Dear Mr Vincent,

Appearance of Chief Samuel Hinga Norman before the TRC

We thank you for your letter dated 5 September 2003 together with the Practice Direction adopted on 9 September 2003.

We wish to point out certain concerns we have with the Practice Direction, which are set out hereunder.

1. The Direction purports to compel the TRC to list the specific questions it proposes to ask the detainee by virtue of paragraph 2(g).

2. The Direction purports to authorise the Registrar to tape record the interview and to make available the interview transcript to the prosecution for potential use at the trial (paragraphs 4ii and 8(b), (c)).

3. The Direction purports to authorise the Presiding Judge to approve whether the TRC may interview a detainee in pursuance of its mandate (paragraph 5).

4. The Direction purports to authorise the Registrar to monitor the interview and confine the ambit of the interview to be conducted by the TRC.
The Practice Direction has no regard for the right of the Commission to hear testimony in confidence as provided by section 3 of the Truth and Reconciliation Act, 2000 (the Act) and to conduct interviews in private (section 8(1)(c) of the Act). Records of confidential interviews may not be used by any other party, including the Special Court.

Witnesses who appear before the TRC are expected to contribute towards truth telling which in turn forms the basis of national healing and reconciliation. In this process a witness may incriminate himself. Where the interview is conducted on the basis of confidentiality (as provided by the Act) the TRC will naturally not disclose any information to another body for purposes of criminal prosecution. This principle has been established and respected in other jurisdictions and indeed it is established in this country. The TRC routinely interviews awaiting trial prisoners before the criminal courts of Sierra Leone and there has been absolutely no question of monitoring our interviews or for that matter forwarding information to prosecutors. Indeed to do so would be regarded as an outrage. We are surprised that the Special Court, a body established through international co-operation and which presumably subscribes to international human right standards would conduct itself in this way.

The Direction is in the circumstances a flagrant denial of the accused’s right not to testify against himself. This right is enshrined in your own Statute for the Special Court of Sierra Leone by virtue of Article 17, subparagraph (4)(g).

The burden of proof in a criminal trial rests with the prosecution. The Direction in our view constitutes an improper attempt to procure evidence from the accused. In effect the accused who wishes to appear before the TRC is penalised and his right to a fair trial undermined for no other reason than his desire to exercise his rights under the Act. The Practice Direction then has a “chilling effect” on those detainees who may wish to appear before the TRC. Many will in the circumstances decide not to exercise their rights in this regard and those that do are effectively punished for doing so.

We were advised by you at our meeting on 4th September 2003 that the Direction was put in place, for amongst other reasons, to safeguard the accused’s right to a fair trial. The Practice Direction does little to protect the right of an accused to a fair trial. As we have demonstrated above it is manifestly offensive to that right.

We note that among the reasons for the monitoring of the interview you have suggested that the monitoring officer may have to intervene in order to prevent the identification of protected witnesses. This is, with respect, an ill-considered reason for the monitoring of our interview. The moment the monitoring officer intervenes for this purpose, he or she will in all probability inadvertently point to the identity of a protected witness. Witness protection is all about information security. We assume of course that witness protection details have not been disclosed to accused persons. This then cannot be a valid reason for the monitoring of our interview.

We are of course respectful of the important role the Special Court plays in Sierra Leone in addressing impunity. The TRC would not engage in any activity that would
undermine the objectives of the Special Court. In this regard we will adhere to conditions the Special Court puts in place pertaining to security and administration. However no institution, the Special Court included, may obstruct any person from participating in the TRC process.

In short the TRC will not interview persons in the circumstances proscribed by the Practice Direction. In our view the Practice Direction is ill-conceived and we would request you to review it as a matter of urgency. The Direction is dismissive of the spirit and purpose behind the Truth and Reconciliation Commission and would be a highly regrettable development between our two important institutions.

Please advise us per return whether the Special Court will review the paragraphs of the Practice Direction referred to above. We would be happy to meet with you at the time and place suggested in your letter to discuss parameters that are reasonable and acceptable to both the Special Court and TRC.

Yours sincerely

Franklyn Kargbo
Executive Secretary

cc: Mr Sulaiman Banja Tejan-Sie II,
Chief Samuel Hinga Norman JP