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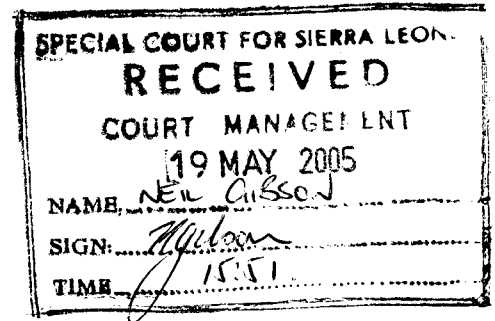
**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL-2004-16-T

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

Registrar: Robin Vincent

Date filed: 19 May 2005

**THE PROSECUTOR**

against

ALEX TAMBA BRIMA**BRIMA BAZZY KAMARA**

and

SANTIGIE BORBOR KANU

JOINT DEFENCE REPLY TO PROSECUTION COMBINED REPLY TO "JOINT DEFENCE RESPONSE TO PROSECUTION REQUEST FOR LEAVE TO CALL AN ADDITIONAL WITNESS PURSUANT TO RULE 73bis(E)" AND "JOINT DEFENCE NOTICE TO INFORM THE TRIAL CHAMBER OF ITS POSITION VIS-À-VIS THE PROPOSED EXPERT WITNESS MRS. BANGURA PURSUANT TO RULE 94bis"

Office of the Prosecutor:

Luc Coté
Lesley Taylor

Defence Counsel for Kanu:

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

Defence Counsel for Brima:

Glenna Thompson
Kojo Graham

Defence Counsel for Kamara:

Mohamed Pa-Momo Fofanah

I INTRODUCTION

1. On 4 May 2005 the Prosecution filed its “Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E)” (“**Prosecution Rule 73bis Request**”), the Defence on 13 May 2005 filed 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 also 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**”).
2. The Prosecution decided to file one reply to these two – separate – documents (i.e. a Defence notice and a Defence response), and filed its “Prosecution Combined Reply to ‘Joint Defence Response to Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E)’ and ‘Joint Defence Notice to Inform the Trial Chamber of Its Position Vis-à-vis the Proposed Expert Witness Mrs. Bangura Pursuant to Rule 94bis’” (“**Prosecution Combined Reply**”). In reply to the second part of this Prosecution Combined Reply, which part is only confined to the response to the Defence Notice, the Defence herewith files its “Joint Defence Reply to ‘Prosecution Combined Reply to ‘Joint Defence Response to Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E)’ and ‘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 Reply**”).

II PRELIMINARY ARGUMENT

3. The Defence wishes to bring the following preliminary argument, before going into the merits of this matter.
4. As mentioned in para. 2 above, the Prosecution decided to file a combined reply to both the Defence Response to Rule 73bis Request and the Defence Notice. In this regard, the Defence respectfully submits that the Prosecution Combined Reply is not properly formatted. As can be deducted from Rule 7(C) of the Rules of Procedure and Evidence, the Prosecution should have addressed the Defence documents by way of two separate documents. The Rules of Procedure and Evidence do not allow a party to address two issues which are comprised in two separate legal documents, in one document or one combined response, especially now that the subject matter of the two underlying documents differs, and moreover, this Combined Response pertains to different procedural stages, namely a reply and a response in one document.
5. In the way the Prosecution Combined Response is now framed, and especially by its title, it could easily be overlooked that this combined document comprises a response to the Defence Notice, so that the Defence is still endowed with the right to reply to the latter issue. Yet, the title of the Prosecution Combined Response fails to mention that it also meant to function as a response to the Defence Notice. It is therefore the humble submission of the Defence that the second part of the Prosecution Combined Reply be disregarded by the honorable Trial Chamber, as it was not filed in its proper form.

III MERITS

6. In the alternative, in case the honorable Trial Chamber does not accept the Defence argument under Section II of this Defence Reply, the Defence will go into the merits of the Prosecution Combined Reply and deal with the arguments

set out in the second part of that document, i.e. the arguments pertaining to the Prosecution response to the Defence Notice.

7. The Prosecution misconstrues the Defence argument in para. 26 of its Prosecution Combined Reply by stating that the Defence asserts that proposed witness Mrs. Bangura would be precluded from being an expert on forced marriage “because she once practiced in the insurance industry.” The Defence submitted in para. 6 of the Defence Notice that indeed, the proposed witness is a “professional Insurer by background,” but in paras. 7 and 8 also referred to the content of her CV, i.e. all experience she gained after she left the area of insurance. Therefore, stating, as the Prosecution does in para. 27, that “[t]his determination pays no attention or regard to the work that Mrs. Bangura has been exclusively undertaking since the mid-1990s with both civil society, national NGOs, as well as international organisations / institutions (...)” does not address the fundamental point of the Defence argument.
8. What the Defence submitted in its Defence Notice was that this witness does not have the proper competence for being an expert in this particular field of expertise; as such, the Defence does not deny the fact that this witness can be qualified as experienced in a general sense. But that single fact situated against this general background, does not make her eligible to testify as an *expert* on this “extremely sensitive topic.”¹
9. The Prosecution indicates in para. 28 that the Defence “have failed to acknowledge that Mrs. Bangura’s civil society and international consulting activities have also encompassed the issue of sexual violence perpetrated against women and forced marriages.” However, it can be observed that such knowledge cannot be deducted from the proposed witness’s curriculum vitae.

¹ Prosecution Rule 73*bis* Request, para. 14

10. The Prosecution relies on one example of Mrs. Bangura working as Executive Director for the organization Campaign for Good Governance, and specifically working on the “promotion and protection of women’s rights, including providing free medical and legal services for women victims of sexual violence during the conflict.” The Defence submit that working as an Executive Director of an NGO dealing, amongst *many* other topics, with providing free medical and legal services to female victims of sexual violence during the conflict, can, without any further references and qualifications, not qualify the proposed witness an *expert* in the field of sexual violence and forced marriages.
11. The Defence in addition submits, in rebuttal of the Prosecution argument that her CV makes clear that she is “an expert qualified to comment and inform the Court on issues concerning the practice of forced marriage during the Sierra Leone conflict,” that the filed biography does not even refer to the field of “forced marriages.” Also here, the mere fact that the proposed witness has no specific experience on issues of forced marriage, never wrote any publication on the topic, justifies the conclusion that she should not be accepted as an expert in this field.
12. The phenomenon of forced marriages as it is indicated also by the Prosecution relates to quite a specialized and sensitive issue, and therefore, by its nature, can, as such, not be deemed to fall within the broad and general range of women’s issues in conflict situations, good governance, democratization processes, and other topics the proposed witness has experience in. The topic of forced marriages is highly controversial and contested in a legal sense, as was also argued by the Defence in its “Defense Response to Prosecution’s Request for Leave to Amend the Indictment”, filed on behalf of the Accused Kanu on 17 February 2004.
13. It was the choice of the Prosecution to bring forward the charge of “forced marriages” at quite a late stage in the proceedings against the three Accused, and therefore, the Prosecution bears the onus of proving that specific charge based upon evidence which is acceptable according to the standards of expert witnesses

as set forth by the *ad hoc* International Tribunals, as set forth by the Defence in other motions which are still pending before the honorable Trial Chamber in the AFRC case.

14. In this regard, attention should be paid to the observation of Trial Chamber I in the case against the Accused, where it was decided that “we are of the opinion that the amendment sought is not a novelty that should necessitate fresh investigations as the defence contends.”² Suggesting, as the Prosecution does in para. 20 of its Prosecution Combined Reply, that “the Defence may attain its own expert evidence (...)” does not take away the burden of proof on part of the Prosecution in that it, if it so wishes, presents evidence based on said proper standard of expert evidence.

15. Moreover, as observed by Justice Bankole Thompson in his dissenting opinion to the Decision on Prosecution Request for Leave to Amend the Indictment of 6 May 2004, “granting the amendment is very likely to occasion undue delay in giving effect to the right of the Accused persons, which concept is always a key function of the efficaciousness or otherwise of the right of the Accused to a fair and expeditious trial statutorily guaranteed under Article 17(2)(c) of the Statute.”³ Part of this right of the Accused to a fair trial is certainly the presentation by the Prosecution of expert evidence which meets the proper standard of international criminal justice.

16. Finally, as to the substance of the report itself, the assertion of Mrs. Bangura in her report referred to in para. 13 of the Defence Notice, indicating that “[e]arly or arranged marriages are no longer common” is not supported by authority, and moreover highly controversial in view of the sources referred to by the witness herself. The Defence holds the opinion that this assessment is of additional value to exclude Mrs. Bangura as expert witness, and therefore is not just a matter, as

² *Prosecutor v. Brima, Kamara and Kanu*, Trial Chamber I, Decision on Prosecutin Request for Leave to Amend the Indictment, 6 May 2004, para. 52.

³ Para. 12 under (iii).

the Prosecution indicates, for cross-examination. The honorable Trial Chamber is able to deduce from such assertions in a report the conclusion whether or not that report qualifies as an expert report. If it is established beforehand that a certain report fails to be accurate in the specific area, such inadequacy can be dealt with without awaiting cross-examination of the particular author in terms of accepting him or her as an expert witness.

17. The Defence does not oppose the conclusion of the *Bizimungu* Trial Chamber mentioned in paras. 32 – 33 of the Prosecution Combined Reply, and indeed admits that experience can be a sufficient basis for an expert, however, in the instant case, the experience of Mrs. Bangura is insufficient to qualify her as an expert on this extremely specialized field. The fact that Mrs. Bangura has dealt with certain women's issues and worked as an aid worker during the conflict of Sierra Leone, is insufficient to qualify her as expert on the field of forced marriages. In this regard, a certain experience can under circumstances, be a sufficient basis to be admitted as expert witness. Yet, in the instant case, no such field experience on part of Mrs. Bangura can be detected regarding this specialized field.

IV RELIEF SOUGHT

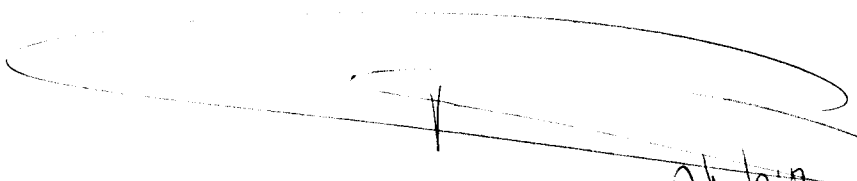
18. Based on the foregoing arguments, the Defence notifies the honorable Trial Chamber of the following:

- (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

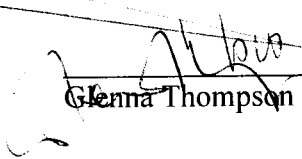
- (ii) It wishes to cross-examine proposed witness Mrs. Bangura, in case the Trial Chamber does permit the Prosecution to admit this witness to the Witness List; and
- (iii) In that event, it moreover wishes to cross-examine the co-author of aforementioned report, Ms. Christina Solomon.

Respectfully submitted,

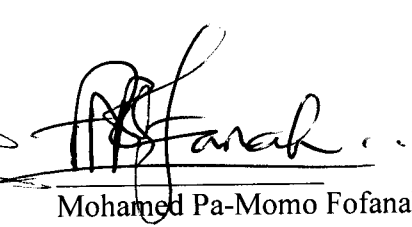
On 19 May 2005



Geert-Jan A. Knoop



Glenna Thompson



Mohamed Pa-Momo Fofanah