

**IN THE SPECIAL COURT OF SIERRA LEONE****TRIAL CHAMBER II****Before: The Trial Chamber**

Judge Teresa Doherty, Presiding Judge

Judge Richard Brunt Lussick

Judge Julia Sebuntinde

**Registrar:** Mr Robin Vincent**Date Filed:** 22 February, 2005**THE PROSECUTOR****Against****ALEX TAMBA BRIMA  
BRIMA BAZZY KAMARA  
SANTIGIE BORBOR KANU**

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**KAMARA – REPLY TO PROSECUTION COMBINED RESPONSE TO  
DEFENCE 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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Case No. SCSL 2004-16-PT

**Office of the Prosecutor**

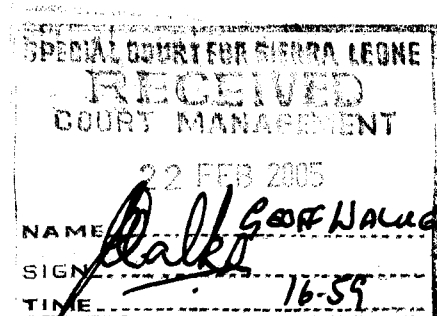
Luc Cote, Chief of Prosecutions

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Wilbert Harris

Mohamed Pa-Momo Fofanah

**Counsel for Co-accused**Kevin Metzger, Glenna Thompson and Kojo Graham for **Alex Tamba Brima**Geert-Jan Knoops, Carry Knoops and A.E. Manly-Spain for **Santigie Borbor Kanu**

## I. BACKGROUND

1. This reply is in answer to the “Prosecution Combined Response to Defence Request for an Order Not to Disclose Photography, Video and Audio Recording of the Trial to the Public and/or Third Parties” filed on 17 February 2005.
2. The Defence files this Reply for and on behalf of Ibrahim Bazy Kamara in order to further strengthen the submissions made in its Application of 16 February 2005 on the subject “Kamara - Request for an Order Not to Disclose Photography, Video and Audio Recording of the Trial to the Public and/or Third Parties”, as well as to support and add to the arguments contained in the respective Replies by Brima<sup>1</sup> and Kanu<sup>2</sup> to the “Prosecution Combined Response to Defence Request for an Order Not to Disclose Photography, Video and Audio Recording of the Trial to the Public and/or Third Parties” aforesaid.

## II ARGUMENT

### A. **The Defence will suffer no undue prejudice from the taking and disclosure of photographs, video and audio recordings of the accused.**

3. The “Brima - Reply to Prosecution Combined Response to Defence Request for an Order Not to Disclose Photography, Video and Audio Recording of the Trial to the Public and/or Third Parties” filed on 21 February 2005 has already indicated that reliance by the Prosecution on the decision in *The Prosecution Against Augustine Gbao*<sup>3</sup> is, “respectfully misconceived”, and the Kamara Defence agrees

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<sup>1</sup> “Brima - Reply to Prosecution Combined Response to Defence Request for an Order Not to Disclose Photography, Video and Audio Recording of the Trial to the Public and/or Third Parties”, 21 February 2005.

<sup>2</sup> “Kanu - Reply to Prosecution Combined Response to Defence Request for an Order Not to Disclose Photography, Video and Audio Recording of the Trial to the Public and/or Third Parties”, 22 February 2005.

<sup>3</sup> SCSL-2003-09-I, Order on the Urgent Request for Direction on the Time to Respond to and/or an Extension Time for the Filing of a Response to the Prosecution Motions, 16 May 2003, page 2.

with that position. Additionally, the Kamara Defence contends that it is the same rationale advanced by the Prosecution regarding the professionalism and independence of Judges of this honourable Trial Chambers that urged and has continued to urge the current Application. The Defence is of the view that by its application for non-disclosure of images of the accused to the public and/or third parties via photography, video and audio recording of the trial, an independent professional tribunal will be able to assess the fears and concerns of the accused and, where appropriate and possible, safeguard him against anything that may potentially harm the fairness of his trial.

4. Reference to the *general* import of the Transcripts of 5 July 2004 in the *Prosecutor Against Sesay, Kallon and Gbao*<sup>4</sup> by the Prosecution to support their Response is, with respect, equally misplaced. Whilst the foregoing references and the preceding statements to them<sup>5</sup> particularly caution against the use of “emotionalism and hyperbolic statements” in opening statements, the current application by the Defence is, with respect, too serious to be considered “emotive”, “hyperbolic” or sensational. It touches and concerns an accused’s right to fair hearing free from fear, prejudice or influence. Any suspicion or apprehension by the accused that witnesses called against him will be influenced should not be emotionally removed from the consideration of a professional and independent body of judges, whether local or international.
5. The Defence agrees with arguments proffered by the Brima<sup>6</sup> and Kanu<sup>7</sup> Defence Teams in reply to the contention by the Prosecution that “the jurisprudence in

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<sup>4</sup> SCSL-2004-15-T, page 32, lines 28-31 and page 35, lines 21-26.

<sup>5</sup> *Id.*, page 32, lines 21-26.

<sup>6</sup> “Brima - Reply to Prosecution Combined Response to Defence Request for an Order Not to Disclose Photography, Video and Audio Recording of the Trial to the Public and/or Third Parties”, 21 February 2005, paragraph 5.

<sup>7</sup> “Kanu - Reply to Prosecution Combined Response to Defence Request for an Order Not to Disclose Photography, Video and Audio Recording of the Trial to the Public and/or Third Parties”, 21 February 2005, paragraphs 3-7.

international criminal law indicates that little weight is given to mere dock identification”<sup>8</sup>.

6. Further, contrary to the Prosecution’s submissions in paragraph 8 of its Response, it is contended that this is the most appropriate time to file the current Application. The accused is worried about higher risk of damage being done to his case now than before when actual trial was uncertain and witnesses were unsure of when they will testify before the Court. The fact that witnesses will be testifying against the accused only a couple of weeks from today makes this Application timely enough.
7. The Defence is respectfully of the view that paragraph 9 of the Prosecution Response was written with knowledge that this Trial Chambers can positively address the current Application, at least in favour of the accused. It is submitted that as much as the Defence does not consider the grant of protective measures to certain witnesses of the Prosecution as an “abridgement of the public’s right to information on or about the proceedings”<sup>9</sup>, so does it also consider its current Application for the accused as a necessary protective measure to safeguard fair hearing.
8. In reply to paragraph 10 of the Prosecution Response, it is submitted that Rule 81 (D) of the Rules of Procedure and Evidence is discretionary to this Court. Therefore, the Defence respectfully urges the Court to exercise that discretion in the accused’s favour. Besides, the current application is made in anticipation of actual trial, not for “pre-trial media coverages” highlighted by the Prosecution in reference to *The Prosecutor Against Mejaki*<sup>10</sup>.

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<sup>8</sup> “Prosecution Combined Response to Defence Request for an Order Not to Disclose Photography, Video and Audio Recording of the Trial to the Public and/or Third Parties”, 17 February 2005, paragraph 7.

<sup>9</sup> Id., paragraph 9.

<sup>10</sup> IT-02-65-PT, Decision on Dasko Knezevic’s Request Pursuant to Rule 81 (D), 28 July 2004.

9. In reply to paragraph 11 of the Prosecution Response, it is submitted that the Defence's analogy to protective measures enjoyed by Prosecution witnesses and victims to strengthen the Defence's Application<sup>11</sup> is, with respect, appropriate and tenable. Experience has shown that an accused who feels uncomfortable may *inter alia* choose to abstain from proceedings against him, which situation is, for the purposes of the Defence, as bad as the unavailability of evidence for the Prosecution. As victims are to themselves primary witnesses for the Prosecution against the accused, so are accused persons primary witnesses for the Defence. Thus, this Application simply seeks to make the accused confident that his trial will not be prejudiced.
10. On the issue of credibility also mentioned by the Prosecution in paragraph 11 of its Response, it is contended that credibility is exactly what this Application seeks to assure in witnesses called against the accused. Prosecution witnesses should, respectfully, testify on what they independently perceive, not otherwise.

**B. The Defence request infringes on the right to a Public Trial:**

11. In reply to paragraphs 12, 13 and 14 of the Prosecution Response under the above rubric, the Defence repeats paragraphs 1 to 9 of this Reply. The Defence particularly repeats that Rule 81 (D) of the Rules of Procedure and Evidence is discretionary to the Court and again respectfully urges the Court to exercise its discretion in the accused's favour.

**The Defence Request is Broad:**

11. Paragraphs 15 and 16 of the Prosecution Response are, with respect, redundant. The Reliefs sought by the Defence are clear enough. Paragraph 8 of the Defence Application prays *inter alia* that this honourable Trial Chambers orders that "the

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<sup>11</sup> "Kamara - Request for an Order Not to Disclose Photography, Video and Audio Recording of the Trial to the Public and/or Third Parties", 21 February 2005, paragraph 4.

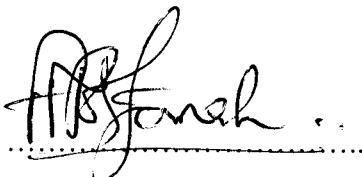
Registry *refrains* from publishing or disclosing photographs, video and audio records of the accused to the public (including the media) and/or third persons respectively, and ensures that reasonable steps are taken to prevent witnesses of the Prosecution from accessing photographs, video and audio records of the accused prior to testifying before [the Court]" (emphasis added). It is respectfully submitted that the Registry has not been asked to refrain from making image and sound disclosures to itself.

III. CONCLUSION:

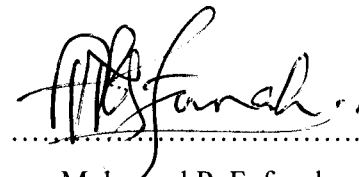
12. For the reasons above stated, the Defence urges this honourable Court to dismiss the Prosecution Response herein and grant the Defence the orders prayed for in paragraph 8 of its Application to this Trial Chambers.

Respectfully Submitted

Dated this 22<sup>nd</sup> day of February 2005



pp. Wilbert Harris -  
Lead Counsel



Mohamed P. Fofanah -  
Co-Counsel