial appearance of the accused. The provision is mandatory and not discretionary.
6. The Defence submits further that, in as much as it recognises the Prosecution's statutory continuing disclosure obligations under Rule 66 and Rule 68 of the Rules of Procedure and Evidence of the Special Court of Sierra Leone, the continuing obligations must be exercised in accordance with the law and due process of the Court, and such requires the Prosecution to obtain an order from the court permitting it to disclose additional evidentiary material in accordance with Rule 66(A)(i) of the Rules of procedure and Evidence of the Special Court of Sierra Leone.
7. The Defence contends that the prosecution cannot, with respect, use its statutory continuing disclosure obligations under Rule 66 and Rule 68 of the Rules of Procedure and Evidence of the Special Court of Sierra Leone as a shield for its continuing non-compliance, nor as a sword to strike out its mandatory obligation under Rule 66(A)(i) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.
8. It is further submitted that upon an application to show good cause for the purpose of obtaining an order to disclose additional evidence the presiding Judge has discretion and is vested with the necessary power to grant the order if so requested. The operative part of the rule provides that upon a showing of good cause, a Judge of the Trial Chamber may order that copies of additional prosecution witnesses be made available to the defence within a prescribed time.

9. The Defence submits that a true reading of Rule 66(A)(i) allows disclosure to be made to the Defence after the 30 day time limitation, but only upon the Prosecutor successfully showing **GOOD CAUSE** (*emphasis is mine*), and obtaining an order from the Trial Chamber or Judge to that effect. To that extent, it can be argued at least persuasively, that the second leg of Rule 66(A)(i) of the Rules of Evidence of the Special Court of Sierra Leone is designed to provide an ameliorating relief, when necessary, to the strict time-limits imposed by the first leg of the said Rule 66(A)(i).
10. Article I of the said Practice Direction provides that the “*Prosecutor shall disclose materials to the defence in accordance with Rule 66 of the Rules.*”
11. It is the submission of the Defence that the Practice Direction highlights and reinforces the importance the Special Court for Sierra Leone attaches to Rule 66 of the Rules of Procedure and Evidence, which rule, the Prosecution has and continues to disregard.
12. It is further submitted that, the historical purpose of Rule 66(A)(i) is “to broaden the rights of suspects and accused persons” and more significantly, “to introduce certain time-limits within which the Prosecutor must disclose to the defence the supporting material which accompanied the indictment and witness statements.”<sup>1</sup>
13. Section 5 of the said Rules of Procedure and Evidence of the Special Court for Sierra Leone deals with non-compliance with the rules of this court and provides that, “*Where an objection on the ground of non-compliance with the Rules and Regulations is raised by a party at the earliest opportunity, the Trial Chamber or the Designated Judge may grant relief.*”
14. The Defence further submits that the objection to the Prosecution’s non-compliance with the rules has been raised at the earliest opportunity and for

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<sup>1</sup> See John R.W.D. Jones and Steven Powles, *International Criminal Practice* (2003) at 648-649, discussing the historical origins and objects of Rule 66(A). (hereinafter Jones and Powles)

good cause. The Defence by this Motion therefore prays the Trial Chamber to grant the RELIEFS sought in this application.

15. The Defence submits that the Prosecution has failed to fulfil its disclosure obligations under the Rules and therefore ought to be sanctioned<sup>2</sup>. In the ICTY *Decision on Motion of Defendant Anto Furundzija to preclude testimony of certain Prosecution witnesses*<sup>3</sup> “ rendered by the Trial Chamber in *Furundzija* on April 1998, the trial Chamber expressed its “**grave concern at the unjustifiable failure of the Prosecution to comply with its disclosure obligations**” (*emphasis is mine*) under Rule 66.<sup>4</sup>

## VII INHERENT JURISDICTION

On the question of inherent jurisdiction Counsel for the Applicant submits that this doctrine is applicable both in Civil and Criminal cases, although in the latter case opinions differ as to whether limitations exist. See in this connection I.H. Jacob: “The inherent jurisdiction of the Court” (1970) 23 Current Legal Problems page 23; Cohen: *Due Process of Law* (1977), Chapter 6, page 343; *Connelly v. Director of Public Prosecutions* (1964) 2 AER 401; and *R v Jefferies* (1968) 3 All ER 238.

In his Article on the subject Master Jacob had this to say at pages 27, 28, under the rubric “Juridical Basis of Inherent Jurisdiction”:

“.... The essential character of a superior court of law necessarily involves that it should be invested with a power to maintain its authority and to prevent its process being obstructed and abused. Such a power is intrinsic in a superior court: it is its very life-blood, its very essence, its eminent attribute. Without such a power, the Court would have form but lack substance. The jurisdiction which is inherent in a Superior Court of law is that which enables it to fulfil itself as A Court of Law. The Juridical basis of this jurisdiction is therefore the authority of the judiciary to uphold, to protect and to fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner.”

<sup>2</sup> Jones and Powels at page 654, paragraph 8.5.334, on sanctioning the Prosecution for failure to comply with its disclosure obligations.

<sup>3</sup> *Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1-T, Trial Chamber, Judgement, 10 December 1998. (hereinafter *Furundzija*).

<sup>4</sup> Jones and Powels, at pages 654, 655, paragraphs 8.5.334 to 8.5.336 and paragraphs 8.5.340 to 8.5.342.

Based on the foregoing reasons canvassed above, and in particular the blatant and continuous breach by the Prosecution of Rule 66(A)(i) of the Rules of Procedure and Evidence the Defence submits that this a proper case for the Trial Chamber to proceed to exercise its discretion in granting the below remedies and consequential orders if only to guarantee the rights of the Accused in the above matter.

## VII ORDERS SOUGHT

In the light of the afore-mentioned serious breaches of Rule 66(A)(i) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone, the Applicant herein requests the Designated Judge OR the Trial Chamber of the Special Court for Sierra Leone to issue the following Orders:

- 1) That all witnesses statements filed after April 18, 2003 be excluded or expunged from the case file of the accused herein Tamba Alex Brima.
- 2) That the Trial Chamber do graciously grant the necessary consequential orders to give effect to the reliefs stated in (1) above.
- 3) In the alternative, that the prosecution be barred or restrained from further disclosure of evidentiary material as specified in the said rule except on show of good cause and pursuant to an order or orders of this Honourable Trial Chamber.
- 4) That the Trial Chamber do graciously grant an order setting out a limitation period within which the Prosecution ought properly to put an end to any further disclosure of evidentiary material as required by the said Rules of Procedure and Evidence of the Special Court of Sierra Leone.
- 5) That in the light of the foregoing matters and reasons and arguments canvassed above that the Trial Chamber do graciously proceed to grant a further order extending the time

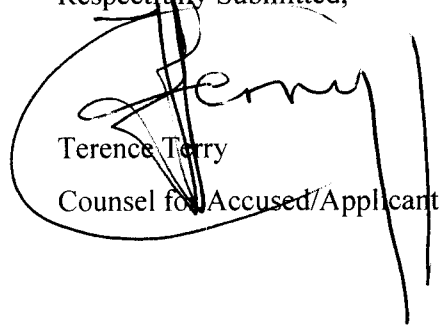


within which the Defence should take steps to respond to the Prosecution's Pre-Trial Brief with the express caveat that such an exercise shall be carried out by the Defence only after Prosecution has completed disclosure within the letter and spirit of both the statute of the Special Court and the Rules of Procedure and Evidence of the Special Court for Sierra Leone.

- 6) Any other relief that the Honourable Trial Chamber may deem just in the circumstances in order to ensure and guarantee a fair trial for the Applicant Accused herein.
  
- 7) An interim stay of all further proceedings except those envisaged under Orders 1 to 6 above prayed for herein.

Freetown, March 22, 2004

Respectfully Submitted,



Terence Terry  
Counsel for Accused/Applicant

**DEFENCE INDEX OF ATTACHMENTS**

1. Rule 73 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.
2. Rule 66(A) (i) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.
3. Rule 5 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.
4. Practice Direction on Disclosure by the Prosecutor pursuant to Rule 66 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone.
5. Affidavit of Ayo Max-Dixon in support of the Defence Motion sworn to at the Law Courts Building Siaka Stevens Street, Freetown on the 22<sup>nd</sup> day of March 2004 at 11:30 o'clock in the forenoon.

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days of the date of the reference to the Appeals Chamber;

(ii) any response to submissions filed under Sub-Paragraph (i) above shall be filed within 14 days;

(iii) any reply to the response shall be filed within 7 days.

Any extension of time may be granted by the Appeals Chamber.

(H) References by the Trial Chamber pursuant to Sub-Rules (E) and (F) above shall not operate as a stay of proceedings. Such references shall not operate as a stay of the trial itself unless the Trial or Appeal Chamber so orders.

(I) This Rule shall be deemed to have entered into force on the 7th of March, 2003.

## **Part VI - PROCEEDINGS BEFORE TRIAL CHAMBERS**

### **Section 1: General Provisions**

#### **Rule 73: Motions**

(A) Subject to Rule 72, either party may move before the Designated Judge or a Trial Chamber for appropriate ruling or relief after the initial appearance of the accused. The Designated Judge or the Trial Chamber, or a Judge designated by the Trial Chamber from among its members, shall rule on such motions based solely on the written submissions of the parties, unless it is decided to hear the parties in open Court.

(B) Decisions rendered on such motions are without interlocutory appeal. However, in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal. Such leave should be sought within 3 days of the decision and shall not operate as a stay of proceedings unless the Trial Chamber so orders.

#### **Rule 73 bis: Pre Trial Conference**

(A) The Trial Chamber or a Judge designated from among its members shall hold a Pre Trial Conference prior to the commencement of the trial.

(B) At the Pre Trial Conference the Trial Chamber or a Judge designated from among its members may order the Prosecutor, within a time limit set by the Trial Chamber or the said Judge, and before the date set for trial, to file the following:

- (i) A pre trial brief addressing the factual and legal issues;
- (ii) Admissions by the parties and a statement of other matters not in dispute;
- (iii) A statement of contested matters of fact and law;
- (iv) A list of witnesses the Prosecutor intends to call with:
  - (a) The name or pseudonym of each witness;
  - (b) A summary of the facts on which each witness will testify;

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has been a material change in circumstances.

(D) The Judge or Trial Chamber may impose such conditions upon the granting of bail to the accused as it may determine appropriate, including the execution of a bail bond and the observance of such conditions as are necessary to ensure the presence of the accused at trial and the protection of others.

(E) Any decision rendered under this Rule shall be subject to appeal in cases where leave is granted by a Single Judge of the Appeals Chamber, upon good cause being shown. Applications for leave to appeal shall be filed within seven days of the impugned decision.

(F) If necessary, the Trial Chamber may issue a warrant of arrest to secure the presence of an accused who has been granted bail or is for any other reason at large. The provisions of Section 2 of Part V shall apply.

(G) The Prosecutor may appeal a decision to grant bail. In the event of such an appeal, the accused shall remain in custody until the appeal is heard and determined.

(H) Appeals from bail decisions shall be heard by a bench of at least three Appeals Chamber Judges.

### **Rule 65 bis: Status Conferences**

A status conference may be convened by the Designated Judge or by the Trial Chamber. The status conference shall:

- (i) organize exchanges between the parties so as to ensure expeditious trial proceedings;
- (ii) review the status of his case and to allow the accused the opportunity to raise issues in relation thereto.

### **Section 3: Production of Evidence**

#### **Rule 66: Disclosure of materials by the Prosecutor**

(A) Subject to the provisions of Rules 53, 69 and 75, the Prosecutor shall:

(i) Within 30 days of the initial appearance of an accused, disclose to the Defence copies of the statements of all witnesses whom the Prosecutor intends to call to testify and all evidence to be presented pursuant to Rule 92 bis at trial. Upon good cause being shown, a Judge of the Trial Chamber may order that copies of the statements of additional prosecution witnesses be made available to the defence within a prescribed time.

(ii) At the request of the defence, subject to Sub-Rule (B), permit the defence to inspect any books, documents, photographs and tangible objects in his custody or control, which are material to the preparation of the defence, upon a showing by the defence of categories of, or specific, books, documents, photographs and tangible objects which the defence considers to be material to the preparation of a defence, or to inspect any books, documents, photographs and tangible objects in his custody or control which are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.

(B) Where information or materials are in the possession of the Prosecutor, the disclosure of which may prejudice further or ongoing investigations, or for any other reasons may be contrary to the public interest or affect the security interests of any State, the Prosecutor may apply to a Judge designated by the President sitting ex parte in camera to be relieved from the obligation to disclose

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**Transaction:** A number of acts or omissions whether occurring as one event or a number of events, at the same or different locations and being part of a common scheme, strategy or plan;

**Victim:** A person against whom a crime over which the Special Court has jurisdiction has allegedly or has been found to have been committed.

(B) In the Rules, the masculine shall include the feminine and the singular the plural, and vice-versa.

### **Rule 3: Working Language**

(A) The working language of the Special Court shall be English.

(B) The accused or suspect shall have the right to use his own language.

(C) Any person appearing before or giving evidence to the Special Court, who does not have sufficient knowledge of English, may ask for permission to use his own language.

(D) The Registrar shall make any necessary arrangements for interpretation and translation.

### **Rule 4: Sittings away from the Seat of the Special Court**

A Chamber or a Judge may exercise their functions away from the Seat of the Special Court, if so authorized by the President. In so doing, audio or video-link technology, email or other available electronic instruments may be used if authorised by the President or Presiding Judge.

### **Rule 5: Non-compliance with the Rules**

Where an objection on the ground of non-compliance with the Rules or Regulations is raised by a party at the earliest opportunity, the Trial Chamber or the Designated Judge may grant relief.

### **Rule 6: Amendment of the Rules**

(A) Proposals for amendment of the Rules may be made by a Judge, the Prosecutor, the Registrar, the Defence Office and by the Sierra Leone Bar Association or any other entity invited by the President to make proposals for amendments.

(B) Proposals for amendment may be adopted at a Plenary Meeting of the Special Court.

(C) An amendment of the Rules may be adopted otherwise than as stipulated in Sub-Rule (B) above, provided it is approved unanimously by any appropriate means either done in writing or confirmed in writing.

(D) An amendment shall, unless otherwise indicated, enter into force immediately. The Registrar shall publish the amendment by appropriate means.

### **Rule 7: Time limits**

(A) Unless otherwise ordered by a Chamber or by a Designated Judge, or otherwise provided by the Rules, where the time prescribed by or under the Rules for the doing of any act shall run from the day after the notice of the occurrence of the event has been received in the normal course of transmission by the Registry, counsel for the Accused or the Prosecutor as the case may be.

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ATTENTION: MR. TERENCE M. TERRY Room 4  
024 SCSL-2004-16-PT 346  
(346-347) 691



SPECIAL COURT FOR SIERRA LEONE

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Practice Direction on Disclosure by the Prosecutor  
Pursuant to Rule 66 of the Rules of Procedure and Evidence of  
the Special Court for Sierra Leone

Adopted 23 February 2004

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SPECIAL COURT FOR SIERRA LEONE  
CERTIFIED TRUE COPY OF THE ORIGINAL.  
SEEN BY ME  
NAME Neil Gibson  
SIGNATURE [Signature] DATE 23.2.04

SPECIAL COURT FOR SIERRA LEONE  
**RECEIVED**  
COURT RECORDS  
2.3 FEB 2004  
NAME Neil Gibson  
SIGN [Signature]  
TIME 9:32

ATTENTION MR. TERENCE M. TERRY  
Room 4

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#### PREAMBLE

The Registrar of the Special Court for Sierra Leone,

CONSIDERING the Statute of the Special Court for Sierra Leone (hereinafter the "Statute") 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 thereof;

CONSIDERING the Rules of Procedure and Evidence of the Special Court for Sierra Leone (hereinafter the "Rules") as applicable pursuant to Article 14 of the Statute, and in particular Rule 33(D) and Rule 66 thereof;

HEREBY ISSUES, in consultation with the President of the Special Court, the Practice Direction on Disclosure by the Prosecutor pursuant to Rule 66 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (hereinafter the "Practice Direction"):

#### ARTICLE 1. GENERAL

The Prosecutor shall disclose materials to the Defence in accordance with Rule 66 of the Rules.

#### ARTICLE 2. DISCLOSURE TO THE REGISTRY

1. In the case of an accused who is still undergoing the process of being assigned a Counsel at the time of the disclosure, the Prosecutor shall submit the disclosure materials to the Court Management Section. The Court Management Section shall seal, date and store in a secure location the disclosed materials.
2. The Court Management Section shall forward the sealed materials to the assigned Counsel as soon as practicable after his or her assignment. Disclosure shall be deemed to take effect upon receipt of the materials by the assigned Counsel.

#### ARTICLE 3. ENTRY INTO FORCE

The Practice Direction shall enter into force on 23 February 2004.



ROBIN VINCENT  
REGISTRAR

Dated 23 February 2004

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**THE SPECIAL COURT FOR SIERRA LEONE  
FREETOWN – SIERRA LEONE**

Before: Judge Bankole Thompson  
Judge Itoe  
Judge Boutet

Registrar: Mr. Robin Vincent

Date filed: March 22, 2004

**THE PROSECUTOR**

**Against**

**ALEX TAMBA BRIMA also known as TAMBA ALEX BRIMA  
also known as GULLIT**

**CASE NO. SCSL-2004-16-PT**

**AFFIDAVIT IN SUPPORT**

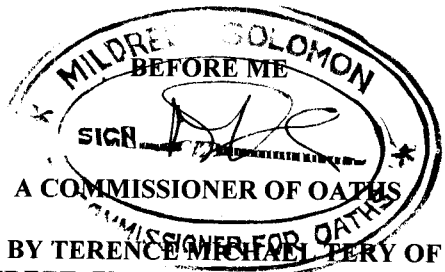
I, **AYO MAX-DIXON** of 25 Pownall Street, Freetown in the Western Area of the Republic of Sierra Leone Managing Clerk in the office of Terence Michael Terry Counsel for the Applicant herein make oath and say as follows:-

1. That I am the Managing Clerk in the office of Terence Michael Terry Counsel for the Applicant herein and I am duly authorized to make this affidavit for and on behalf of the Applicant herein.
2. That on or around March 17, 2003 the Accused/Applicant herein made his initial appearance before Judge Benjamin ITOE, sitting as a single Judge of the Trial Chamber to take his plea.
3. That I am informed by Mr Terence Michael Terry Counsel for the Applicant herein and I verily believe same to be true that within 30 days after the initial appearance of the Accused/Applicant herein, the Prosecution was to disclose specified evidentiary materials to the Defence.
4. That I am also informed by Mr. Terence Michael Terry Counsel for the Applicant herein and I verily believe that the 30-day limitation period has elapsed without the Prosecution delivering all the evidentiary materials as required.

5. That I am further informed by Mr. Terence Michael Terry Counsel for the Applicant herein and I verily believe that even though the time limitation period has elapsed the prosecution continues to disclose additional discovery materials without an order of the Trial Chamber as required by law.
6. That I am further informed by Mr. Terence Michael Terry Counsel for the Applicant herein and I verily believe that additional discovery materials were served on the Defence in June 2003, and at various times in the months of February and March of 2004.
7. That I am also informed by Mr. Terence Michael Terry Counsel for the Applicant herein and I verily believe that the Prosecution's continuing disclosure of evidentiary materials without a defined time frame is unduly prejudicing and disruptive of the Defence's efforts to prepare the Defence of the Applicant herein in sufficient time prior to the trial.
8. That I am further informed by Mr. Terence Michael Terry Counsel for the Applicant herein and I verily believe that the Application herein is to protect the statutory rights of the Applicant herein and therefore constitute substantial and justifiable grounds for an exclusion of the discovery materials filed after the 30-day period as well as a stay on any further additional disclosure of discovery materials by the Prosecution.
9. That I am informed by Mr. Terence Michael Terry Counsel for the Applicant herein and I verily believe same to be true that it is in the interest of justice and ensuring a fair trial that the orders prayed for in this Application be granted.
10. That I make this affidavit in support of the Orders prayed for in the application herein.
11. That the contents of this affidavit are true to the best of my knowledge, information and belief.

SWORN TO AT LAW COURTS BUILDING FREETOWN  
 ON THE 22<sup>ND</sup> DAY OF MARCH 2004  
 AT 11:30 O'CLOCK IN THE FORE NOON

*Max Dixon*  
 DEPONENT  
 AYO MAX-DIXON



THIS AFFIDAVIT IS FILED BY TERENCE MICHAEL TERRY OF 4<sup>TH</sup> FLOOR, MARONG HOUSE, 11 CHARLOTTE STREET, FREETOWN COUNSEL FOR AND ON BEHALF OF THE APPLICANT HEREIN.