

**SPECIAL COURT FOR SIERRA LEONE**OFFICE OF THE PROSECUTOR  
FREETOWN – SIERRA LEONE**TRIAL CHAMBER II**Before: Hon. Justice Richard Lussick, Presiding  
Hon. Justice Teresa Doherty  
Hon. Justice Julia Sebutinde

Registrar: Mr. Lovemore G. Munlo SC

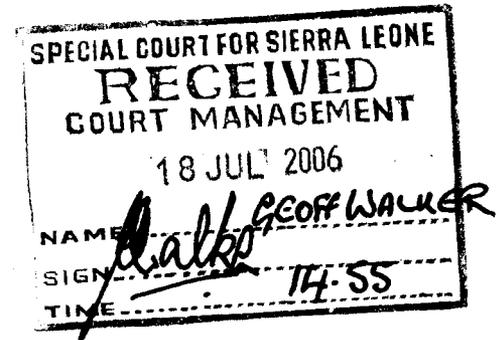
Date filed: 18 July 2006

**THE PROSECUTOR**

Against

**ALEX TAMBA BRIMA  
BRIMA BAZZY KAMARA  
SANTIGIE BORBOR KANU**

Case No. SCSL – 2004 – 16 – T

**PUBLIC****SUPPLEMENT TO  
PROSECUTION REPLY TO DEFENCE RESPONSES TO  
PROSECUTION MOTION FOR RELIEF IN RESPECT OF VIOLATIONS OF RULE 67****Office of the Prosecutor**Mr. Christopher Staker  
Mr. Karim Agha**Defence Counsel for Brima**Mr. Kojo Graham  
Ms. Glenna Thompson**Defence Counsel for Kamara**Mr. Andrew Daniels  
Mr. Pa Momo Fofanah**Defence Counsel for Kanu**Mr. Geert-Jan Alexander Knoops  
Ms. Carry J. Knoops  
Ms. A.E. Manly-Spain

1. On 14 July 2006, the Prosecution filed its "Prosecution Reply to Defence Responses to Prosecution Motion for Relief in Respect of Violations of Rule 67".
2. That Reply cited two authorities from the case-law of the ICTR. The Reply omitted to include a copy of the relevant pages of the first of these authorities (the *Kayishema and Ruzindana* Trial Judgement), as required by Article 7(E) of the Practice Direction on the Filing of Documents Before the Special Court for Sierra Leone, and omitted to include the URL of the second of these authorities (the *Kayishema and Ruzindana* Decision of 3 September 1998) as required by Article 7(D)(i) of the Practice Direction. Annexed hereto (Annexes A and B) are the relevant portions of the former and a copy of the latter. The Prosecution seeks leave, if necessary, for the late filing, which was due in part to the recent disruption of the Special Court's internet connection.
3. Also annexed hereto (Annex C) is a copy of recent e-mail correspondence between the Prosecution and the Defence for the Second Accused, in which the Defence for the Second Accused indicates that it "relies on Rule 67(B) which provides that 'Failure of the Defence to provide such notice under this Rule shall not limit the right of the Accused to rely on the above defences'". The Prosecution submits that this is a further reason why the order sought by the Prosecution should apply also the Defence for the Second Accused, as requested by the Prosecution. The Prosecution seeks leave, if necessary, to rely on this correspondence in support of its motion.

Done in Freetown,

18 July 2006

For the Prosecution,



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Christopher Staker  
Acting Prosecutor



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Karim Agha  
Senior Trial Attorney

**ANNEX A**

*Prosecutor v. Kayishema and Ruzindana, Judgement*, Case No. ICTR-95-1-T, Trial Chamber, 21 May 1999

**ANNEX B**

*Prosecutor v. Kayishema and Ruzindana, Decision on the Prosecution Motion for a Ruling on the Defence Continued Non-Compliance With Rule 67(A)(ii) and with the Written and Oral Orders of the Trial Chamber*, Case No. ICTR-95-1-T, Trial Chamber, 3 September 1998

**ANNEX C**

E-mail correspondence between the Prosecution and the Defence for the Second Accused

# ANNEX A



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

**Before:**

Judge William H. Sekule, Presiding  
Judge Yakov A. Ostrovsky  
Judge Tafazzal Hossain Khan

**Registrar:**

Mr. Agwu U. Okali

**Decision of:** 21 May 1999

**THE PROSECUTOR**  
**versus**  
**CLÉMENT KAYISHEMA**  
**and**  
**OBED RUZINDANA**

*Case No. ICTR-95-1-T*

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**JUDGEMENT**

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**The Office of the Prosecutor:**

Mr. Jonah Rahetlah  
Ms. Brenda Sue Thornton  
Ms. Holo Makwaia

**Counsel for Clément Kayishema:**

Mr. André Ferran  
Mr. Philippe Moriceau

**Counsel for Obed Ruzindana:**

Mr. Pascal Besnier  
Mr. Willem Van der Griend

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## V. FACTUAL FINDINGS

### 5.1 ALIBI

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#### 5.4 THE MASSACRES IN THE AREA OF BISESERO

### 5.1 ALIBI

232. Both Kayishema and Ruzindana raised the defence of alibi to the charges levied against them. Both accused assert that they were not at the sites when any of the massacres occurred. The Trial Chamber shall consider the arguments advanced by Kayishema and Ruzindana below. Before examining the specifics of the alibi defences, however, it is first necessary to consider the procedural concerns that have accompanied their invocation.

#### 5.1.1 Alibi Defence and Rule 67 of the Rules

The salient provisions of Rule 67 of the Rules state that,

- (A) As early as reasonably possible and in any event prior to the commencement of the trial:
  - (ii) the defence shall notify the Prosecutor of its intent to enter:
    - (a) the defence of alibi, in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi
- (B) Failure of the defence to provide such notice under this Rule shall not limit the right of the accused to rely on any of the above defences.

233. The requirement upon the Defence to disclose its intention to rely upon the defence of alibi reflects the well-established practice in the common law jurisdictions around the world.<sup>[1]</sup> It is a requirement necessary in many jurisdictions, and in the jurisdiction of this Tribunal, in order to allow the Prosecution to adequately prepare its case. Once the accused has raised the defence of alibi, the burden to prove this defence may or may not rest upon him depending upon the jurisdiction concerned. In some jurisdictions such as India, the burden of proof rests upon individuals, who plead the defence of alibi.<sup>[2]</sup> In several other jurisdictions as for example in South Africa, the burden of proof rests upon the Prosecution.<sup>[3]</sup>

234. In the instant case, the Trial Chamber holds that the burden of proof rests upon the Prosecution to prove its case beyond a reasonable doubt in all aspects notwithstanding that the Defence raised alibi. After all, the accused is presumed innocent until the Prosecution has proved his guilt under Article 20(3) of the Statute. The accused is only required to raise the defence of alibi and fulfil the specific requirements of Rule 67(A)(ii) of the Rules, which stipulates the necessary information required about

the defence of alibi.

235. Under Rule 67 aforementioned, the Defence is required to notify the Prosecution about their intent to rely upon the defence of alibi. However, Counsel for Kayishema made absolutely no indication prior to the commencement of the trial of his intention to rely upon the defence of alibi, and Counsel for Ruzindana only submitted limited information with regard to the witnesses that he intended to call. The Prosecution filed a formal complaint by Motion in which it requested the Trial Chamber to order compliance with Rule 67(A)(ii) of the Rules.<sup>[4]</sup>

236. During the hearing, Kayishema was asked why, in light of the evidence he had heard against him, he had not raised his defence of alibi at an earlier stage. He stated that as far as the Office of the Prosecutor was concerned, the question was never asked of him. Furthermore, he raised the issue at the first opportunity with his Defence Counsel on 31 May 1996.

237. The Trial Chamber has considered the failure of both Defence Counsels to act in accordance with Rule 67(A)(ii). In its Decision on the above Prosecution Motion, the Chamber ruled,

. . . that where good cause is not shown, for the application of Rule 67(B), the Trial Chamber is entitled to take into account this failure when weighing the credibility of the defence of alibi and/or any special defences presented.<sup>[5]</sup>

238. The Trial Chamber notes that the Defence had ample time to prepare their client's defence and takes this on board in consideration of the timeliness of Counsel's notification of the Prosecution in accordance with Rule 67(A)(ii) of the Rules. This approach is congruent with those jurisdictions<sup>[6]</sup> facing similar difficulties in balancing the needs of the Prosecution with the Defendant's right to testify and present a defence.<sup>[7]</sup>

239. Counsel for the Defence constantly advanced the argument that the Prosecution's concern over the continued violations of this rule was unjustified in light of the Prosecution's late disclosure of witness lists.<sup>[8]</sup> However, all Parties to the proceedings had the opportunity to raise such lack of disclosure in the appropriate manner before this Chamber. Therefore, the Defence's failure to follow the Rules of Procedure and Evidence is unacceptable and serves neither the interests of the accused nor of justice. Furthermore, the Defence's observation that under Rule 85 the Prosecution may bring evidence to rebut the alibi, does not mitigate the aforementioned duty upon the Defence under Rule 67.<sup>[9]</sup> Moreover, the mere fact that the Prosecutor did not utilise Rule 85 to bring evidence in rebuttal will not have any bearing upon the Trial Chamber's assessment of the evidence presented. Thus, this Chamber will accord no extra weight to the accused's defence of alibi merely because the Prosecution did not call witnesses in rebuttal. Considering the Decision on the above Motion, in which the Trial Chamber ordered the compliance with Rules 67(A)(ii) and 67(B) and in light of the considerations discussed

above, the Trial Chamber will, despite the non-compliance with its order and the defiance of the Defence Counsel, consider the defence of alibi advanced by both Kayishema and Ruzindana without prejudice to the accused.

### 5.1.2 Kayishema's Alibi Defence

240. The essence of Kayishema's alibi is that he was in hiding from the morning of Saturday 16 April 1994, to the morning of Wednesday 20 April 1994. These dates purportedly removed him from the scene of the massacres at Catholic Church, Home St. Jean Complex and the Stadium that occurred on 16, 17, 18, 19 April. It would also remove him from Mubuga Church on the 16 April, the date that the Trial Chamber has found the major attack at this site occurred. It would not, however, account for his whereabouts in the days that preceded this attack. Kayishema also denies ever being present at any of the massacre sites in the Bisesero area during the period set out in the Indictment, but provides no specific alibi.

241. Kayishema testified before this Trial Chamber that in the early hours of Saturday 16 April, upon the departure of the commanding officer Major Jabo, the Tutsi gendarmes were mutinying and were looking for him with harmful intention. Upon receipt of this information he, with his wife and children, went into hiding. Kayishema stated in his testimony that between 9 and 10 a.m. he and his family left the *prefectorial* house and went into hiding. They sought refuge in the houses of white people in Kibuye because they had already been looted and no one was likely to return to them. The first house was that of Mr. Soufflet which lay along from the *Prefectorial* residence on Lake Kivu, approximately three kilometres from Home St. Jean and the Catholic Church. Kayishema stated that they remained there for the nights of 16 and 17 April. He and his family then moved next door, to the last house in that direction, for the remaining two nights. This was owned by a Swiss technical assistant who was working in the forestry department. Kayishema contended that he was absent from his family only when he would investigate a noise outside or when his informant visited their hiding place. This absence was never in excess of 30 minutes.

242. In an earlier account, Kayishema had volunteered details of this Prosecution period to the investigators, as shown in exhibit 350C, a transcript of the interview with investigators. On 6 November 1996, during the interview with investigators, Kayishema stated that he was in his own home during the period of the massacres at Home St. Jean, the Catholic Church, and the Stadium. Although at this time he could not remember the dates, or the days of the week that he was confined to his house, Kayishema identified individuals with whom he had hidden, namely Emmanuel Dusabimana, Alphonse Kayiranga, the wife of Lieutenant Charles Twagirayezu and the Tutsi wife of a Hutu named Francois. He did not, however, call any of these people to testify on his behalf. In this statement he also asserted that he would spend his nights, in the bush, hiding. During his cross-examination Kayishema explained the

previous meetings with regard to the new *sous prefects* had been written in French, this meeting was noted in another ink and written in Kinyarwanda. Furthermore, this note states that it was a meeting with all staff members to present the new *sous prefects*.<sup>[12]</sup> There is no mention of the meeting being a public one as Mrs. Kayishema had claimed. The Trial Chamber has some doubt whether the entry regarding this meeting was in fact entered at the time of events.

255. Beyond these specific days, and a few other notable days of interest such as when the Cardinal visited the region, the Mrs. Kayishema does not offer any further testimony as to her husband's actions during the remaining period when massacres were occurring in the Bisesero area. However, Witness DU, a friend of Kayishema who claims to have been resident in his house from 4 May, offers this alibi. He testified that apart from one day when the defendant was attending a meeting all morning, Kayishema never left his offices for more than half an hour. It is a testimony that is discredited initially by its improbability, especially in light of Kayishema's position as *Prefect* that demanded his presence over the whole *Prefecture*. It is also a testimony that is discredited by its contradictions with Mrs. Kayishema's and the defendant's own testimony before this Chamber. Kayishema gave detailed evidence of his continuing activities as *Prefect* throughout April, May and June. He specifically confirmed, contrary to the opinion of DU, that he had been to the Bisesero area. The testimony of witness DU, therefore, adds little weight to Kayishema's alibi defence for the massacres that occurred in the Bisesero region.

#### ***Kayishema's Elaboration***

256. A further phenomenon highlighted by the Prosecution was the Kayishema's ability to recall exact dates, days and even times that he was in hiding during his testimony. It is a matter of concern to this Trial Chamber because it is in sharp contrast to his interview, almost two years prior. In that interview in November 1996 Kayishema could not provide any dates or even days that he was in hiding. Kayishema was asked in cross-examination before this Trial Chamber why he had given the response to the investigators that he did not remember what days he was in hiding. His considered response was that, in the first place, he did not know what were going to be the key issues for his defence. Secondly, he asserted that he had the right to remain silent. However, this Chamber notes that he did not remain silent. Rather, he specifically said that he did not remember.<sup>[13]</sup> The Chamber also notes that Kayishema could not have an answer what had aided his memory, in light of the absence of any entry in his diary, since that last interview. Although not conclusive in itself, the Trial Chamber has taken such elaboration into consideration.<sup>[14]</sup>

#### ***Finding***

257. In light of these contradictions, this Chamber does not find any merit in the defence advanced by Kayishema. Whilst the burden of proof rests upon the Prosecution to prove the case against Kayishema, the defence of alibi that has been raised on his behalf has not been sufficient to levy any doubt against

that Prosecution case which is set out and considered below.

### 5.1.3 Ruzindana's Alibi Defence

258. In total, 21 witnesses appeared on behalf of Ruzindana alone and gave testimony pertinent to his defence of alibi. Most of these witnesses did not give a comprehensive account of Ruzindana's whereabouts during the period when massacres were known to have occurred in the Bisesero region. Nevertheless, a picture was built by the Defence of a man continuing his business in the town of Mugonero.

259. After the death of President Habyarimana, on 6 April 1994, Ruzindana and his family left Remera, a neighbourhood of Kigali, where they had been living. They returned to Mugonero where Ruzindana's father continued to run a shop. Ruzindana was a businessman and a well-known figure in the area. A number of witnesses testified to having seen Ruzindana for varying periods of time between April and July 1994. Witnesses testified to having seen Ruzindana serving customers in his father's shop, others observed Ruzindana at the local market which was held every Wednesday, or noticed him on the roads between Kibuye, Cyangugu and Gisenyi.

260. Specifically, witnesses such as DD testified to frequenting the store of Ruzindana's father "almost everyday" where, on most occasions, Ruzindana had served him.<sup>[15]</sup> Witness DD, a friend of Ruzindana's was not more specific but witness DAA apparently corroborated his account. Like DD, witness DAA worked in a store opposite the Ruzindana family shop and confirmed that Ruzindana was never away from Mugonero for more than a week. However, like all other witness who testified for the accused, he never accompanied Ruzindana on these business trips. Moreover, the only exact dates to which he could confirm that Ruzindana was present at Mugonero were the 12 to 14 April.

261. Ruzindana was also seen regularly in the Mugonero market, which was held every Wednesday. Witnesses DB, DE, DF, DN, DQ, DS and DY identified Ruzindana in the market on numerous occasions throughout April, May and June. However, no exact dates were ever given by these witnesses. Witness DB, for example, saw the accused one Wednesday in early May; witness DF recollected seeing him four times in these three months; witness DQ saw him once in April and twice in May. Thus, it is possible to see that these sightings, which would last only a few minutes, are utilised by the Defence to reflect the activities of an individual continuing his normal course of business. They are not, and cannot, be offered as a comprehensive alibi for his whereabouts during the massacres in the Bisesero area.

262. Similarly, the Defence offered a number of examples where witnesses had seen Ruzindana on the roads in the conduct of his business. Other witnesses referred to Ruzindana driving one of his four

these day trips would have more than sufficed to enable Ruzindana to reach the massacre sites and then return home. Accordingly, it is not sufficient for the purposes of his alibi defence, for witnesses to state that Ruzindana was the road from Mugonero or for Ruzindana's sister to state that whenever he was not on a business trip, that the accused would enjoy the family meal with them.

270. Furthermore, the Prosecution does not deny that Ruzindana continued trading throughout April, May and June, or that he made several other trips to locations such as Cyangugu. Rather, this supports the contention of Prosecution witnesses, X, FF and II who had not only heard reference to their attackers coming from Gisenyi, Gikongoro and Cyangugu, but had also noticed the accents peculiar to these regions.

### *Finding*

271. The Chamber is cognisant of the difficulties raised in advancing this defence due to the time period covered in the Indictment. The legal issues that this gives rise to have already been considered.

[18] At this juncture it is sufficient to note that, on a factual basis, many witnesses for the Defence were unable to provide specific dates as to when they had seen Ruzindana in Mugonero.

272. The burden of proof is, of course, on the Prosecution to prove their case beyond a reasonable doubt. In the opinion of the Trial Chamber, however, the alibi defence provided by Ruzindana does not diminish the Prosecution case. Even if the evidence proffered by the Defence in support of alibi is accepted in its entirety, it remains insufficient to raise doubt in relation to Ruzindana's presence in Bisesero at the times of the massacres. Accordingly, the Trial Chamber rejects the defence of alibi advanced by Ruzindana and has set out its factual findings below.

# ANNEX B



International Criminal Tribunal for Rwanda  
Tribunal pénal international pour le Rwanda

**TRIAL CHAMBER II**

OR:ENG.

**Before:**

Judge William H. Sekule Presiding  
Judge Yakov A. Ostrovsky  
Judge Tafazzal Hossain Khan

**Registry:** Mr. John M. Kiyeyeu

**THE PROSECUTOR**  
**Versus**  
**CLEMENT KAYISHEMA**  
**AND**  
**OBED RUZINDANA**

*Case No. ICTR-95-1-T.*

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**DECISION ON THE PROSECUTION MOTION FOR A RULING ON THE  
DEFENCE CONTINUED NON COMPLIANCE WITH RULE 67 (A)(ii)  
AND WITH THE WRITTEN AND ORAL ORDERS OF THE TRIAL  
CHAMBER**

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**The Office of the Prosecutor:**

Mr. Jonah Rahetlah  
Ms. Brenda Sue Thornton  
Ms. Holo Makwaia

**Counsel for the Accused:**

Mr. Andre Ferran (For Clement Kayishema)

**THE TRIBUNAL,**

SITTING AS Trial Chamber II (the "Trial Chamber") composed of Judge William H. Sekule Presiding, Judge Yakov A. Ostrovsky and Judge Tafazzal Hossain Khan;

BEING SEIZED of the prosecution motion filed on 11 August 1998, seeking, *inter alia*, an order prohibiting the defence of Clement Kayishema ("the defence") from invoking the defence of alibi or any special defence due to the defence's continued non compliance with rule 67(A)(ii) of the Rules of Procedure and Evidence ("the Rules");

CONSIDERING the written and oral submissions made by the prosecution and defence on 26 August 1998.

**THE PROSECUTOR ARGUES:**

A. Failure of the defence to disclose the prescribed details of its alibi defences to the prosecutor;

- violates rule 67(A)(ii)(a) which requires the defence to notify the prosecutor of its intent to offer a defence of alibi along with the prescribed details;

- amounts to a complete disregard for the written decision of this Trial Chamber dated 15 June 1998 which requires the defence to disclose immediately to the prosecutor, if it intends to rely upon the defence of alibi or special defence;

- demonstrates its indifference to the oral order of this Trial Chamber made on 24 June 1998 reminding the defence to comply with the written decision cited above.

B. The defence's failure to disclose and notify the prosecutor of its intent to use the defence of alibi renders the prosecutor vulnerable to an ambush in that, she finds herself unprepared for rebutting such claims.

C. Although under rule 67(B), failure of the defence to provide notice under rule 67(A)(ii) shall not limit the right of the accused to rely on the defence of alibi or any special defence, the rule should not be used to defeat the purpose and the spirit of rule 67(A)(ii).

D. The Trial Chamber should consider issuing an order prohibiting the defence of the accused from invoking the defence of alibi or special defence due to its continued non compliance with the Rules and with the relevant written decision and oral order of the Trial Chamber.

E. The Trial Chamber, in the alternative, should warn the defence on the record that its continued disregard for the disclosure obligation may result in either the loss of the right to assert such defences or, at a minimum, should be considered by the Trial Chamber when weighing the credibility of an alibi and any special defence.

F. Should the Trial Chamber allow the defence of Clement Kayishema to invoke the defences with which they are presented, the prosecutor may require time to investigate the defences after they are presented.

G. The Trial Chamber should order the defence to comply with rule 67(C) by transmitting to the prosecutor for inspection, any books, documents, photographs and tangible objects which are within the custody or control of the defence and which it intends to use as evidence at trial.

#### **THE DEFENCE RESPONDS:**

A. Under rule 67(B), failure of the defence to notify the prosecutor of the defence of alibi or any special defence as required by rule 67(A)(ii), does not limit the right of the accused to raise the defence of alibi or special defence.

B. The contents of the preceding paragraph notwithstanding, the defence has not been able to disclose its defence of alibi mainly because of the short period that elapsed between the appearance of the last prosecution witness and the appearance of the defence witnesses.

C. In addition to the above reasons, the defence has been unable to comply with rule 67(A)(ii) due to want of cooperation from the governments of the Democratic Republic of Congo and Kenya in obtaining the details of witnesses.

#### **DELIBERATIONS:**

HAVING REGARD TO Article 19 of the Statute of the Tribunal which empowers this Trial Chamber to ensure that the trial is fair and expeditious and that proceedings are conducted in accordance with the Rules;

WHEREAS this Trial Chamber, in its written decision of 15 June 1998 and oral order of 24 June 1998, ordered the defence to comply with the requirements of rule 67(A)(ii) if it intended to use the defence of alibi or any special defence, with which the defence has not complied fully;

NOTING THAT rule 67(A)(ii)(a) requires the defence to notify the prosecutor of its intention "to enter the defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi;" as early as reasonably practicable and, in any event, prior to the commencement of the trial;

NOTING THAT rule 67(B) states that failure of the defence to provide notice as required under rule 67(A)(ii) does not limit the right of the accused to rely on the defence of alibi and/or special defence, which could effectively render rule 67(A)(ii) unenforceable;

ACCORDINGLY therefore, in order to give effect to rule 67(A)(ii) the Trial Chamber *requires a showing of good cause* for the invocation of rule 67(B);

RECOGNIZING THAT the circumstances in which good cause may arise are limited;

OBSERVING THAT an alleged short lapse of time between the close of the prosecution case and the start of the defence case cannot be considered as an argument toward good cause because rule 67(A)(ii) requires disclosure *prior to the commencement of the trial*;

OBSERVING THAT although the defence may have allegedly faced non-cooperation from the governments of the Democratic Republic of Congo and Kenya, thereby limiting its ability to obtain all the necessary information regarding names and address of witnesses as required under rule 67(A)(ii), this is not a good cause for the defence's *complete* failure to provide *any* details regarding alibi and/or special defence;

OBSERVING THAT the accused himself could have provided, at the very least, details regarding the place or places at which the accused claims to have been present at the time of the criminal activities at issue, prior to the commencement of the trial because he was provided with a copy of the indictment;

**NOW THEREFORE, FOR THE REASONS STATED HEREIN ABOVE**

**THE TRIAL CHAMBER: -**

(I) **REITERATES** its previous decision on this matter;

(ii) **OBSERVES** that where good cause is not shown, for the application of rule 67(B), the Trial Chamber is entitled to take into account this failure when weighing the credibility of the defence of alibi and/or any special defence presented, and **STRESSES** its utter displeasure with the defence counsel's non-compliance with the abovementioned decision and order of this Trial Chamber.

Arusha, 3 September 1998

William H. Sekule

Presiding Judge

Yakov A. Ostrovsky

Judge

Tafazzal Hossain Khan

Judge

(Seal of the Tribunal)

# ANNEX C

SCSL Defence-Kamara/SCSL

07/14/2006 04:26 PM

To Karim Agha/SCSL@SCSL

cc

bcc

Subject Re: Rule 67 (A) : The Defence of Alibi

Dear Agha

Presently the Defence for the Second accused relies on Rule 67(B) which provides that “ Failure of the Defence to provide such notice under this Rule shall not limit the right of the Accused to rely on the above defences”

Sincerely

Andrew

Karim Agha/SCSL

Karim Agha/SCSL

07/13/2006 08:31 AM

To SCSL Defence-Kamara/SCSL@SCSL

cc

Subject Rule 67 (A) : The Defence of Alibi

Dear Andrew and Mohamed,

I refer to my e-mail to you both on 7-7-06 a copy of which is reproduced below for ease of reference.

Please may I receive your written reply to that e-mail in respect of the defence of Alibi under Rule 67 (A) by close of business Friday 14th July (tomorrow) failing which we may be compelled (as with the other 2 accused) to file an appropriate motion before the court.

Sincerely

Karim Agha

STA

Dear Andrew and Mohamed,

Following the evidence of the first accused it appears that he is relying on the defence of alibi for a number of the crimes alleged against him in the indictment including the Freetown invasion in January 1999. You may have seen that the prosecution earlier today filed a motion in this regard

The only indication of any alibi which the second accused has given the prosecution to date is found at para 10 of the Kamara--Defence PTB dated 21st February 2005. Para 10 states that the accused was imprisoned at the time of the coup in May 1997.

Please can you confirm asap that the 2nd Accused does not intend to rely on the defense of alibi in respect of any of the crimes alleged against him in the indictment especially in respect of the invasion of Freetown in Jan 1999.

If the second accused will be relying on the defense of alibi in respect of any of the crimes alleged against him in the Indictment please can you provide the prosecution asap with an alibi notice containing the details set out in Rule 67 (A).

Sincerely,

Karim Agha,  
STA,