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SCSL-11-02-T
(167-169)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Teresa Doherty, Presiding Judge
Registrar: Binta Mansaray
Case No.: SCSL-11-02-T
Date: 18 June 2012

PROSECUTOR

v.

Hassan Papa BANGURA
Samuel KARGBO
Santigie Borbor KANU
Brima Bazy KAMARA

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT MANAGEMENT	
THE MAGNET	
18 JUN 2012	
NAME	SAMUEL J. FORNAH
SIGN	
TIME	12:30

INTERIM DECISION ON PROSECUTOR'S ADDITIONAL STATEMENT OF ANTICIPATED TRIAL
ISSUES AND REQUEST FOR SUBPOENA

Independent Counsel:
Robert L. Herbst

Counsel for Bangura:
Melron Nicol Wilson
Counsel for Kargbo:
Charles Taku
Counsel for Kanu:
Kevin Metzger
Counsel for Kamara:
Abdul Serry Kamal

I, Justice Teresa Doherty, Single Judge of the Special Court for Sierra Leone ("Special Court");

SEISED of the "Prosecutor's Additional Statement of Anticipated Trial Issues and Request for Subpoena," filed on 11 June 2012 ("Application"),¹ wherein the Independent Counsel requested the Trial Chamber pursuant to Rule 54 to issue a subpoena to Andrew Daniel and Claire Carlton-Hanciles requiring their appearance before the Trial Chamber to give testimony;

NOTING the "Defence Pre-Trial Brief on Behalf of Santigie Borbor Kanu filed pursuant to the Scheduling Order of 1 May 2012," filed on 29 May 2012, wherein counsel for Santigie Borbor Kanu opposed the issuance of a subpoena to either Daniels or Carlton-Hanciles;

NOTING the "Defence Pre-Trial Brief on Behalf of Brima Bazzy Kamara," filed on 1 June 2012, wherein counsel for Brima Bazzy Kamara opposed the issuance of a subpoena to either Daniels or Carlton-Hanciles;

NOTING AND RECALLING the oral arguments made by Independent Counsel and both Counsel for the Accused Kanu and Kamara made on 16 June 2012;

HEREBY ISSUES THE FOLLOWING INTERIM DECISION AND ORDER:

I. DELIBERATIONS

1. I do not consider that the lawyer-client privilege vested in a client by Rule 97 of the Rules of Procedure and Evidence ("Rules") is absolute if the purpose of the communication is obtaining advice on the commission of a future crime. Accordingly, the application for a subpoena requiring Andrew Daniels to appear and give evidence is granted and shall issue forthwith.
2. I will give a fully reasoned decision on this ruling and on the further issue, as to whether the privilege existed between Daniels and the Accused when the alleged communications were made, when time permits.
3. In relation to the application to subpoena Claire Carlton-Hanciles, the Principal Defender, I request and appoint Professor William Schabas, pursuant to Rule 74 of the Rules, to prepare and submit an Amicus Brief on the application of Rule 97 and the Code of Professional Conduct for

¹ SCSL-2011-02-26

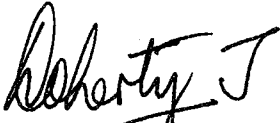
Counsel with the Right of Audience before the Special Court for Sierra Leone to the Principal Defender.

4. I further request the Registrar to serve the annexed Subpoena on the said Andrew Daniels by email.

FOR THE ABOVE REASONS, THE TRIAL CHAMBER

DIRECTS that Andrew Daniels shall appear to give evidence as soon as practicable.

Done at Freetown, Sierra Leone, this 18th day of June 2012.


Justice Teresa Doherty
Presiding Judge
[Seal of the Special Court for Sierra Leone]
The seal of the Special Court for Sierra Leone is circular, featuring a central scale of justice flanked by two figures. The text 'SPECIAL COURT FOR SIERRA LEONE' is written around the perimeter, and 'SCSL' is in the center. A banner at the bottom reads 'FREEDOM'.