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SCSL - 04 - 16 - PT
(6735 - 6749)

6735

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
FREETOWN - SIERRA LEONE

Before: Judge Teresa Doherty, Presiding
Judge Richard Lussick
Judge Julia Sebutinde

Registrar: Mr. Robin Vincent

Date filed: 3 March 2005

THE PROSECUTOR

Against

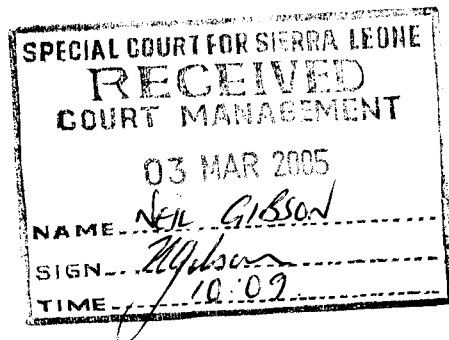
**ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
SANTIGIE BORBOR KANU**

CASE NO. SCSL - 2004 - 16 - PT

**PROSECUTION RESPONSE TO DEFENCE MOTION FOR DEFECTS IN
THE FORM OF THE INDICTMENT**

Office of the Prosecutor:
Luc Coté
Lesley Taylor
Boi-Tia Stevens
Millicent Stronge

Defence Counsel for Brima:
Kevin Metzger
Glenna Thompson



**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
FREETOWN – SIERRA LEONE**

THE PROSECUTOR

Against

**ALEX TAMBA BRIMA
BRIMA BAZZY KAMARA
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CASE NO. SCSL – 2004 – 16 – PT

**PROSECUTION RESPONSE TO DEFENCE MOTION FOR DEFECTS IN
THE FORM OF THE INDICTMENT**

I. BACKGROUND

1. On 15, 17 and 21 March 2003, the Accused, Tamba Brima, made his initial appearance on the original indictment, which formed part of Case No. SCSL-2003-06-I.
2. On 17 April 2003, pursuant to Rule 66(A)(i) of the Rules of Evidence and Procedure for the Special Court for Sierra Leone (the Rules) and the Court's Order on disclosure to the Registry dated 17 April 2003, the Prosecution transmitted to the Registry for disclosure to the Defence, the statements of Prosecution witnesses. The Registry subsequently disclosed the documents to the Defence on 31 May 2003 and the Defence received the materials on 3 June 2003. (*See proof of service of disclosure materials attached hereto as Annex A.*)

3. The Accused did not file any preliminary motion regarding defects in the form of the indictment in the period immediately following the initial appearance of the Accused or the receipt of the disclosed materials.
4. On 13 May 2004, the Prosecution filed an amended joint indictment¹ against the Accused and two others (Kamara and Kanu) to include a new count: Count 9. This count was based on existing factual allegations in the indictment. Pursuant to Rule 61, the Accused made an initial appearance on the Amended Joint Indictment on 17 May 2004.
5. Following this initial appearance, the Prosecution did not disclose additional statements in connection with the amended charge. In the request for leave to amend the indictment, filed on 9th February 2004, the Prosecution stated that no new materials in relation to the new count would be disclosed and, that for purposes of the new count, it was relying on material already disclosed to the Defence.
6. In the period immediately following the initial appearance of the Accused on the additional charge, the Accused did not file any motion contesting the form of the indictment.
7. On 18 February 2005, pursuant to the Decision on the Prosecution Application to Further Amend the Amendment Consolidated Indictment By Withdrawing Counts 15-18 dated 15 February 2005, the Prosecution filed a Further Amended Consolidated Indictment. The withdrawal of Counts 15-18 did not necessitate the disclosure of new witness statements.
8. On 1 March 2005 the Accused filed his motion for defects in the form of the indictment.

¹ Amended Consolidated Indictment, Case No. SCSL-2004-16-PT.

II. ARGUMENT

A. The Defence Motion is Time Barred

9. The Defence Motion must be rejected outright. The time at which the motion was filed is well past the period prescribed by Rule 72(A). Rule 72(A) provides that preliminary motions (enumerated under Rule 72(B)) shall be filed within 21 days following the disclosure by the Prosecutor to the Defence of all the material envisaged by Rule 66(A)(i).
10. Rule 66(A)(i) provides that within 30 days of the initial appearance of an accused, the Prosecution shall disclose the statements of all the witnesses it intends to call at trial. The statements which fall within the ambit of Rule 66(A)(i) are those in the possession of the Prosecution as at the time of the initial appearance of an accused. Rule 66 as amended on 29th May 2004 supports this position.²
11. Accordingly, the period for filing a preliminary motion based upon alleged defects in the form of the indictment expired on 24 June 2003. This is the date 21 days after the the Defence received the Rule 66(A)(i) disclosure materials, a date 21 months ago.
12. When an indictment is amended to include new charges, the Rules further provide for preliminary motions exclusively in relation to the new charges to be brought 10 days from the date of disclosure of materials envisaged in Rule 66(A)(i) pertaining to the new charge: see Rule 50(B) and subsections (i) to (iii). Therefore, even if preliminary motions were available in relation to the Amended Joint Indictment (and the Prosecution maintains they were not), such motions should have been filed at the latest by June 2004.

² cf Rules 66(A)(i) and(ii) as they existed prior to 29 May 2004

B. The Defence arguments have no merit

13. In the alternative, should the Defence application be deemed timely, the Prosecution submits that the application should be dismissed as it has no basis in law.
14. Issues similar to the ones which the Accused has raised have already been litigated by other defendants before this Court. In *Prosecutor v Kanu*³, Trial Chamber I elucidated important principles on the specificity of an indictment. In relation to dates and names of victims, the Court ruled that in international law in cases of mass crimes, the sheer scale of the events makes it impossible to give the identity of the victims and that dates of events need not be specific, but must be within a reasonable time frame. Of particular note, is the fact that the indictment at issue in *Kanu* is almost identical to the current indictment, and contains the same set of dates and the omission of names of victims.
15. The Defence has provided no cogent justification why this Chamber should now deviate from these well established principles.
16. The Defence asserts in paragraph 5 of its motion that the Prosecution has pleaded alternative but mutually exclusive forms of liability with regards to liability founded on command responsibility and individual responsibility which also includes “joint criminal responsibility”. The Prosecution submits that this approach is legally acceptable, having regard to the view expressed by the Court in *Prosecutor v Sesay*⁴, that both forms of criminal culpability are not mutually exclusive.
17. Counts 1-2 are sufficiently precise and not duplicitous of other charges in the indictment. The elements of these charges, as indicated in the Prosecution pre-trial

³ Case No. SCSL-2003-13-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 19 November 2003.

⁴ Case No. SCSL-2003-05-PT, Decision and Order on Defence Preliminary Motion for Defects in the Form of the Indictment, 13 October 2003, para. 7(xii).

brief, are different from the elements of other charges in the indictment and also protect a different societal interest from other charges in the indictment.

18. For counts 6-9, the incidents relied upon are duly stated in paragraphs 51-57. The Prosecution reiterates that it is rudimentary law that an indictment must plead facts and not evidence. The Defence objection to the joint term AFRC/RUF is based merely on the denial of any joint participation with the RUF. The Prosecution submits that this fact in issue is one to be contested at trial.
19. For counts 10 – 11, the incidents relied upon are duly stated in paragraphs 58 – 64 of the indictment. Further the Prosecution makes reference to the propositions of law in relation to the requirements for an indictment as laid down by the Court in *Prosecutor v Issa Hassan Sesay*⁵.
20. It is the right of the Accused to dispute allegations in the indictment. However, the forum for contesting the veracity of the allegations in all counts in the indictment is at trial and not by way of a late motion for defects in indictment. Thus with respect to the Defence arguments about counts 13 and 14, the Prosecution submits that they are not of moment.

III. CONCLUSION

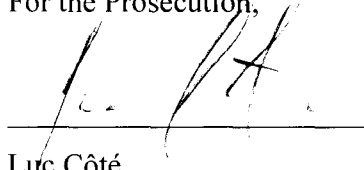
21. For the foregoing reasons, the Prosecution requests that this Honorable Chamber not consider the Defence motion as it is time barred, or, in the alternative, that the Defence motion be dismissed in its entirety as being without merit.

⁵ *Id* at paras. 7-25.

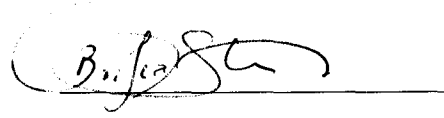
Prosecutor against Tamba Brima et al., Case No. SCSL-2004-16-PT

Freetown, 3 March 2005.

For the Prosecution,



Luc Côté
Chief of Prosecutions



Boi-Tia Stevens
Associate Trial Counsel

ANNEX A

PROOF OF SERVICE OF DISCLOSURE MATERIALS



SPECIAL COURT FOR SIERRA LEONE
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

COURT SERVICE – FORM 1 – FILING COVER SHEET
FOR OFFICIAL FILING OF DOCUMENTS WITH THE COURT

To: The Listing Officer, Court Management Section, Registry	
For filing and onward transmission to:	
<input type="checkbox"/> Designated Judge <input type="checkbox"/> Trial Chamber <input type="checkbox"/> Appeals Chamber	
Filed by:	<input type="checkbox"/> Chamber <input type="checkbox"/> Defence <input checked="" type="checkbox"/> Prosecutor <input type="checkbox"/> Other: <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <div style="text-align: center;"> <input type="checkbox"/> Judge (name) </div> <div style="text-align: center;"> Luc Cote (name) </div> <div style="text-align: center;"> (name) </div> </div>
Case Name:	The Prosecutor vs. Alex Tamba Brima
Case Number:	SCSL-2003-06-PT
Dates:	Filing date: 20/6/03 Document's date: 3/6/03
Pages:	Total No. of Pages: 4 No. of Annexes: 2
Annexes:	Please list particulars of annexes: (1) Letter from Registrar to Defence Counsel TERRY, dated: 31/5/03, Re: Service of Disclosure materials (2) Letter from Prosecution to Defence Counsel TERRY forwarding disclosed materials, dated: 17/4/03
Document's Full Title	Disclosure Receipt



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SPECIAL COURT FOR SIERRA LEONE

LA SCAN DRIVE • OFF SPUR ROAD • FREETOWN • SIERRA LEONE
PHONE: +1 212 963 9915 Extension: 178 7100 or +39 0831 257100 or +232 22 236527
FAX: Extension: 174 6998 or +39 0831 236998 or +232 22 295998

31 May 2003

REG/.../2003

Mr. Terence Terry
Defence Counsel
Special Court for Sierra Leone

Re: Service of Disclosure Materials in accordance with ruling of Judge Bankole Thompson the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non Public Disclosure, Prosecutor v. Alex Tamba Brima, SCSL-2003-06-PT

Pursuant to the "Order on Disclosure to the Registry" of 17 April 2003 and the "Orders for Immediate Protective Measures for Witnesses and Victims and for Non Public Disclosure" on 23 May 2003 in the case of Alex Tamba Brima, SCSL-2003-06-PT, the Registry is serving you with the sealed package comprising of the disclosure materials.

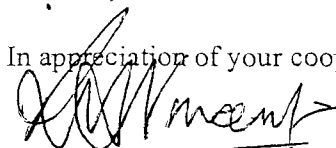
In accordance with the "Orders for Immediate Protective Measures for Witnesses and Victims and for Non Public Disclosure" of 23 May 2003, particularly orders (g) and (h) which stipulate:

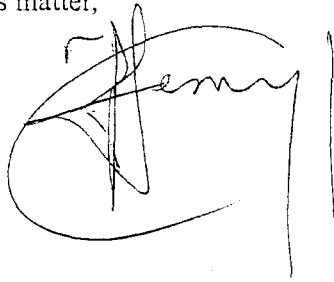
(g) That the Defence shall maintain a log indicating the name, address and position of each person or entity which receives a copy of, or information from, a witness statement, interview report or summary of expected testimony, or any other non-public material, as well as the date of disclosure; and that the Defence shall ensure that the person to whom such information was disclosed follows the order of non-disclosure;

(h) That the Defence provide to the Chamber and the Prosecution a designation of all persons working on the Defence team who, pursuant to order (f) above, have access to any information referred to in order (a) through (e) above (reference herein being made to the Motion), and requiring the Defence to advise the Chamber and the Prosecution in writing of any changes in the composition of this Defence team;

I request you to prepare and maintain a log as required in order (g) and to provide the Chamber and the Prosecution a designation of all persons working on the Defence team as required in order (h). Until such time, all disclosure materials shall be received and viewed only by those counsel who have filed their power of attorney with the Registrar for the Accused, Alex Tamba Brima.

In appreciation of your cooperation in this matter,


ROBB VINCENT
The Registrar



3rd June 2003



6745

SPECIAL COURT FOR SIERRA LEONE

1A SCAN DRIVE • OFF SPUR ROAD • FREETOWN • SIERRA LEONE
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Mr. Terence Terry, Counsel for Alex Tamba Brima
Marong House, 4th Floor
11 Charlotte Street
Freetown, Sierra Leone

17 April 2003

Re: The Prosecutor Against Alex Tamba Brima aka Tamba Alex Brima aka Gullit,
SCSL-2003-06- PT


Dear Sir:

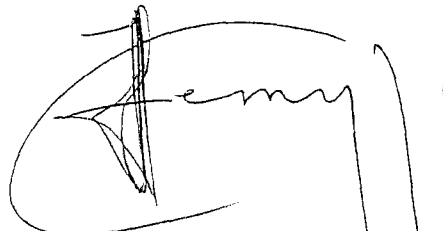
Pursuant to its continuing disclosure obligations, the Prosecution hereby serves you with the attached materials. The Prosecution has also provided you with a detailed receipt itemizing the materials disclosed. Please review the receipt and materials provided, sign the receipt and return it to the Prosecution as soon as possible. Please advise the Prosecution in writing of any missing materials.

The disclosed material is intended solely for your use in connection with the above-captioned case. The material is not to be disclosed to the public or the media, nor kept for personal use. Should you withdraw from representation of this Accused prior to the conclusion of proceedings in this case, please remit the disclosed materials to your replacement counsel or to the Defence team. We also request that, at the conclusion of proceedings in this case, all material disclosed to the defence team by the Prosecution be remitted to the Registry for appropriate disposition.

Thank you for your cooperation.

Very truly yours,


Brenda J. Hollis
Senior Trial Counsel


3rd June 2003



SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

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**PROSECUTOR Against ALEX TAMBA BRIMA
 CASE NO. SCSL-2003-06-PT**

RECEIPT

Pursuant to the prosecution's disclosure obligations, redacted statements, interview reports and summaries of expected testimonies from witnesses bearing the following pseudonyms were submitted to Mr. TERENCE TERRY, counsel for the accused, on
 _____ 2003:

No.	Witness Pseudonym	Date of Interview/Summary	No. of Pages
1	TF1-001	10 January 2003	5
2	TF1-002	27 November 2002	2
3	TF1-003	27 November 2002	4
4	TF1-004	27 November 2002	4
5	TF1-005	25 November 2002	7
6	TF1-006	26 November 2002	6
7	TF1-007	25 November 2002	4
8	TF1-008	26 November 2002	3
9	TF1-009	25 November 2002	5
10	TF1-010	24 November 2002	4
11	TF1-011	24 November 2002	7
12	TF1-012	16 November 2002	10
13	TF1-013	18 November 2002	7
14	TF1-014	16 November 2002	5
15	TF1-015	15 November 2002	13
16	TF1-016	18 November 2002	5
17	TF1-017	16 November 2002	10
18	TF1-018	15 November 2002	8
19	TF1-019	14 November 2002	5
20	TF1-020	16 April 2003 (Summary)	1
21	TF1-021	25 February 2003	7
22	TF1-022	26 February 2003	6
23	TF1-023	16 February 2003	10
24	TF1-024	20 February 2003	5
25	TF1-025	19 February 2003	3
26	TF1-026	25 February 2003	9
27	TF1-027	19 February 2003	5
28	TF1-028	18 January 2003	15
29	TF1-029	26 February 2003	6
30	TF1-030 (Not Assigned)		

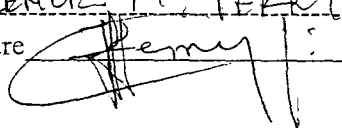
31	TF1-031	19 January 2003	5
32	TF1-032	18 January 2003	5
33	TF1-033	11 April 2003 (Summary)	1
34	TF1-034	18 November 2002	11
35	TF1-035	16 November 2002	10
36	TF1-036	14 October 2002	4
		12 October 2002	4
37	TF1-037	31 January 2003	8
38	TF1-038	3 February 2003	4
39	TF1-039	4 February 2003	5
40	TF1-040	19 January 2003	5
41	TF1-041	16 January 2003	5
42	TF1-042	16 April 2003 (Summary)	2
43	TF1-043	16 April 2003 (Summary)	1
44	TF1-044	16 April 2003 (Summary)	1
45	TF1-045	5 March 2003 (Summary)	1
46	TF1-046	9 April 2003 (Summary)	2
47	TF1-047	27 November 2002	5
48	TF1-048	27 November 2002	4
49	TF1-049	25 November 2002	5
50	TF1-050	10 January 2003	5
51	TF1-051	11&12 January 2003	3
52	TF1-052	24 November 2002	5
53	TF1-053	26 November 2002	6
54	TF1-054	26 November 2002	7
55	TF1-055	18 January 2003	5
56	TF1-056	18 January 2003	5
57	TF1-057	18 January 2003	10
58	TF1-058	18 January 2003	7
59	TF1-059	19 January 2003	5
60	TF1-060	2 February 2003	7
61	TF1-061	1 February 2003	6
62	TF1-062	16 October 2002	5
63	TF1-063	31 January 2003	5
64	TF1-064	2 December 2002	6
65	TF1-065	14 November 2002	11
66	TF1-066	2 December 2002	4
67	TF1-067	2 December 2002	7
68	TF1-068	14 November 2002	5
69	TF1-069	4 December 2002	4
70	TF1-070	1 December 2002	6
71	TF1-071	16 April 2003 (Summary)	2
72	TF1-072	No Date	6
73	TF1-073	18 November 2002	5
74	TF1-074	16 November 2002	6
75	TF1-075	17 November 2002	4
76	TF1-076	3 December 2002	4
77	TF1-077	16 November 2002	4
78	TF1-078	14 November 2002	10
79	TF1-079	17 November 2002	8
80	TF1-080	14 November 2002	5

81	TF1-081	14 April 2003	1
82	TF1-082	14 April 2003	1
83	TF1-083	3 March 2003	9
84	TF1-084	22 February 2003	8
85	TF1-085	23 February 2003 & 27 February 2003	10
86	TF1-086	26 February 2003	6
87	TF1-087	26 February 2003	4
88	TF1-088	11 November 2002	5
89	TF1-089	9 November 2002	3
90	TF1-090	18 November 2002	5
91	TF1-091	14 December 2002	8
92	TF1-092	5 December 2002	7
93	TF1-093	16 April 2003 (Summary)	1
94	TF1-094	29 October 2002	5
95	TF1-095	5 December 2002	2
96	TF1-096	10 March 2003	4
97	TF1-097	5 March 2003	10
98	TF1-098	7 March 2003	11
99	TF1-099	3 March 2003	5
100	TF1-100	27 March 2003	7
101	TF1-101	19 March 2003	5
102	TF1-102	25 March 2003	8
103	TF1-103	16 April 2003 (Summary)	1
104	TF1-104	13 February 2003	7
		18 February 2003	8
105	TF1-105	29 March 2003	5
106	TF1-106	16 April 2003 (Summary)	1
107	TF1-107	24 November 2002	4
108	TF1-108	30 March 2003 (Interview Report)	21
109	TF1-109	28 March 2003 (Interview Report)	15
110	TF1-110	29 March 2003 (Interview Report)	13
111	TF1-111	28 March 2003 (Interview Report)	12
112	TF1-112	28 March 2003 (Interview Report)	8
113	TF1-113	27 March 2003 (Interview Report)	13
114	TF1-114	26 March 2003 (Interview Report)	18
115	TF1-115	26 March 2003 (Interview Report)	11
116	TF1-116	26&27 March 2003 (Interview Report)	6
117	TF1-117	17 January 2003	11
118	TF1-118	17 January 2003	5
119	TF1-119	26 March 2003	3
120	TF1-120	31 January 2003	5

121	TF1-121	4 February 2003	4
122	TF1-122	30 January 2003	9
123	TF1-123	28 September 2002	5
124	TF1-124	13 September 2002	9
125	TF1-125	30 January 2003	11
126	TF1-126	1 February 2003	6
127	TF1-127	12 September 2002	9
128	TF1-128	4 February 2003	3
129	TF1-129	12 April 2003 (Summary)	1
130	TF1-130	10 April 2003	11
131	TF1-131	6 April 2003 (Interview Report)	31
132	TF1-132	5 April 2003 (Interview Report)	9
133	TF1-133	3 April 2003 (Interview Report)	6
134	TF1-134	5 April 2003 (Interview Report)	9
135	TF1-135	5 April 2003 (Interview Report)	11
136	TF1-136	5 April 2003 (Interview Report)	7
137	TF1-137	4 April 2003 (Interview Report)	3
138	TF1-138	14 April 2003 (Summary)	1
139	TF1-139	16 April 2003 (Summary)	1
140	TF1-140	7 April 2003 (Interview Report)	5
141	TF1-141	6 April 2003 (Interview Report)	7
142	TF1-142	4 April 2003 (Interview Report)	7
143	TF1-143	7 April 2003 (Interview Report)	16
144	TF1-144	8 April 2003 (Interview Report)	4
145	TF1-145	8 April 2003 (Interview Report)	6
146	TF1-146	5 April 2003 (Summary)	1
147	TF1-147	4 April 2003 (Interview Report)	9
148	TF1-148	8 April 2003 (Interview Report)	2
149	TF1-149	8 April 2003 (Interview Report)	5
150	TF1-150 (Not Assigned)		
151	TF1-151	10 April 2003 (Summary)	1
152	TF1-152	11 April 2003 (Summary)	1
153	TF1-153	10 April 2003 (Summary)	1

I, TERENCE M. TERRY, acknowledge receipt of the items listed above.

Signature



Date 3rd June 2003