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SCSL-2004-16-PT-  
(6105-6107)

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**SPECIAL COURT FOR  
SIERRA LEONE**

Case No. SCSL-2004-16-PT

**TRIAL CHAMBER II**

Before: Judge Teresa Doherty, Presiding  
Judge Julia Sebutinde  
Judge Richard Lussick

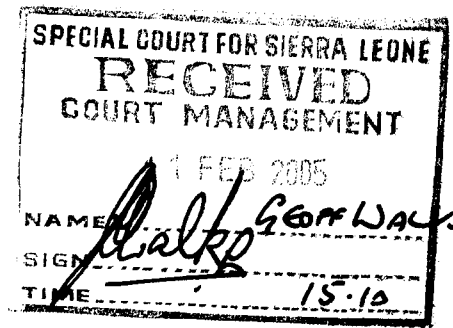
Registrar: Robin Vincent

Date filed: February 11, 2005

**THE PROSECUTOR**

against

**SANTIGIE BORBOR KANU**




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**KANU – REQUEST FOR AN ORDER NOT TO DISCLOSE PHOTOGRAPHY, VIDEO AND AUDIO  
RECORDING OF THE TRIAL TO THE PUBLIC AND/OR THIRD PARTIES**

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Office of the Prosecutor:

Luc Coté  
Lesley Taylor

Defense Counsel:

Geert-Jan Alexander Knoops, Lead Counsel  
Cary J. Knoops, Co-Counsel  
A.E. Manly-Spain, Co-Counsel

## I INTRODUCTION

1. In respect to the upcoming trial proceedings, Mr. Santigie Borbor Kanu (“Accused”) wishes to bring forward this “Kanu – Request for an Order Not to Disclose Photography, Video and Audio Recording of the Trial to the Public and/or Third Parties.”

## II THE APPLICATION

2. In the trial against the AFRC Accused, the identity of the alleged perpetrators of certain events described in the Prosecution witness statements, could perhaps become an important factor in the determination of the reliability and credibility of certain of these witnesses. In several of the Prosecution witness statements, descriptions of certain alleged perpetrators are given, without mentioning the exact identity and/or name of that particular person. It is therefore fair to assume that both the examination and cross-examination of these witnesses will rely on the absence of any predisposition of that particular witness in that this person had no previous access to any photograph, video recording or audio recording of the trial, particularly the recording of the Accused at trial.
3. Accordingly, disclosure of the client’s images could lead to influencing these witnesses in that they would recognize the Accused from these pictures, and would therefore seriously jeopardize the independent truth finding process at trial, and endanger the principle of a fair trial with respect to the Accused. Academic literature is clear on the subject: once the witness has seen an image of the accused, and is afterwards examined about certain events, the original memory of the witness can be distorted and influenced, and thus the authenticity of his testimony can hardly be verified.<sup>1</sup> In view of the Defense, this situation should be avoided in the instant case, particularly now that the Prosecution’s case may depend on the issue of identification of alleged perpetrators within the context of the current indictment.
4. In this context, the Defense draws the attention of the honorable Trial Chamber to its “Kanu – Defense Motion for Dismissal of Counts 15 – 18 of the Indictment Due to an Alibi Defense and Lack of Prima Facie Case,” filed on January 20, 2005, which already proves that mistake of identity or fact is not illusory in this case with respect to the Accused.

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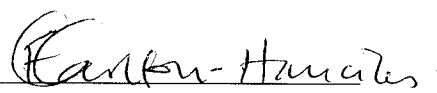
<sup>1</sup> See for this topic for instance Professor W.A. Wagenaar, *Identifying Ivan*, New York, Harvester, 1988.

- 5. Rule 81(D) of the Rules of Procedure and Evidence (“Rules”) provides that: “Photography, video-recording or audio-recording of the trial, otherwise than by the Registry, may be authorised at the discretion of the Trial Chamber.”
- 6. Thus, the Defense requests the honorable Trial Chamber to order that photography, video and audio recording at trial, in particular of the Accused, by third persons be prohibited during the trial proceedings, and to direct the Registry not to publish or disclose photographs, video and audio records of the Accused to the media or other third persons, or take any other reasonable measure to prevent that Prosecution witnesses, prior to their testimony at trial, will have access to such materials.

**III RELIEF SOUGHT**

- 7. It is for the reasons set out above that the Accused respectfully requests the honorable Trial Chamber:
  - (i) To prohibit photography, video and audio recording of the Accused by third persons during the trial proceedings; and
  - (ii) To direct the Registry not to publish or disclose photographs, video and audio records of the Accused to the media or other third persons.
  - (iii) Or to take any other reasonable measure the honorable Trial Chamber deems appropriate to prevent that Prosecution witnesses, prior to their testimony at trial, will have access to such images.

Respectfully submitted,  
 Done on this 11<sup>th</sup> day of February 2005

p.p.   
 Geert-Jan Alexander Knoops  
 Lead Counsel