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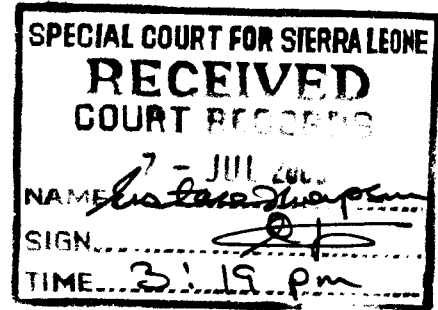
IN THE SPECIAL COURT FOR SIERRA LEONE

Freetown - Sierra Leone

Before: Judge Bankole Thompson,
Designated Judge

Registrar: Robin Vincent

Date filed: 7 July 2003



THE PROSECUTOR

Against

ALEX TAMBA BRIMA

also known as (aka) TAMBA ALEX BRIMA Aka GULLIT

Case No. SCSL-2003-06-PT

**SUBMISSION OF THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE
IN RESPONSE TO DEFENCE MOTION for Leave to Issue a Writ of Habeas Corpus
ad Subjiciendum and for an Order for the Writ of Habeas Corpus ad Subjiciendum**

Office of the Prosecutor:

Mr. Luc Côté, Chief of Prosecutions
Mrs. Brenda J. Hollis, Senior Trial Counsel
The Director of Prisons of the Republic of Sierra Leone
The Officer in Charge-Special Court Detention Facility

Defence:

Mr. Terrence Michael Terry

**Office of the Attorney-General and Minister of
Justice of the Republic of Sierra Leone:**

Mr. Lahai M. Farma, Senior State Counsel
Mr. Joseph G. Kobba, Senior State Counsel
Mr. Pascal Turlan, Focal Point for the Special Court

**SUBMISSION OF THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE
IN RESPONSE TO DEFENCE MOTION for Leave to Issue a Writ of Habeas Corpus
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This Submission in response to the “*Defence Motion for Leave to Issue a Writ of Habeas Corpus, as Subjiciendum as well as for the Order of the Writ of Habeas Corpus ad Subjiciendum releasing the Applicant herein from his present unlawful detention pursuant to Rule 54 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone and under the Habeas Corpus Acts of 1640 and 1816*” is filed before the Special Court for Sierra Leone (the “**Court**”) by the Office of the Attorney-General and Minister of Justice on behalf of the Government of the Republic of Sierra Leone (the “**State**”) pursuant to the *Order for Oral Hearing in the Motion filed by the Defence for Leave to File a Writ of Habeas Corpus* issued by Judge Benjamin Mutanga Itoe on 18 June 2003, and to Rule 65(B) of the Rules of Procedure and Evidence (the “**Rules**”) as stated in the above mentioned Order.

I. INTRODUCTION

1. The State of Sierra Leone, the Host Country of the Court and the State to which the Accused seeks to be released, hereby supports that the means of Writ of Habeas Corpus is not foreseen in the Rules, nor is it provided for in the Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone (the “**Agreement**”) or in the Statute of the Special Court for Sierra Leone (the “**Statute**”), that, alternatively, such application for the issue of a Writ of Habeas Corpus does not meet the criteria set out in Rule 65(B) with regards to its practical consequences that may eventually result in an Order of the Writ of Habeas Corpus releasing the Accused, which are very identical to the consequences of granting Bail to the Accused, and therefore, that this Motion should be denied.

II. BACKGROUND

- 2. On 7 March 2003, the Designated Judge approved the indictment against Alex Tamba BRIMA also known as (aka) Tamba Alex BRIMA Aka GULLIT (the “**Accused**”). On 10 March 2003, the Accused was transferred from the custody of Sierra Leone Police to Special Court Officials and detained at the Special Court Detention Facility in Bonthe, pursuant to a purported order by way of a *Warrant of Arrest and Order for Transfer and Detention* based on the approved Indictment and granted by the Designated Judge on 7 March 2003. On 15 March 2003, the Designated Judge ordered the detention on remand of the Accused until further order of the Court. The Accused has remained in detention until present and his trial is presently pending before the Trial Chamber of the Court. The Accused is charged with Crimes against Humanity, Violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II and Other Serious Violations of International Humanitarian Law, in Violation of Articles 2, 3 and 4 of the Statute of the Special Court for Sierra Leone.

- 3. On 28 May 2003, the Defence Counsel of the Accused filed a Defence Motion for Leave to Issue a Writ of Habeas Corpus, ad Subjiciendum as well as for the Order of the Writ of Habeas Corpus ad Subjiciendum releasing the Applicant therein from his present unlawful detention pursuant to Rule 54 of the Rules and under the Habeas Corpus Acts of 1640 and 1816.

III. ARGUMENT

- 4. The State submits that it has no obligation in challenging and/or otherwise reviewing the lawfulness of the Accused’s detention.

- 5. The State further supports that it has no more obligation to discuss the merits of the legal and/or factual basis of the Motion filed as determined by the Defence.

5. Therefore, the State supports that its submission should be limited to the inexistence of the procedural means of Writ of Habeas Corpus before the Court and to the practical consequences relating to the release of the Accused, should there be an Order of the Writ of Habeas Corpus ad Subjiciendum releasing the Accused, in light of the criteria as set out or provided for under Rule 65 of the Rules.
6. In the premises above, it is submitted that the State opposes the granting of a Writ of Habeas Corpus to the Accused on the following grounds.

THE EXISTENCE OF THE PROCEDURAL MEANS OF WRIT OF HABEAS CORPUS

7. That the procedural means of Writ of Habeas Corpus does not constitute proper procedure before the Court. The Constitution of Sierra Leone, the Courts Act, 1965 (N° 31, 7th October 1965), of Sierra Leone, and the Habeas Corpus Acts of 1640 and 1816 do not apply to the Court, which does not form part of the Judiciary of Sierra Leone as Article 8 of the Statute demonstrates by distinguishing clearly between the Special Court and national courts of Sierra Leone, and as expressly stated in Section 11(2) of the Special Court Agreement, 2002 (Ratification) Act, 2002. While Article 5 of the Statute informs the jurisdiction of the Court by reference to the Prevention of Cruelty to Children Act, 1926 (Cap. 31), of Sierra Leone, and to the Malicious Damage Act, 1861, of Sierra Leone, and while Article 14(2) says that the Rules can be amended by reference to the Criminal Procedure Act, 1965, of Sierra Leone, only the Statute and the Rules apply to the Court.
8. That nowhere in the Statute and the Rules is it provided for a Writ of Habeas Corpus as a procedure to review the detention of an Accused before the Court.
9. Thus, that the Court does not have jurisdiction pursuant to and over the basis chosen for this application and has not been given the capacity to exercise its jurisdiction by

applying national Acts, which form part of the national legal system and only apply to and bind the courts of Sierra Leone, otherwise than by those express references made in the Statute and the Rules.

10. Therefore, that Writ of Habeas Corpus does not exist as a procedural means available to the Accused before the Court to give effect to his right to have his detention reviewed.

THE CONSEQUENCES OF THE APPLICATION

11. That regarding the merits of the Defence Motion, and should the Court accepts the means of Habeas Corpus as a valid procedure before it, which the State denies, the State supports that its submission should be limited to the practical consequences of the release of the Accused pursuant to an Order of the Writ of Habeas Corpus ad Subjiciendum releasing the Accused.
12. It is submitted that the State opposes the granting of Writ of Habeas Corpus to the Accused on the same grounds as it opposes the granting of Bail to the Accused.

The Accused will appear for trial

13. That it cannot guarantee the satisfaction of the Court that the Accused will appear for trial. The Accused may likely flee the country if he is granted Writ of Habeas Corpus and the State cannot guarantee that it can prevent him from fleeing.
14. The State acknowledges that the Court must rely on its cooperation for the surveillance of the Accused, would he be released pursuant to Writ of Habeas Corpus. While the State reiterates its commitment to assisting the Court and fully cooperating with it in accordance with its obligations under the Agreement establishing the Special Court, its current lack of police and military capacities do not allow it to

guarantee the adequate and effective surveillance of the Accused, nor to prevent him from fleeing to another country or to such places where he could hide, and therefore, the State cannot accept the responsibility for his attendance and presence at his trial.

If released, the Accused will not pose a danger to any victim, witness or other person

15. That the State cannot support the guarantee that the Accused, if released, cannot pose a danger to any victim, witness or other person.

16. The lack of presence of the police forces or other security forces of the State in remote areas of the country and generally in the whole of the territory, do not allow to ensure that the Accused would not be in a position to harass or otherwise pose a danger to potential victims, witnesses or any other person who might appear before the Court.

17. In light of the above conditions, that the State cannot also guarantee that the Accused will not enter into contact with, interfere with, intimidate or prevent witnesses from attending trial or to give evidence.

The security situation in Sierra Leone

18. That, in addition, the State submits that the security situation in Sierra Leone does not allow it to guarantee the proper conditions for the State to accept responsibility in relation to providing services such as house arrest or any other practical matters relating to the Accused, including housing, protection or any condition for release that may be set by the Court. Should the order be made that the Accused be under house arrest in the custody of Sierra Leone, the State cannot guarantee the ability of the Sierra Leone authorities to provide such a service.

19. The State further submits that the offences the Accused is charged with are serious and grave, the cost and practicability of taking adequate precautions to trace

absconding accused persons is enormous and the State lacks capacity, resources and mechanism to do so.

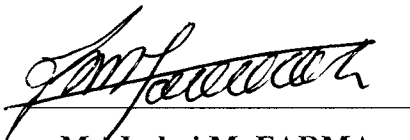
20. Further, that the State being both the Host Country of the Court and the State to which the Accused seeks to be released, the release of the Accused within the country would pose unbearable danger and/or be a security threat. The Accused was a suspect of a treason offence prior to his indictment by the Court. The release of the Accused in Sierra Leone itself would entail striking consequences for the security situation within Sierra Leone.

IV. CONCLUSION

21. By reason of the aforesaid, the State supports that the Defence Motion should be dismissed.

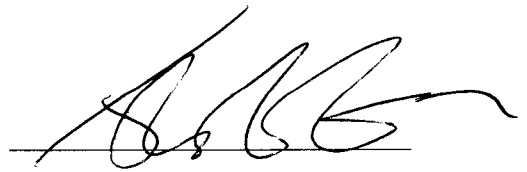
Done in Freetown on this 7th day of July 2003.

For the Attorney-General and Minister of Justice,



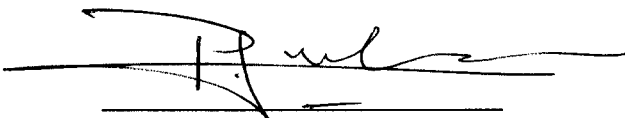
Mr. Lahai M. FARMA

Senior State Counsel



Mr. Joseph G. KOBBA

Senior State Counsel



Mr. Pascal TURLAN

Focal Point for the Special Court