

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”), composed of Justice Teresa Doherty, presiding, Justice Richard Lussick and Justice Julia Sebutinde;

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

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

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

“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

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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 President³. 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.

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.

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

T. Doherty
Justice Teresa Doherty
Presiding Judge

J. Sebutinde
Justice Julia Sebutinde



SEPARATE AND CONCURRING OPINION OF JUSTICE JULIA SEBUTINDE

I. INTRODUCTION

1. I have had the benefit of reading and digesting the majority decision on The Defence Submission Providing Evidentiary Proof of Registry's Repeated Dissemination of Confidential Documents to the Press and Public Affairs Office of the Special Court. I concur with the orders that

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

However, in this separate concurring opinion I am of the view that a different reasoning ought to have been applied in arriving at that outcome.

2. Firstly, I wish to expound on the parties' submissions as I understood them. In addition I consider it judicially compelling for me to expound on (i) the jurisdictional aspects of this application and (ii) the notion of confidentiality in the context of documents or pleadings filed before the Special Court vis-à-vis the practice currently appertaining in the court.

II. THE SUBMISSIONS

Defence submissions

3. On 12 May 2005, Ms. Thompson Co-Counsel for the accused Alex Tamba Brima orally notified the Trial Chamber that the document entitled "*Confidential Prosecution Submissions In Response to Defence Submissions Disclosed to the Prosecution in Their redacted Form Pursuant to Order of 6 May 2005*" had been disseminated by the Department of Court Management Services of the Special Court (CMS) to the Chief of Press and Public Affairs of the Special Court (PPA). Counsel complained on behalf of the Defence that since the said document had been filed confidentially pursuant to the Trial Chamber's order of 6 May 2005 and since the Defence did not wish its contents made public, the said dissemination by CMS to PPA amounted to a breach of confidentiality and "*a driving of coach and horses through the Trial Chamber's Order*". Counsel requested the Trial Chamber (a) to inquire into the matter and to establish who had authorised the dissemination and (b) to direct "*that the said document be returned to the department of CMS and not to move out except to be served upon the Prosecution and Defence and that it should not be disclosed to any other person*".¹

4. On the same day, Ms. Simone Monasebian, then Principal Defender orally submitted that she had made inquiries of her own regarding the matter and that CMS had informed her that the Registrar had "*given CMS an instruction that Ms. Cooper, Chief of PPA could receive all confidential documents so that she could understand what is going on in court*"². The Principal Defender did not submit

¹ AFRC Transcript 12 May 2005, page 6, lines 4 to page 7 line 3.

² AFRC Transcript 12 May 2005, page 7, lines 4-27

written proof of her findings in this regard. She cited the provisions of Article 4 of the Practice Direction on Filing of Documents before the Special Court and observed that whilst the Article does not contain guidelines as to dissemination of confidential documents, it proscribes the use of confidential documents in press releases and their publication on the official court website. The Principal Defender then undertook to provide proof of dissemination of the document entitled "*Confidential Prosecution Submissions In Response to Defence Submissions Disclosed to the Prosecution in Their Redacted Form Pursuant to Order of 6 May 2005*" and requested that in future, the Trial Chamber should control the confidentiality of documents.

5. On 13 May 2005 Mr. Mohamed Pa-Momo Fofana Co-Counsel for the accused Brima Bazzy Kamara filed written submissions on behalf of the Defence in support of the above oral submissions. He annexed 11 copies of e-mails from the department of CMS showing proof of electronic transmissions of 10 confidential documents to (amongst others) the Chief of Press and Public Affairs. The documents transmitted or disseminated included the document entitled "*Confidential Prosecution Submissions In Response to Defence Submissions Disclosed to the Prosecution in Their redacted Form Pursuant to Order of 6 May 2005*". Counsel observed that

"the Defence find the said dissemination very inappropriate and respectfully requests that the Trial Chamber instructs CMS not to send any confidential Defence or Prosecution filings (particularly those mentioning confidential Defence issues) to PPA whose only purpose is to disseminate information" and that "it is the Trial Chamber and not the Registrar that must determine who, if anyone, should receive such documents, and then only with notice and an opportunity to the Defence and Prosecution to be heard on the matter."

6. On 21 June 2005 the Hon. Justice Doherty in her capacity as presiding judge issued an order pursuant to Rule 33 of the Rules directing the Registrar to file written submissions in response to the Defence submissions.

Registrar's Submissions

7. On 27 May 2005 the Registrar filed his written submissions in response to the Defence complaint, in which he admitted issuing the directive to CMS to copy all confidential documents "*to other Sections of the Court as is deemed necessary in the interests of efficient administration of the Court*", including the Registrar's Legal Adviser, the Department of Witness and Victim's Support, the Chief of Press and Public Affairs and to the support staff of the Chambers. The Registrar submitted further that his directive was issued administratively pursuant to his powers under Rule 33(A) of the Rules. He pointed out, however, that the copying of confidential documents to the Press and Public Affairs Office is to the Head of that Office and not to anyone else in that office.

8. Explaining the rationale behind his decision to copy all confidential documents to the Chief of Press and Public Affairs, the Registrar submitted as follows:

"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.

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 and then to notify the court and the Trial Chamber of that fact as soon as possible, thereby limiting any damage resulting from the disclosure.

The Press and Public Affairs Office, with its connections with the local press, may also be able to identify who has been responsible for disclosing a confidential document, but to do that the Office needs to know which documents, and the information contained in them, are confidential. No doubt the Defence teams would welcome the capability of the Press and Public Affairs Office to perform that crucial role.

The Press and Public Affairs Office is also responsible for publishing "Press Clippings" on a daily basis and the office needs to identify which documents are confidential and the nature of the information contained in them in order to prevent inadvertently republishing such disclosed documents or, the information contained in them, that appear in the local press. It should also be made very clear that the copying of the confidential documents is to the Head of the Press and Public Affairs Office only and not to anyone else."

9. The Registrar argues pursuant to Rule 33(A) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone ("the Rules"), that he is responsible for all administrative decisions of the Court, subject only to the supervision of the President, and that includes the decision to have confidential documents copied to the Press and Public Affairs Office. He submits that, in the circumstances of the present case, 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 that 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.

III. DELIBERATIONS

Jurisdiction to entertain this request:

10. Defence Counsel have in their oral and written submissions not referred the court to any legal provision enabling the court to conduct this inquiry or to make the orders requested. The Registrar on the other hand, has challenged the Trial Chamber's power and competence to alter administrative decisions of the Registrar made pursuant to Rule 33(A) unless the Trial Chamber is satisfied such decision affects the Accused persons' right to a fair trial. It is trite law in the International Criminal Tribunals that whilst the decisions of administrative Officials are ordinarily immune from judicial scrutiny and review, these courts will not hesitate to draw upon their inherent power in order to scrutinise and review an administrative decision that is prejudicial to the statutory rights of the accused persons or to the conduct of a fair trial.³ In the case of the Special Court the inherent powers of the court are exercised pursuant to Rule 54 of the Rules.

11. Rule 33(A) of the Rules confers upon the Registrar the responsibility for "*assisting the Chambers, the Plenary Meetings of the Special Court, the Council of Judges, the Judges, the Prosecutor, the Principal Defender and the Defence in the performance of their duties.*" Furthermore the rule confers upon the Registrar the responsibility for the "*administration and servicing of the Special Court, under the authority of the President.*" In turn Rule 19 of the Rules charges the President with supervision of the activities of the Registry. This means that ordinarily, a person aggrieved by a decision of the Registrar can and

³ *The Prosecutor v. Tadic*, Case No. IT-94-1, Decision on the Defence Motion for interlocutory Appeal for Jurisdiction, 2 October 1995; *The Prosecutor v. Blaskic*, Case No. IT-914, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, 29 October 1997; *The Prosecutor v. Barayagwiza*, Case No. ICTR 97-13, Decision on Abuse of Process, 3 November 1999; *The Prosecutor v. Alex Tamba Brima et al.*, Case No. SCSL-04-16-T, Brima- Decision on Applicant's Motion Against denial by the Acting Principal defender to enter into a Legal Services Contract for The Assignment of Counsel, 6 May 2004.

may appeal to the President of the Special Court for review of that decision. However, as stated above there is an exception to the norm where a party to the trial is of the view that the Registrar's administrative decision is prejudicial to the statutory rights of the accused persons or to the conduct of a fair trial. Thus in the instant case, before the Trial Chamber can interfere with the Registrar's directive to CMS to disseminate all confidential documents to the Chief PPA it must be shown that the directive is either prejudicial to the statutory rights of the accused persons or to the conduct of a fair trial.

The Essence of Confidentiality of trial Documents:

12. Defence Counsel have complained that the matters raised and contained in the document entitled "*Confidential Prosecution Submissions In Response to Defence Submissions Disclosed to the Prosecution in Their Redacted Form Pursuant to Order of 6 May 2005*" were matters that the Defence did not wish to be made public and in respect of which they obtained a court order for confidentiality. The Defence are unhappy with the Registrar's directive to CMS to disseminate all confidential documents to the Chief of PPA, whose only role according to the Defence "is to disseminate information". The Defence describe the directive as "a breach of confidentiality" specifically with regard to the said document and generally with regard to all other confidential documents filed as such with CMS. The Registrar on the other hand argues that confidential documents are disseminated to the Chief of PPA only and not to any other person in her office. He has explained the purpose of this dissemination and adds further that the Defence have not proved any prejudice suffered by the accused persons as a result of the dissemination.

13. Neither the Statute of the Special Court nor the Rules of Procedure and Evidence contain any guidelines concerning the filing or dissemination of confidential documents. However, the Registrar has pursuant to the provisions of rule 33(D) of the rules and under the authority of the Plenary issued a *Practice Direction on Filing Documents before the Special Court for Sierra Leone* (the "Practice Direction") which contains general guidelines on the filing of documents by parties before the Special court. The Practice Direction does not expressly provide for the current situation. However, Article 4(B) of the Practice Direction provides as follows:

" (B) 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.** (Emphasis added.)

14. Article 4(B) envisages that before a party is permitted to file a document with CMS as "confidential" they must fill out a CMS form indicating the reasons for confidentiality and submit the document together with the reasons for confidentiality to the Trial Chamber for review and determination as to whether confidentiality is necessary. It would appear that Article 4(B) is intended to vest the Trial Chamber with the ultimate authority to determine which documents may or may not be filed confidentially. Here I must observe that the practice currently appertaining in the Special Court with regard to the filing of confidential documents is at variance with the letter and spirit of Article 4(B) and circumvents the Trial Chamber's input. In practice, a party wishing to file a confidential document simply fills out the relevant CMS Form-1 indicating *inter alia*, the classification

of the document as "CONFIDENTIAL" as well as the parties (including actual names of Counsel) upon which the document should be served.⁴ Without reference to the Trial Chamber the filing party submits the document and Form to CMS for filing. Interestingly the CMS Form makes no provision for the Trial Chamber's endorsement of confidentiality of a document as envisaged under Article 4(B) of the Practice Direction. Be that as it may, once the CMS receives the document and attached Form they file the document as "confidential" without reference to the Trial Chamber and disseminate it to the parties indicated on the Form. Hitherto that practice has not been challenged.

15. Of course the reasons for requesting confidential filing of a document differ from case to case. For example, in the case of the document entitled "*Confidential Prosecution Submissions In Response to Defence Submissions Disclosed to the Prosecution in Their Redacted Form Pursuant to Order of 6 May 2005*" the Defence specifically sought for and were granted leave by the Trial Chamber to file that and related documents not only "confidentially" but also "under seal". The reasons given to the Trial Chamber were that the documents contained sensitive information the publication of which would be prejudicial to Defence Counsel in the performance of their statutory duties. In my opinion, once a document has been filed as confidential, there are certain privileges that pertain to that status one of which is that the public is precluded from accessing it on the official website of the Special Court. Another privilege is that the Press is precluded from accessing and using the confidential document in press releases. A third privilege, the Defence argue, is that CMS may not disseminate the document to persons other than the parties to whom it is directed as indicated on the CMS Form-1 without leave of the Trial Chamber which leave should only be given after hearing from the concerned parties. I am inclined to agree with this submission. In my opinion, the very essence of confidentiality is that it protects the integrity and content of a given document from undesirable or prejudicial publication while permitting only the parties to which it is directed, to access the information in that document. In my view it would defeat the very essence of confidentiality if as soon as a confidential document was filed, CMS disseminated it to persons or parties to which it was never intended to be served and over which neither the Trial Chamber nor the filing party has control. It would in my view amount to nothing short of a breach of confidentiality. In the instant case where the documents in question were filed confidentially and under seal pursuant to an order of the Trial Chamber, the effect of such dissemination would be to render that order nugatory.

16. In this regard, I note the Registrar's submissions that he has directed the dissemination of confidential documents to the Chief of Press and Public Affairs not for the purposes of publication but to avoid or prevent such publication by others. The Defence have expressed reservations about the dissemination of the confidential documents to an official of the court that has nothing to do with the trial proceedings as well as the potential within the office of PPA for further unauthorised dissemination or publication of confidential information. In my view, these reservations are valid and to hold otherwise would be to defeat the very essence of confidentiality. The wider the scope of dissemination of a confidential document, the greater the likelihood of its leakage. Parties to the trial ought to rest assured that when they file documents confidentially or under seal, the office of CMS will treat the contents of such documents as privileged and sacrosanct and that no one will "drive a coach and horses" through that privilege. This assurance or guarantee is in my view, fundamental to the integrity of the trial proceedings and to the conduct of a fair trial. Consequently, any

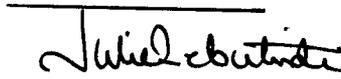
⁴ See Part 1 of Form 1

administrative decision whose effect is to undermine that assurance is in my view, liable to judicial review by the Trial Chamber under Rule 54 of the Rules.

Conclusion:

17. I find that the dissemination by CMS of the document entitled "*Confidential Prosecution Submissions In Response to Defence Submissions Disclosed to the Prosecution in Their Redacted Form Pursuant to Order of 6 May 2005*" to PPA and other departments of the court was tantamount to a breach of confidentiality and of the Trial Chamber's order that the document and others related to the Defence Motion for withdrawal of Counsel should be filed "confidentially and under seal". I find further that the Registrar's blanket directive to CMS to disseminate all confidential documents to the Head of PPA is also tantamount to a breach of confidentiality. In order to preserve the confidentiality of documents filed between the parties, to preserve the integrity of the trial proceedings and related motions and in the interests of justice and a fair trial, I concur with the orders contained in the Majority Decision.

Done at Freetown this 17th day of October 2005.



Justice Julia Sebutinde



SEPARATE AND DISSENTING OPINION OF JUSTICE R.B. LUSSICK

I. INTRODUCTION

1. I have read the majority decision and the separate and concurring opinion of Justice Sebutinde and, with the greatest respect, I have to say that I do not agree with my learned colleagues. The complaint of Co-Counsel for the Accused Kamara is not about the exercise of any judicial function. Rather, his complaint is against an administrative decision of the Registrar on the way confidential documents are to be distributed. That being the case, it is my opinion that this Trial Chamber should not have entertained the complaint at all, since it falls within the jurisdiction of the President.

II. BACKGROUND

2. Before the Trial Chamber is a written submission from Mr. Fofanah, Co-Counsel for the Accused Kamara ("Co-Counsel"), filed as a consequence of matters raised in open court on 12 May 2005 by both Counsel for the Defence and the then Principal Defender.

3. Co-Counsel claims that the Court Management Section is guilty of breaching confidentiality by sending confidential documents, both from the Prosecution and the Defence, to Ms. Allison Cooper, Chief of Press and Public Affairs. Co-Counsel maintains that the Press and Public Affairs Office, "whose only purpose is to disseminate information", should not be sent confidential information. He asks the Trial Chamber to instruct the Court Management Section not to send any confidential Defence or Prosecution filings to the Press and Public Affairs Office. He argues that it is the Trial Chamber Judges, not the Registrar, who must determine who, if anyone, should receive such documents.

4. Attached to Co-Counsel's written submission are copies of various emails from Court Management Section evidencing dissemination of documents marked CONFIDENTIAL to a number of personnel of the Special Court, as well as to members of the Prosecution and Defence. However, the only distribution objected to by Co-Counsel is the distribution to Ms. Allison Cooper. Despite that objection, Co-Counsel does not allege that the Head of Press and Public Affairs has actually published any such documents or misused them in any way.

5. The Registrar has filed a Response in which he explains why confidential documents are distributed not only to the parties but also to other Sections of the Court as is deemed necessary in the interests of efficient administration of the Court. He points out, however, that the copying of confidential documents to the Press and Public Affairs Office is to the Head of that Office and not to anyone else.

6. The Registrar states that there has been a history of documents being "leaked" from the Court to the local press. He explains that, in order to prevent leaks, confidential documents are sent to the Head of Press and Public Affairs, who is then able to take certain precautions (which he describes) to prevent any confidential information from being published.



7. The Registrar argues that, pursuant to Rule 33(A) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“the Rules”), he is responsible for all administrative decisions of the Court, subject to the supervision of the President, and that includes the decision to have confidential documents copied to the Press and Public Affairs Office. He submits that, in the circumstances of the present case, the Trial Chamber has no statutory power to alter administrative decisions of the Registrar made pursuant to Rule 33(A).

III. DELIBERATIONS

8. Rule 33(A) is in the following terms:

(A) *The Registrar shall assist the Chambers, the Plenary Meetings of the Special Court, the Council of Judges, the Judges and the Prosecutor, the Principal Defender and the Defence in the performance of their functions. Under the authority of the President, he shall be responsible for the administration and servicing of the Special Court and shall serve as its channel of communication.*

9. Under Rule 33(D) of the Rules, the Registrar may, with the approval of the Council of Judges, issue Practice Directions addressing particular aspects of the practice and procedure in the Registry of the Special Court. In exercise of this power, the Registrar has issued the Practice Direction on Filing Documents before the Special Court for Sierra Leone. Article 4(B) of the Practice Direction makes provision for confidential documents. Article 4(B) states:

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.

10. It can be seen from this provision that the Judge or Chamber has the judicial function of deciding whether a document should be treated as a confidential document. However, that function should not be confused with the administrative function of distributing the document. What Co-Counsel is objecting to is not the way in which the judicial function is exercised, but the way in which the confidential documents are distributed. The Judge or Chamber’s role in the processing of the document ends once the status of the document has been decided. The document is then distributed according to the practice and procedure of the Registry.

11. Under Article 16(1) of the Statute, the Registry is responsible for the administration and servicing of the Special Court. Under Rule 19(A) of the Rules, the President of the Special Court is empowered to supervise the activities of the Registry.

12. The practice and procedure adopted for the distribution of confidential documents is an administrative decision made by the Registrar. From what the Registrar has submitted, it is clear that his decision to include the Head of Press and Public Affairs in the distribution list is meant as an added protection to confidentiality.

13. It is well established that administrative decisions by the Registrar are subject to review by the President, but not by the Trial Chamber.¹

14. Although the Rules provide a framework whereby the Registry is responsible for administrative matters, subject to Presidential review, the Courts have in some instances instructed the Registrar in administrative matters where fair trial issues were involved.² However, there are no fair trial issues involved in the present case.

IV. DISPOSITION

15. For the above reasons, I would find that the Trial Chamber should not intervene in this matter and that Co-Counsel's submissions ought to have been brought before the President. Accordingly, I would DENY the relief sought.

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


Justice Richard Lussick



¹ See, for example *the Prosecutor v. Ntabakuze*, Case No. ICTR-98-41-T, Decision on Ntabakuze's Motion Regarding Access to the United Nations Detention Facility, 10 June 2002; *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; *Prosecutor v. Delalic et al.*, Case No. IT-96-21-PT, Decision on the Prosecutor's Motion for the Production of Notes Exchanged Between Zejnil Delalic and Zdravko Mucic, 31 October 1996.

² *Prosecutor v. Gatete*, Case No. ICTR-2000-61-I, Decision on the Defence Request for Necessary Resources for Investigations, 2 November 2004, para. 5; The ICTR in that case cited the following authorities: Nahimana et al., Decision on Jean-Bosco Barayagwiza's Motion for Appointment of Counsel or a Stay of Proceedings (AC), 22 October 2004; Bizimungu et al., Decision on Prosper Mugiraneza's Motion to Require the Registrar to Allow Access to a Witness (TC), 2 October 2003; Muvunyi et al., Decision on the Accused's Request to Instruct the Registrar to Replace Assigned Lead Counsel (TC), 18 November 2003.