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SCSL-04-15-ES  
(5738-5774)

5738

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

Before: Justice Renate Winter, Presiding Judge  
Justice Jon M. Kamanda  
Justice George Gelaga King  
Justice Emmanuel Ayoola  
Justice Shireen Avis Fisher

Acting Registrar: Binta Mansaray

Date filed: 28 October 2009

**THE PROSECUTOR**

v.

**Issa Hassan Sesay**  
**Morris Kallon**  
**Augustine Gbao**

Case No. SCSL-04-15-T

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**PUBLIC**

**URGENT APPLICATION TO JUDICIALLY REVIEW THE DECISION OF THE  
ACTING REGISTRAR IN RELATION TO THE ENFORCEMENT OF SENTENCES  
AND TO TEMPORARILY STAY THE TRANSFER  
OF DETAINEES TO A DESIGNATED ENFORCEMENT STATE**

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Registry  
Binta Mansaray  
Sandrine Gaillot  
Shakiratu Sanusi

Defence for Issa Sesay  
Wayne Jordash  
Sareta Ashraph  
Jared Kneitel

SPECIAL COURT FOR SIERRA LEONE	
<b>RECEIVED</b>	
COURT MANAGEMENT	
28 OCT 2009	
NAME	Francis Ngabuh
SIGN	
TIME	15:49

## INTRODUCTION

1. The Sesay Defence (the 'Defence') files the application for judicial review of the Acting Registrar's decision ('the Decision') to transfer Mr. Sesay, along with the seven (7) other convicted persons, to an enforcement state outside of Sierra Leone, within the next seven (7) days on the basis that the decision is irrational for the reasons set out below. At this time the Sesay Defence seeks to challenge the Decision on the basis that seven (7) days notice to be removed from the convicted persons country of birth and place of residence is a breach of international human rights law and amounts to cruel and inhumane treatment.
2. The Defence applies for a temporary stay of the transfer of Mr. Sesay to the enforcement state for a period of one month to allow for the Decision to be properly made, disseminated and implemented, with full regard to the rights and dignity of the convicted persons.

## RELEVANT HISTORY

3. On 24 August 2009, the Defence wrote to the Acting Registrar to request information concerning the transfer of Mr. Sesay to an enforcement state.
4. The Acting Registrar responded on 27 August 2009, stating that as the proceedings were still ongoing, the President of the Court had not issued any order in relation to Mr. Sesay and that information would be provided once the RUF appeal was completed.<sup>1</sup>
5. The Defence replied on 7 September 2009, stating  

While we fully appreciate that the President will not issue such an order in respect of our client while proceedings are ongoing, the reality is that information is being received by the detainees both formally and informally as to a future transfer to Rwanda. At the moment, we are unable to give Mr. Sesay even the most basic information about a possible transfer to Rwanda and the prison conditions he would serve his sentence under, if he was to be transferred there.<sup>2</sup>
6. The Defence reiterated its request for information concerning any possible transfer of Mr.

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<sup>1</sup> Annex A.

<sup>2</sup> Annex B.

Sesay to any foreign prison and the conditions under which he would be expected to serve. Of particular concern, noted in the same letter, was the deep distress that the lack of information coming from the Registry about the possible transfer was causing to Mr. Sesay and his family:

While no Order has yet been made, the rumours of the impending transfer and lack of formally available information is deeply distressing, to our client and his family, for what we hope you will accept are obvious and understandable reasons. We regard the provision of this information as the bare minimum that would allow us to provide the basic legal services which are both explicit and implicit in the legal services contract governing the appeal process.

7. On 14 September 2009, the Defence sent an email to the Acting Registrar requesting an indication of when a response might be expected.

8. In a letter dated 15 September 2009, the Acting Registrar stated that it was not possible to provide any information to the Defence about any possible transfer of Mr. Sesay while the RUF appeal was ongoing. In the letter, the Acting Registrar stated

I can assure you that no information on a future transfer to Rwanda has been provided, formally or informally, to your client by the Registry which is such a responsibility in the event that sentencing becomes final and an enforcement state were designated.<sup>3</sup>

9. On 16 September 2009, the Defence responded to the Acting Registrar's letter, noting that the Registry response of 15 September 2009 merely repeated its earlier response of 27 August. Accepting that enforcement of sentence was a matter to be dealt with after sentencing, the Defence stated that this was plainly not the issue at hand:

The issue is much simpler than that. It would be useful and, dare I say, humane if the Registry could provide information concerning the prison conditions in Rwanda now, rather than days before any transfer takes place. This is not to "pre-empt the outcome of the appeal" as you state but to provide my client with some basic information that would provide a modicum of reassurance about his possible fate. It is entirely unreasonable to close our eyes to the obvious, namely that in all likelihood Sesay will be transferred to Rwanda along with the other convicted prisoners.....

We – and all the court - are well aware that the Rwandese Government has agreed to take all of the convicted prisoners and we are aware that certain terms have been agreed whilst others remain outstanding. We would urge the Registry to assist and

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<sup>3</sup> Annex C.

help us to provide some guidance to our client in the forthcoming months. In my view the Registry has a duty under human rights law to keep the defence and the convicted person informed as much as possible on issues which relate to the latter's incarceration thousands of miles away from his home. Regardless, I would hope that the Registry would agree that it would be the humane thing to do. We are not requesting definitive answers, only some basic information that will help us to advise our client and help him to come to terms with his likely future.<sup>4</sup>

10. The Defence noted that there was no reason why information regarding likely transfer and prison conditions needed to wait until the Appeal Judgment, noting that "this is unnecessarily late and deprives my client of information that would allow the exercise of his fundamental rights pursuant to the Statute of the Special Court". The Defence urged a rethink of the Registry's approach. No response was received from the Registry.
11. On 18 September 2009, the Acting Registrar wrote to the RUF Accused, acknowledging the receipt of a letter, dated 11 September 2009, signed by all convicted persons which outlined their concerns about a possible future transfer to a foreign prison and the conditions to be expected there. The Acting Registrar, in her letter to Mr. Sesay, Mr. Kallon and Mr. Gbao, stated "Proceedings in all of your cases are still ongoing and until the conclusions of the appeals in all of your matters and notification of a decision by the Appeals Chamber, no decision can be taken on the enforcement of sentences".<sup>5</sup>
12. At the time of the delivery of the Appeals Judgment therefore, despite repeated attempts by Mr. Sesay and his Defence team to receive even the most basic information about any possible future transfer to a foreign prison, the Acting Registrar refused to provide any information to assist Mr. Sesay in readying himself and his family, both psychologically and financially, for his life-long departure from Sierra Leone. Moreover, given the lack of any information, no arrangements could be made for friends and relatives - who would be unlikely to be able travel to the enforcement state - to travel from the provinces to see Mr. Sesay prior to his leaving.
13. On 26 October 2009, the date of the delivery of the Appeals Judgment in the RUF trial, the

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<sup>4</sup> Annex D.

<sup>5</sup> Annex E.

Defence sent another letter to the Acting Registry reiterating its request for information concerning the possible prison transfer of Mr. Sesay and the prison conditions if he were to be held in another country.<sup>6</sup>

14. On the same day, the Defence Office served Mr. Sesay with a copy of the ‘Confidential Order designating state in which Issa Hassan Sesay is to serve his sentence’<sup>7</sup>, which provided details of the State to which Mr. Sesay and the other convicted persons are to be transferred. It was the first definitive confirmation that Mr. Sesay had received from the Court as to the location to which he was to be transferred.
15. On 27 October 2009, the Acting Registrar responded to the Defence informing the Defence of the location of the enforcement state and that some of the prison conditions had yet to be agreed. Of particular concern to Mr. Sesay was the ability to see his family, including his two young children, while he is held in prison overseas. The Registry noted that “discussions are ongoing concerning the type of financial assistance that will be made available to at least one family member to travel to Rwanda once a year, for about one week”.<sup>8</sup> It is still unclear whether the Court will provide funding for travel, visa and accommodation. In other words, no arrangements have been made for any visitation by family and/or friends. The lack of provision of such assistance would render any promise of family visits illusory as Mr. Sesay and his family would be financially able to cover the costs of travelling to see Mr. Sesay.
16. On 27<sup>th</sup> October 2009, the Acting Registrar, together with representatives of Security, the Office of the Principal Defender and Detention, held a meeting with detainees. In the course of the meeting, the detainees were issued with a memorandum from the Chief and Deputy Chief of Detention, the last sentence of which read “... **please note that the date of transfer will be within the next seven days**”.<sup>9</sup> This information was not relayed to the Sesay Defence.

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<sup>6</sup> Annex F.

<sup>7</sup> *Prosecutor v. Sesay et al.*, Confidential Order designating state in which Issa Hassan Sesay is to serve his sentence, 26 October 2009, SCSL-04-15-T-1322.

<sup>8</sup> Annex G.

<sup>9</sup> Annex H.

17. The Acting Registrar declined repeated requests by Mr. Sesay and his Defence team for any information about a possible prison transfer prior to 26 August 2009 and then on 27 August 2009 provided Mr. Sesay with a minimum of 1 day and a maximum of 7 days' notice of his likely life-long removal from his country of birth, culture, family, friends, and all support structures.

## STANDING AND JURISDICTION

18. Annex I contains the convicted person's instruction of the previously formulated Defence Team to act as his legal representatives in relation to the instant matter and any issues arising as to the enforcement of his sentence. The Acting Principal Defender has refused to act upon the convicted persons instructions and declines to act as his legal representatives on this issue.

19. In the Brima-Kamara Decision, the majority in the Appeals Chamber adopted and extended the reasoning of Justice Pillay, the then President of the ICTR, in her decision of 13 November 2002, which observed

"Modern systems of Administrative Law have built in review procedures to ensure fairness when individual right and protected interests are in issue, or to preserve the interesting of justice...In all systems of administrative law, a threshold condition must be satisfied before an administrative decision may be impugned by supervisory review. There are various formulations of this threshold condition in national jurisdictions, but a common theme is that the decision sought to be challenged, must involve a substantive right that should be protected as a matter of human rights jurisprudence or public policy. An application for Review of the Registrar's Decision by the President on the basis that it is unfair procedurally or substantively, is admissible... if an accused has a protective right or interest, or if it otherwise in the interests of justice." The Appeal Chamber concurred with Justice Pillay' view on the need for a mechanism for judicial review of administrative decisions affecting the rights of the Accused but considered that judicial review, "in the specific situation of the Special Court" falls within the inherent jurisdiction of the Trial Chamber *and* the Appeals Chamber.<sup>10</sup>

## STANDARD OF REVIEW

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<sup>10</sup> *Prosecutor v. Brima et al.*, "Decision on Brima-Kamara Defence Appeal Motion against Trial Chamber II Majority Decision on Extremely Urgent Confidential Joint Motion for the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara", 8<sup>th</sup> December 2005, SCSL-2004-16-T-441, paras 72-78.

20. The standard of review which is to be applied to administrative decisions of the Registry is whether the Registry “failed to observe any basic rules of natural justice or to act with procedural fairness toward the person affected by the decision, or if he had reached a decision which no sensible person who has applied his mind to the issue could have reached (the “reasonableness test”); and that in order for a decision of the Registry to be quashed, the Defence will have to “persuade the Trial Chamber a) that an error of the nature described has occurred, and b) that such error has significantly affected the Registrar’s decision to his detriment.”<sup>11</sup>
21. It is submitted that the Appeals Chamber can reverse a decision if it is so unreasonable as to be “perverse” or “irrational”. Irrationality “applies to a decision which is so outrageous in its defiance of logic or of accepted *moral* standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.”<sup>12</sup>

## RELEVANT RIGHTS ENTITLEMENTS

22. The convicted person is entitled to the following rights, pursuant to international and regional human rights instruments, *inter alia*:

### African Charter on Human and Peoples' Rights

#### Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

#### Article 9

1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law.

#### Article 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

<sup>11</sup> *Prosecutor v. Milan Martić*, IT-95-11-PT, Decision on the Defence’s Motion for Review of Registrar’s Decision Denying Additional Legal Aid Funds, 6 December 2005, pg. 3.

<sup>12</sup> *Counsel of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374.

**Article 18**

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.

**International Covenant on Civil and Political Rights****Article 7**

No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment.

**Article 10**

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

**Article 17**

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

**Article 23**

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**European Convention on Human Rights****ARTICLE 3**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

**ARTICLE 8**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

**SUBMISSIONS**

23. The Sesay Defence application is predicated on the submission that the Decision by the



Registrar to implement the transfer of Mr. Sesay and the other convicted person with a minimum of one day and a maximum of seven days' notice is irrational. The Decision is so outrageous in its defiance of logic or of accepted *moral* standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.”<sup>13</sup>

24. It is submitted that a reasonable decision maker would not consider it appropriate, fair or proportionate to remove the convicted person from his country of birth, culture, family, friends and all support structures for the remainder of his life without providing a reasonable period for both practical and emotional arrangements to be made concerning that eventuality. As noted above the Registry has not made proper arrangements guaranteeing even one visit from a member of the convicted person's family and friends or any meaningful means of communicating with many of those persons. The Registry's Decision thus seeks to deprive Sesay of any meaningful opportunity to bid farewell to most of his family, friends or acquaintances.

25. Further, the convicted person, Sesay, is attempting to arrange the legal adoption of his two children, Hassan Sesay (12 years old) and Augustine Sesay (10 years old) to his sister Isatu Sesay. It is simply not possible to make these arrangements in the 7 days allotted by the Registry. In the event that Sesay is transferred from the jurisdiction within the next 7 days the children will be without a legal guardian and without any means of support.

26. The convicted person, Sesay, is attempting to effect arrangements to allow his infirm and indigent father to visit from Port Loko. This involves raising money and making proper travel arrangements that are proving cumbersome and may well not be achieved in the short time remaining. The convicted person's father is too ill to travel out of Sierra Leone. The Registry's Decision deprives the convicted person of a reasonable opportunity to see his father again.

27. The convicted person, Sesay, has family and friends throughout Sierra Leone. It is

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<sup>13</sup> Counsel of Civil Service Unions v. Minister for the Civil Service [1985] AC 374.

impracticable to make the necessary arrangements for these persons for these persons to arrange cover for their employment and their families to travel to Freetown to bid the convicted person farewell. The Registry's Decision deprives the convicted person of a reasonable opportunity to see most of these persons again.

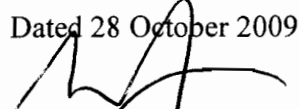
## CONCLUSION

28. Article 5 of the African Charter of Human and Peoples' Rights prohibits cruel, inhuman or degrading treatment. The African Commission has held that this "includes not only actions which cause serious physical or psychological suffering, but which humiliate the individual".<sup>14</sup> It is submitted that this aspect of Mr. Sesay's punishment is cruel, inhuman and degrading. Inhuman treatment may take the form of mental suffering, including such mental suffering resulting from detention in inhuman conditions.<sup>15</sup> Regard must be had to the mental suffering, which a person of normal sensibilities, given factors such as the applicant's sex, age and health, would, in the circumstances, consider to be inhuman.

29. The Defence submit that to move a convicted to another country to serve a sentence which is likely to run for the rest of their natural life while affording less than 7 days' notice is clearly inhumane, unfair, irrational and an abuse of the process of the Court. It brings the Special Court into disrepute and breaches its commitment to the international and regional human rights standards.

30. We therefore refer the Appeals Chamber to paragraphs 1 and 2 and ask for the foresaid relief.

Dated 28 October 2009



Wayne Jordash  
Sareta Ashraph  
Jared Kneitel

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<sup>14</sup> Communications 137/94, 139/94, 154/96 and 161/97, *International Pen, Constitutional Rights, Interight on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organisation v. Nigeria*, Twelfth Annual Report of the Commission – 1998/1999

<sup>15</sup> *Greek case* (1969) 12 YB 1 EComm HR *Cyprus v. Turkey* (1976) 4 EHRR 482.

## BOOK OF AUTHORITIES

*Prosecutor v. Sesay et al.*, Confidential Order designating state in which Issa Hassan Sesay is to serve his sentence, 26 October 2009, SCSL-04-15-T-1322.

*Prosecutor v. Brima et al.*, “Decision on Brima-Kamara Defence Appeal Motion against Trial Chamber II Majority Decision on Extremely Urgent Confidential Joint Motion for the Re-Appointment of Kevin Metzger and Wilbert Harris as Lead Counsel for Alex Tamba Brima and Brima Bazzy Kamara”, 8<sup>th</sup> December 2005, SCSL-2004-16-T-441,

*Prosecutor v. Milan Martić*, IT-95-11-PT, Decision on the Defence’s Motion for Review of Registrar’s Decision Denying Additional Legal Aid Funds, 6 December 2005, pg. 3.

*Counsel of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374.

*Greek case* (1969) 12 YB 1 EComm HR *Cyprus v. Turkey* (1976) 4 EHRR 482.

Annexes

- Annex A: 27 August 2009 Letter from Acting Registrar to Mr. Jordash;  
Annex B: 7 September 2009 Letter from Mr. Jordash to Acting Registrar;  
Annex C: 15 September 2009 Letter from Acting Registrar to Mr. Jordash;  
Annex D: 16 September 2009 Letter from Mr. Jordash to Acting Registrar;  
Annex E: 18 September 2009 Letter from Acting Registrar to Messrs. Sesay, Kallon, and Gbao;  
Annex F: 26 October 2009 Letter from Mr. Jordash to Acting Registrar;  
Annex G: 27 October 2009 Letter from Acting Registrar to Mr. Jordash;  
Annex H: 27 October 2009 Letter from Deputy Chief of Detention to “Prisoner”; and  
Annex I: 27 October 2009 Letter from Mr. Sesay to Principal Defender.

**ANNEX A**



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**SPECIAL COURT FOR SIERRA LEONE**  
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Ref/REG/461/ 2009/SG

Wayne Jordash  
Lead Counsel  
Sesay Defence Team  
Special Court for Sierra Leone

27 August 2009

Dear Wayne,

I am writing in response to your request for information concerning the President's recent confidential order to transfer convicted persons to an enforcement state, namely Rwanda.

Please note that, pursuant to Rule 103(B) of the Rules of Procedure and Evidence, the designation of an enforcement state is the prerogative of the President of the Court.

Considering that five of the eight persons currently detained at the Special Court's Detention Unit have seen their appeals completed, that they have been sentenced to terms of imprisonment ranging from 15 to 50 years, the President has issued five individual confidential orders, designating an enforcement state in respect of those five convicted persons only.

I draw your attention to Paragraph 5 of the *Practice Direction on Designation of State for Enforcement of Sentence*, according to which the designation of an enforcement state can only be made "after the sentencing of a convicted person has become final."

Therefore, given the fact that the proceedings in the RUF case are still ongoing, the President has not issued any order in relation to your client.

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Once the RUF Appeal is completed, if applicable any relevant information regarding transfer will be provided to you in due course.

Sincerely,

A handwritten signature in black ink, appearing to be 'BMA', is written over a horizontal line. The signature is stylized and somewhat cursive.

Binta Mansaray  
Acting Registrar  
Special Court for Sierra Leone

Encl. Practice Direction on Designation of State for Enforcement of Sentence

**ANNEX B**



5754



**SPECIAL COURT FOR SIERRA LEONE**  
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE  
**SESAY DEFENCE TEAM**  
Telephone: +232 22 297214 • Email: defence-sesay@un.org

7 September 2009

Ms. Binta Mansaray  
Acting Registrar

Dear Ms. Mansaray,

**Re: Transfer of Detainees to Rwanda**

Thank you for your letter of 27 August 2009 in response to our request for information concerning the President's recent confidential order to transfer convicted persons to an enforcement state, namely Rwanda.

While we fully appreciate that the President will not issue such an order in respect of our client while proceedings are ongoing, the reality is that information is being received by the detainees both formally and informally as to a future transfer to Rwanda. At the moment, we are unable to give Mr. Sesay even the most basic information about a possible transfer to Rwanda and the prison conditions he would serve his sentence under, if he was to be transferred there.

We would be grateful if the Registry would provide us with information concerning the prison that the detainees are likely to serve their sentence at and the prison conditions there. We are particularly interested in any available details regarding family visits (including funding of such visits and their frequency), conjugal visits and the provision, for example, of classes, recreational activity and the payment for work programme that exists at the Special Court.

While no Order has yet been made, the rumours of the impending transfer and lack of formally available information is deeply distressing, to our client and his family, for what we hope you will accept are obvious and understandable reasons. We regard the provision of this information as the bare minimum that would allow us to provide the basic legal services which are both explicit and implicit in the legal services contract governing the appeal process.

Regards,

Wayne Jordash  
Lead Counsel, Sesay Defence team

**ANNEX C**



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**SPECIAL COURT FOR SIERRA LEONE**  
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**Ref/REG/493/2009**

Wayne Jordash  
Lead Counsel  
Sesay Defence Team  
Special Court for Sierra Leone

15 September 2009

Dear Mr Jordash

**Transfer of Detainees to Rwanda**

I write further to your letter of 7 September 2009 seeking further information on the prison that the detainees are likely to serve their sentence at and the prison conditions there as well as Ms Ashraph's email of 14 September 2009 requesting an indication of whether a response to your letter is forthcoming and when it might be expected.

I now write further to my email of even date informing Ms Ashraph that a formal response would be sent today.

I note, with concern, the contents of your letter in relation to "information...being received by the detainees both formally and informally as to a future transfer to Rwanda". As you will appreciate, and as I am sure you are aware, under the provisions of Paragraph 5 of the Practice Direction on Designation of State for Enforcement of Sentences the designation of an enforcement state can only be made "after the sentencing of a convicted person becomes final."

The matter of enforcement of sentences, as appropriate, is thus a matter to be properly dealt with after the sentencing, if any, of a convicted person becomes final notwithstanding any administrative arrangements the Registry may be tasked with. As you note in your letter, proceedings in relation to your client's appeal remain ongoing. It would be highly improper, in the circumstances, for me to pre-empt the outcome of the appeal.

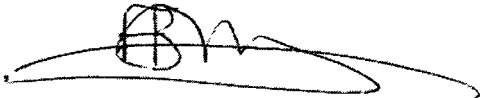
I can assure you that no information on a future transfer to Rwanda has been provided, formally or informally, to your client by the Registry which is tasked with

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such a responsibility in the event that sentencing becomes final and an enforcement state were designated.

I would be more than happy to provide you fully with the information you have requested, if applicable, on notification of the appeal judgement and in a timely manner.

Yours sincerely

A handwritten signature in black ink, appearing to be 'BM' with a large, sweeping underline that extends to the left and right.

Binta Mansaray  
Acting Registrar  
Special Court for Sierra Leone

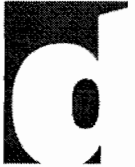
**ANNEX D**

5759

**doughty street chambers**

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16 September 2009

Binta Mansaray  
Acting Registrar  
Special Court for Sierra Leone

Dear Ms. Mansaray.

Re: Transfer of Mr. Sesay to detention facility in Rwanda

I write further to your letter of 15 September 2009 which appears to merely repeat the contents of your response of 27 August 2009. I appreciate that the “matter of enforcements of sentences, as appropriate, is thus a matter to be dealt with after the sentencing, if any, of a convicted persons becomes final notwithstanding any administrative arrangements the Registry may be tasked with”. This, plainly, however is not the issue at hand.

The issue is much simpler than that. It would be useful and, dare I say, humane if the Registry could provide information concerning the prison conditions in Rwanda now, rather than days before any transfer takes place. This is not to “pre-empt the outcome of the appeal” as you state but to provide my client with some basic information that would provide a modicum of reassurance about his possible fate. It is entirely unreasonable to close our eyes to the obvious, namely that in all likelihood Sesay will be transferred to Rwanda along with the other convicted prisoners. Indeed this has been confirmed by senior members of the detention staff who in the exercise of their duties have shown themselves willing to approach the detainees with a degree of sensitivity in these difficult circumstances. The detention staff ought to be commended for treating the convicted persons with the dignity commensurate with the SCSL’s purported status as an internationalised court.

We – and all the court - are well aware that the Rwandese Government has agreed to take all of the convicted prisoners and we are aware that certain terms have been agreed whilst others remain outstanding. We would urge the Registry to assist and help us to provide some guidance to our client in the forthcoming months. In my view the Registry has a duty under human rights law to keep the defence and the convicted person informed as much as possible on issues which relate to the latter’s incarceration thousands of miles away from his home. Regardless, I would hope that the Registry would agree that it would be the humane thing to do. We are not requesting definitive answers, only some basic information that will help us to advise our client and help him to come to terms with his likely future.



S760

**doughty street chambers**

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website [www.doughtystreet.co.uk](http://www.doughtystreet.co.uk)



Further, we note that you would appear to know the date of any such transfer. This would appear to be the logic of your claim to be happy to provide the information "on notification of the appeal judgment and in a timely manner". We require this information to be able to advise our client as per our Legal Service Contract.

There is no reason why this information has to wait until the Appeal Judgement. In my view this is unnecessarily late and deprives my client of information that would allow the exercise of his fundamental rights pursuant to the Statute of the Special Court. We therefore urge a rethink in the Registry's approach and the provision of this information forthwith.

Regards

Wayne Jordash  
Lead Counsel for Sesay

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**ANNEX E**



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**SPECIAL COURT FOR SIERRA LEONE**

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Ref/REG/507/2009

18 September 2009

Issa Hassan Sesay  
Morris Kallon  
Augustine Ato Bao  
c/o SCSL Detention Centre

Dear Messrs Sesay, Kallon, Bao,

I acknowledge receipt of your correspondence dated 11 September 2009 with enclosures which was signed by all of you as well as by Mr Brima, Mr Kamara, Mr Kanu, Mr Fofanah and Mr Kondewai

I have noted the concerns expressed therein.

Proceedings in all of your cases are still ongoing and until the conclusions of the appeals in all of your matters and notification of a decision by the Appeals Chamber, no decision can be taken on the enforcement of sentences, if any, and if applicable, in each individual case. You will all have been advised by your Counsel that under the provisions of Paragraph 5 of the Practice Direction on Designation of State for Enforcement of Sentences the designation of an enforcement state can only be made "after the sentencing of a convicted person becomes final."

In general terms, however, the conditions of enforcement of any sentences handed down by the Special Court for Sierra Leone following the conclusion of all proceedings will be in accordance with international law. The Special Court is committed to ensuring, and will verify, that the conditions under which sentences handed down by its Trial Chambers are served are in



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compliance with those standards.

Yours sincerely,

Binta Mansaray  
Acting Registrar  
Special Court for Sierra Leone

Cc: Counsel Issa Hassan Sesay  
Counsel Morris Kallon  
Counsel Augustine Aro Bao  
Ray Cardinal, Chief of Detention  
Claire Carlton Hanciles, OIC, Office of the Principal Defender

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**ANNEX F**



**SPECIAL COURT FOR SIERRA LEONE**  
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE  
**SESAY DEFENCE TEAM**  
Telephone: +232 22 297214 • Email: defence-sesay@un.org

26 October 2009

Ms. Binta Mansaray  
Acting Registrar

Dear Ms. Mansaray,

**Re: Transfer of Detainees to Rwanda**

As you may recall, the Sesay Defence team wrote to you on 27 August and 8 September 2009 for information concerning the President's confidential order to transfer convicted persons to an enforcement state, namely Rwanda.

In our correspondence, we requested that Registry provide us with information concerning the prison that the detainees are likely to serve their sentence at and the prison conditions there. We remain particularly interested in any available details regarding family visits (including funding of such visits and their frequency), conjugal visits and the provision, for example, of classes, recreational activity and the payment for work programme that exists at the Special Court.

In your response of 15 September 2009, you stated that "the matter of enforcement of sentences...is thus a matter to be properly dealt with after the sentencing, if any, of a convicted person becomes final". You add that you would be "happy to provide [the Sesay Defence team fully] with the information...requested, if applicable, on notification of the appeal judgment and in a timely manner."

As you are no doubt aware, the appeals judgment in the RUF trial was handed down this morning and Mr. Sesay's sentencing has now become final. In the circumstances we renew our request to the Registry for information concerning the transfer of Mr. Sesay to Rwanda (or any other enforcement states) and the prison conditions under which he will serve his sentence.

I look forward to hearing from you in the near future.

Best regards,

Wayne Jordash  
Lead Counsel, Sesay Defence

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**ANNEX G**

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Ref/REG/573/ 2009/SG

Wayne Jordash  
Lead Counsel  
Sesay Defence Team  
Special Court for Sierra Leone

27 October 2009

Dear Wayne,

I am writing in response to your letter dated 26 October 2009 concerning the transfer of prisoners to Rwanda and conditions of imprisonment there.

As indicated in my previous correspondence, now that the Appeals Judgment in your client's case has been delivered and that his sentence has been confirmed, I can provide you with the following information concerning enforcement of his sentence in Rwanda.

With regards to the question of family visits, please note that the Special Court takes maintenance of family ties very seriously. You will note that the Court is the only international court to have provided regular funding for family visits over a number of years. In its endeavours to ensure that families will be able to effectively continue to visit SCSL prisoners, the Special Court has committed to continue funding such visits even after transfer. Prisoners' right to family visits will not be taken away after conviction, and the Government of Rwanda has also committed to facilitate the access of families to the SCSL prisoners.

In addition, discussions are ongoing concerning the type of financial assistance that will be made available to at least one family member to travel to Rwanda once a year, for about one week. While the funding of family visits throughout the duration of each prisoner's sentence has been approved in principle, the exact amount made available to families on a yearly basis will be subject to the Management Committee's approval, and managed by the Residual Mechanism of the Court after completion of the Court's mandate. The Special

Court and the Government of Rwanda have also agreed that the Court, and its ensuing Residual Mechanism, will also process visa applications on behalf of family members wishing to travel to Rwanda.

Concerning the issue of conjugal visits, I would like to draw your attention to the terms of Article 3.2 of the Amended Sentence Enforcement Agreement which specifically states that, once transferred, the conditions of imprisonment shall be governed by the laws of Rwanda. Considering the fact that we, at the Special Court, have introduced the right to conjugal visits in our own Detention Facility, I have requested the Government of Rwanda to consider granting the same rights to SCSL prisoners. While such right does not comply with their domestic legislation, the Government of Rwanda has committed to examine the matter further and determine whether conjugal visits could, in the future, be allowed specifically for SCSL prisoners.

Finally, in relation to your last query concerning education/vocational/recreational activities and earning schemes for work programs, I draw your attention to Article 29 and 40 of *Law N°38/2006 of 25/09/2006 establishing and determining the organization of the National Prisons Service* (attached), which provide that prisoners may work in an area related to their professional skill, if any, and will receive 10% of the sale of what they produce. Please note that the Management Committee of the Court has approved the provision of a subsidy remunerating each prisoner over and above the regulatory 10% earned under the Rwandan Prisons Service.

Finally, the Director of Mpanga prison will be provided with all the prisoners' profiles, enabling him to appraise himself of their individual needs, level of education and professional pursuits. Upon their transfer to Rwanda, SCSL Prisoners will be entitled to take any equipment they have used at the Court to pursue their current educational/vocational/recreational activities (e.g. sewing machines, draft board, school books, etc.)

In addition to the above-mentioned Law on the organisation of the National Prisons Service, the Special Court and the Government of Rwanda have entered into a Memorandum of Understanding detailing costs that will be borne by each party and regulating the manner in which Special Court funds might be used by Rwanda, to ensure that SCSL prisoners receive the same level and quality of care they have received during their detention at the Special Court Detention Facility.

Finally, the Registry will continue to monitor the conditions of detention on a regular basis, to ensure consistent compliance with the terms of the Sentence Enforcement Agreement and the Memorandum of Understanding signed by and between the Court and the Government of Rwanda.

I note that your client has been notified of the President's Order designating Rwanda as the state where his sentence will be enforced on 26 October 2009. Today, I have also met

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with him and other convicted persons to provide them with additional information on the conditions of their imprisonment at Mpanga prison.

I hereby attach the Law on the Organisation of the National Prisons Service for your reference, as well as a copy of the Amended Sentence Enforcement Agreement.

Sincerely,

A handwritten signature in black ink, appearing to be 'Binta Mansaray', with a long horizontal flourish extending to the left.

Binta Mansaray  
Acting Registrar  
Special Court for Sierra Leone

Encls.



**ANNEX H**

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To: Prisoner  
From: Joanna Pauline  
Deputy Chief of Detention  
Ray Cardinal  
Through: Chief of Detention  
Claire Carlton-Hanciles  
Principal Defender  
Date: October 27, 2009  
Subject: Transfer Logistics Notice

It is time for you to pack up your personal belongings, legal papers and books. You will be provided with boxes of a standard size. Should you wish to send items home to your families prior to your transfer; it is now time for you to do so.

You will be required to box up your personal possessions now that you have received this official notification. Should you decline to pack your own items staff will be directed to do so for you.

You will be permitted to keep one change of clothing in your cell over and above what you chose to wear on the day of your transfer. Any prescribed medication will also remain with you during the transfer. It will be placed in a manila envelope by the nurse and transported with you.

Those of you who are involved in the tailoring program should know that your sewing machines will be boxed up at this time in order for them to be properly shipped.

All of the compact disk players with radios that the Detention Facility has already purchased for you use will be transported to your new living quarters at the time of your transfer.

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Your Draft game board and scrabble boards will be shipped along with your personal effects in order to provide you with the entertainment items you are currently enjoying and familiar with.

You will be able to receive visits from your family for as long as you are still residing at the Detention Facility. **The exact date of your transfer will not be shared with you due to security reasons, but please note that the date of transfer will be within the next seven days.**

**ANNEX I**

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27<sup>th</sup> October 2009


Ms. Claire Carlton-Hancilles  
Officer-in-Charge  
Office of the Principal Defender

Dear Ms. Carlton-Hancilles,

**Re: Legal representation**

I write to inform you that I have nominated Mr. Wayne Jordash and Ms. Sareta Ashraph to act as my lawyers in relation to matters involving my transfer out of Sierra Leone and the enforcement of my sentence.

Regards,

 27-10-2009  
Issa Sesay

Cc. Justice R. Winter, President of the Special Court for Sierra Leone  
Ms. B. Mansaray, Acting Registrar