

SEISED of the Defence Submission Providing Evidentiary Proof of Registry's Repeated Dissemination of Confidential Defence/ Prosecution Trial Chamber Documents to Press and Public Affairs, filed on 12 May 2005 on behalf of the accused Brima Bazzy Kamara;

NOTING also the oral submission of Counsel in Court made on 12 May 2005.

NOTING that the Defence disapproves the distribution of confidential marked documents to the Chief of Press and Public Affairs;

NOTING further that there is an instruction from the Registrar to the Chief of Court Management to provide the Chief of Press and Public Affairs with confidential documents.

WHILST NOTING the Defence submission is not a motion within the Provisions of the Rules of Evidence and Procedure (the Rules) and has not been served on any other party, the Presiding Judge has directed that the submission be served on the Registrar and that he responds thereto;

NOTING the Response of the Registrar dated 27 June 2005;

DECIDES AS FOLLOWS based solely on the written submissions and oral submissions of the parties and the Principal Defender of 12 May 2005.

I. THE SUBMISSIONS

1. On 12 May 2005, Co-Counsel for Brima informed the Court there was dissemination of confidential documents and said there "should be an enquiry".^[1] The Principal Defender then stated that "confidential motions between (the Court) and between the Prosecution and Defence are being mailed to the Chief of Press and Public Affairs" on the directive of the Registrar, that such confidential documents should not be given "to the Press or the Chief of the Press and Public Affairs...". She sought an "instruction be given to Registry" by the Court to prohibit dissemination unless the Court "allows it."^[2] The present written "submission" was filed subsequently.
2. In it Co-Counsel for the accused Kamara states "there are many instances of this breach of confidentiality". He annexes eleven copies of electronic transmissions to the Chief of Press and Public Affairs of which ten relate to confidential documents. These show dissemination of the confidential document that gave rise to the complaint of 12 May 2005 and others to the Head of Press and Public Affairs of the confidential motion which gave rise to the complaint on 12 May 2005 and others.
3. Co-Counsel refers to the oral objection of 12 May 2005 by other Counsel on the same issue and states "we find said dissemination very inappropriate" and requests that the Trial Chamber "instruct Court Management not to send any confidential [...] filings [...] to the Press and Public Affairs Office".
4. Counsel makes no reference to any Rules or Decision of the Chamber in support of this application nor does he refer to the provisions empowering the Trial Chamber to make the order or instruction he seeks.

5. In Response the Registrar refers to his duties and responsibilities in Rule 33(A) of the Rules to support his submission that he “is responsible for all the administrative decisions of the Court, subject to the supervision of the President”. He submits this includes the decision to have confidential documents copied to the Press and Public Affairs Office.

6. He explains the rationale behind this decision:

“Unfortunately, there has been a history of documents being “leaked” from the Court to the press in Sierra Leone. It is therefore appropriate that the Head of the Press and Public Affairs Office has knowledge of which court documents are confidential and which are not, not only to warn the Sierra Leone press of the status of any document if they are leaked, but also to understand what is in those documents and to be able to explain to the local press why they are confidential. In this way the Court is able to reduce the number of “leaked” documents, and the information contained in them, from being published”.

And states:

“It is also important for the Head of the Press and Public Affairs Office to have knowledge of any confidential documents to be able to immediately identify it if the document, or the information contained in it, has been published...”

7. He also states that the Press and Public Affairs Office need to be able to identify who has disclosed confidential documents and to check that confidential documents are not being inadvertently re-published if they have already appeared in the local press.

8. He submits the Trial Chamber has no statutory power to alter administrative decisions of the Registrar made pursuant to Rule 33(A) unless the Trial Chamber is satisfied such decision affects the accused’s right to a fair trial. He notes no submission has been made and no evidence adduced by the defence alleging any breach of the accused’s right to a fair trial under Article 17 of the Statute of the Special Court of Sierra Leone.

II. DELIBERATIONS

9. It is apparent from the Registrar’s response that dissemination of confidential documents to the Head of Press and Public Affairs Office is at his directive.

10. Defence Counsel in their oral and written submissions have not referred the court to any Article of the Statute or any Rule enabling the court to instruct Court Management. There is no doubt the Registrar has been charged with the responsibility for the “administration and servicing of the Special Court” and that he does so under the authority of the President. In turn Rule 19 charges the President with supervision of the activities of the Registry. It is the Registrar and not the Trial Chamber who has the responsibility and power to instruct Court Management under Rule 33(A).

11. As shown by decisions of other International Tribunals if a party is aggrieved by a decision of the Registrar, the Party may submit his complaint to the President^[3]. However, the instant case relates not only to an administrative decision of the Registrar but to the filing of documents in the Trial Chamber which, in turn, is governed by the

Practice Direction on Filing of Documents before the Special Court of Sierra Leone (The “Practice Direction”). Article 4(B) of the Practice Direction provides:

“Where a Party, State, organization or person seeks to file all or part of a document on a confidential basis, the party shall mark the document as ‘CONFIDENTIAL’ and indicate, on the relevant Court Management section form, the reasons for the confidentiality. The Judge or Chamber shall thereafter review the document and determine whether confidentiality is necessary. Documents that are not filed confidentially may be used in press releases and be posted on the official website of the Special Court.

11. Article 4(B) imposes an obligation on the Judge or the Trial Chamber to decide if the document needs to retain its confidentiality. We note that Article 4(B) provides that documents that are not filed confidentiality may be used in press releases.

12. In this regard, we note the Registrar’s submission that the confidential documents are sent to the Head of Press and Public Affairs Office, not for purposes of publication, but to avoid or prevent such publication by others. We further note that Counsel, in his submission, has not alleged any dissemination of confidential documents by the Press and Public Affairs Office. We accept and find that this practice by the Registrar is to prevent the leaking of confidential material. However, we are of the opinion that the spirit and letter of Article 4(B) of the Practice Direction is to give the Judge or Trial Chamber the primary duty to review all confidential documents.

FOR THE ABOVE REASONS WE ORDER THAT

1. documents filed confidentially shall only be transmitted to the parties on which the filing party intends to serve them; and
2. documents filed as confidential shall not be disseminated to other persons except with the express leave of the Trial Chamber.

Justice Julia Sebutinde appends separate and concurring opinion and Justice Richard Lussick a dissenting opinion.

Done at Freetown, Sierra Leone, this 17th day of October 2005.

Justice Teresa Doherty
Presiding Judge

Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]

[1] Transcript 12 May 2005, page 6, line 25.

[2] Transcript 12 May 2005, page 7 line 5 et seq.

[3] See *Prosecutor v. Ndindiliyimana*, Case No. ICTR-00-56-I, Decision on Augustin Ndindiliyimana's Motion for an Order that the Registrar Hold a Hearing on the Suspension of the Contract of His Investigator Pierre-Claver Karangwa, 12 November 2002; *Prosecutor v. Gatete*, Case No. ICTR-2000-61-I, Decision on the Defence Request for Necessary Resources for Investigations, 2 November 2004.