

**SPECIAL COURT FOR  
SIERRA LEONE**

**Case No. SCSL-2004-16-T**

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

Registrar: Robin Vincent

Date filed: 13 May 2005

**THE PROSECUTOR**

**against**

**ALEX TAMBA BRIMA**

**BRIMA BAZZY KAMARA**

**and**

**SANTIGIE BORBOR KANU**

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**JOINT DEFENCE NOTICE TO INFORM THE TRIAL CHAMBER OF ITS POSITION VIS-À-VIS  
THE PROPOSED EXPERT WITNESS MRS. BANGURA PURSUANT TO RULE 94bis**

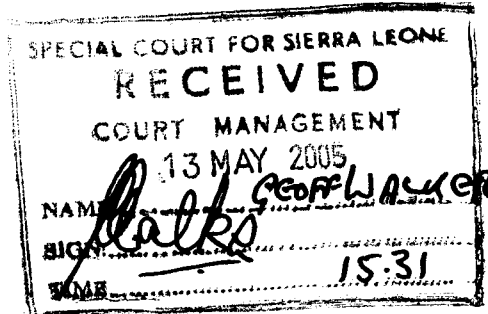
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## I INTRODUCTION

1. Pursuant to the “Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E)” (“**Prosecution Rule 73bis Request**”) filed on 4 May 2005, the Defence herewith files its “Joint Defence Notice to Inform the Trial Chamber of Its Position Vis-à-vis the Proposed Expert Witness Mrs. Bangura Pursuant to Rule 94bis” (“**Defence Notice**”). On May 13, 2005, the Defence filed its “Joint Defence Response to Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E)” (“**Defence Response to Rule 73bis Request**”).

## II APPLICABLE PROVISION

2. In the Prosecution Rule 73bis Request, the Prosecution requested the Trial Chamber to allow the Prosecution to put proposed witness Mrs. Bangura on the Prosecution Witness List, and to admit the proposed witness’s report, attached as Annex B to the Prosecution Rule 73bis Request (“**Report**”), into evidence.
3. In the Defence Response to Rule 73bis Request, the Defence already requested the honorable Trial Chamber to dismiss the relief sought by the Prosecution in its Rule 73bis Request. However, in the current Defence Notice, the Defence wishes to notify the Trial Chamber of its position vis-à-vis this proposed witness specifically under Rule 94bis of the Rules.
4. Rule 94bis(B) of the Rules provides that “[w]ithin fourteen days of filing of the statement of the expert witness, the opposing party shall file a notice to the Trial Chamber indicating whether:
  - (i) It accepts the expert witness statement; or
  - (ii) It wishes to cross-examine the expert witness.”

5. The Defence wishes to notify the Trial Chamber that it does not accept the proposed expert witness statement, and in the alternative, if the Trial Chamber would find that the statement be admitted into evidence, the Defence indicates that it wishes to cross-examine the proposed witness.

### III NO ACCEPTANCE OF PROPOSED WITNESS'S STATEMENT

#### 3.1 Witness is Not an Expert on Forced Marriages

6. The Defence is of the humble opinion that this proposed witness, Mrs. Bangura, should not be allowed to testify as an expert witness on the issue of forced marriage, in which she, according to her curriculum vitae, lacks expertise, as she is a "professional Insurer by background."<sup>1</sup> The Prosecution indicates that the Trial Chamber would be best served by "the testimony of this Sierra Leonean expert who would truly be able to inform the Court of the long-term social, cultural, physical and psychological meanings and consequences of forced marriage."<sup>2</sup>
7. The Defence submits that the proposed witness, according to the submitted curriculum vitae, is not an expert on any of these purported areas, and should thus not be admitted as an expert witness on the subject of forced marriages, as the witness is neither a sociologist, an anthropologist, a psychologist, a physician, or any other specialist in any of the related areas. The fact that the proposed expert witness is "an internationally renowned activist" in national and international civil society and the fact that she is a Sierra Leonean are insufficient to qualify her as an expert witness on this "extremely sensitive topic."<sup>3</sup>
8. With her insurance background, it seems that the proposed expert witness has gained her purported knowledge and experience mainly in the area of

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<sup>1</sup> See p. 3 of the Report attached as Annex 2 to Prosecution Rule 73bis Request.

<sup>2</sup> Prosecution Rule 73bis Request, para. 22.

<sup>3</sup> Prosecution Rule 73bis Request, para. 14.

accountability of governments, anti-corruption, women's development, democracy issues, none of which are closely connected to the issue of forced marriages.<sup>4</sup>

### 3.2 Report Is Inadequate as an Expert Report

9. A second argument emerges for this conclusion. When one looks at the content of the Report, objections arise against admitting this report into evidence. The following reasons can be detected:
  10. **In the first place**, the title of the Report, attached to the Prosecution Rule 73bis Request as Annex B, reads "Expert Report on the phenomenon of 'forced marriage' in the context of the conflict in Sierra Leone and, more specifically, in the context of the trials against the RUF and the AFRC Accused only." This title seems to suggest that the proposed witness has particular knowledge of the RUF and AFRC organizations, which is not elaborated on anywhere in the Prosecution Rule 73bis Request or anywhere in the proposed witness's curriculum vitae. The Defence therefore submits that also this aspect of the witness's statement, besides the fact that she is not an expert on the issue of force marriage, also makes her ineligible as an expert witness on this matter in the instant case.
  11. **In the second place**, the Report is mainly confined to research done in the province of Kailahun. On p. 8 of the Report, second paragraph, the proposed witness seems to indicate that the reason why the interviewees are from Kailahun is that "Kailahun was the only district that the RUF had control of during the entire period of the war." The Defence submits that this reason is insufficient in the underlying case, as this concerns the case against the AFRC Accused.
  12. **In the third place**, the Defence contends that the report is inaccurate and incomplete, as it omits to refer to sources and data. For instance, on p. 8 of the

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<sup>4</sup> See for her complete curriculum vitae Annex A to the Prosecution Rule 73bis Request.

Report, it says that “thousands of [women and girls] were abducted, gang raped and used as sex slaves or made ‘bush wives,’ that is captured and forcibly made the ‘wives’ of rebel commanders or other rebels.” In the first place does the author not indicate how she arrives at the number of “thousands,” and in the second place, it is omitted on which basis the definition of “bush wives” has been formulated. Is this a commonly accepted definition, does she refer to any authority on this area, or is it her own definition?

13. **In the fourth place**, the Defence wishes to strongly object to the – unfounded – conclusion the authors make on p. 10 of their report, indicating that “[e]arly or arranged marriages are no longer common.” Mrs. Bangura and her co-author do not provide any source for this statement, and according to the humble opinion of the Defence, this statement is grossly inaccurate. To support this argument, the Defence refers to the report by Human Rights Watch titled “We’ll Kill You If You Cry: Sexual Violence in the Sierra Leone Conflict.”<sup>5</sup> On p. 17 of this Human Rights Watch report, it is stated that “[m]arriages are usually arranged, and the consent of the bride-to-be is not considered essential in most ethnic groups, but the consent of the girl’s/woman’s family is required. The fact that a girl is considered ‘ready’ for marriage at such a young age and her consent is not sought has contributed to the common practice of early forced marriages.”<sup>6</sup> Interestingly, Mrs. Bangura in her Report uses this specific Human Rights Watch report as one of her – very few – sources. Of course, she is entitled to having a different opinion, but, according to the information of the Defence, Mrs. Bangura certainly advocates no generally accepted view on arranged marriages, and having a distinctive view on this matter should at least be supported by arguments and/or sources, which is not done in this instance. This is but one example of an unfounded statement or conclusion the Report makes, and for which no reason or source is provided.

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<sup>5</sup> Vol. 15 No. 1(A) – January 2003. This document can be found on: <http://www.hrw.org/reports/2003/sierraleone/sierleon0103.pdf>.

<sup>6</sup> Footnote omitted.

14. The Defence therefore contends that the provided Report is inaccurate and incomplete, and should therefore not be admitted into evidence.
15. **In the fifth place**, and related to the fourth argument, the list of references used by the authors of the Report is insufficient to provide a proper basis for their research. This argument consists of three components.
16. Firstly, the list of References in the Report only mentions four different sources, which is, in the opinion of the Defence, quite limited for a research on such a broad topic as the “long-term social, cultural, physical and psychological meanings and consequences of forced marriage.”<sup>7</sup>
17. Secondly, one out of the four sources mentioned concerns a document (the Defence assumes it is a book) dating from 1983, that is, long before the conflict even started in Sierra Leone.
18. And thirdly, the Defence notes that, the documents of the Campaign for Good Governance are all documents which were written under Mrs. Bangura’s coordination. She is therefore using her own material as one of the main sources of her current research, and thus not relying on independent authorities. This, added to the other arguments, should lead to the conclusion that the references for this research are inadequate and insufficient.
19. **In the sixth place**, the report contains numerous – again unfounded – general statements in the report, such as “rebel ‘husbands’ did not show their ‘bush wives’ respect.”<sup>8</sup> Another example of this form of generalization is the following: “Communities believe that any person who lives with a rebel longer than a day becomes tainted and acquires ‘rebel behaviour.’ So, ‘bush wives’ are seen as

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<sup>7</sup> Prosecution Rule 73*bis* Request, para. 22.

<sup>8</sup> Report, p. 13, fourth paragraph.

extensions of their husbands and are hated for that reason.”<sup>9</sup> This is but one of the many unfounded statements, conclusions and generalizations in the Report. This disqualifies the Report an expert’s report, and therefore the Defence submits that this Report should not be allowed into evidence.

20. Although the assessment of admissibility of an expert witness’s report into evidence should not evolve solely around the contents of the report, the Defence wishes to bring forward these arguments relating to the content of the Report, as it shows the fundamental shortcomings as to the acceptance of the proposed witness as expert with regard to this area of expertise.

21. As a result of all these arguments, the Defence contend that the Report of Mrs. Bangura and Ms. Solomon should not be admitted into evidence.

#### **IV REQUEST FOR CROSS-EXAMINATION**

22. In the alternative, in case the honorable Trial Chamber denies the Defence request to have this proposed witness removed from the Witness List, the Defence wishes to notify the Trial Chamber of its wish to cross-examine Mrs. Bangura.

23. Also, if the Trial Chamber would find that Mrs. Bangura should be put on the Witness List, the Defence wishes to notify the Trial Chamber that it wishes to cross-examine the co-author of the report, Ms. Christina Solomon. To only cross-examine Mrs. Bangura, while the report is also co-authored by Ms. Solomon, would seem not effective to the Defence, for Mrs. Bangura might be unable to answer all questions regarding this report or the underlying research, as parts of it may have been executed by Ms. Solomon. The Defence therefore request that, if the Report be admitted into evidence, not only Mrs. Bangura, but also Ms. Solomon be cross-examined by the Defence.

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<sup>9</sup> Report, p. 19, fifth paragraph.

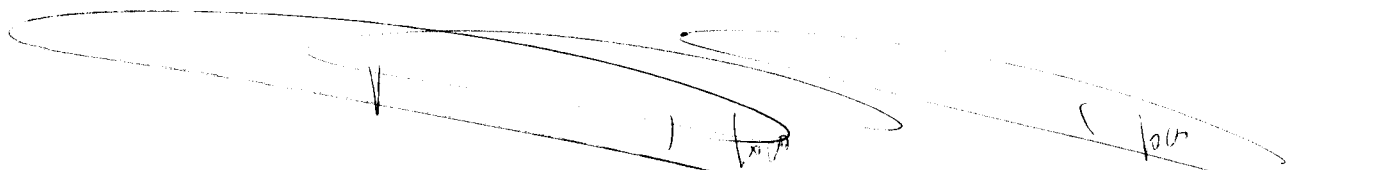
**V RELIEF SOUGHT**

24. Based on the foregoing arguments, the Defence notifies the honorable Trial Chamber of the following:

- (i) It does not accept the proposed witness Mrs. Bangura as an expert witness, nor does it accept the contents of the witness's report which report should not be admitted into evidence, attached to the Prosecution Rule 73*bis* Request as Annex B, and
- (ii) It wishes to cross-examine proposed witness Mrs. Bangura, in case the Trial Chamber does permit the Prosecution to admit this witness to the Witness List; and
- (iii) In that event, it moreover wishes to cross-examine the co-author of aforementioned report, Ms. Christina Solomon.

Respectfully submitted,

On 13 May 2005



Geert-Jan A. Knoops      Glenna Thompson      Mohamed Pa-Momo Fofanah