

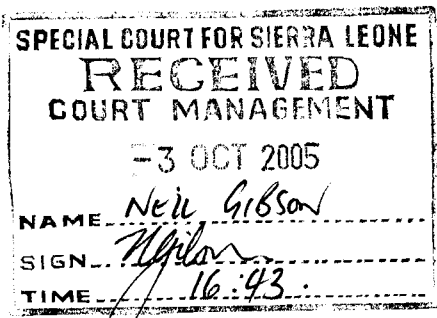
**SPECIAL COURT FOR  
SIERRA LEONE**

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

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

Registrar: Robin Vincent

Date filed: 3 October 2005



**THE PROSECUTOR**

**against**

**ALEX TAMBA BRIMA**

**BRIMA BAZZY KAMARA**

**and**

**SANTIGIE BORBOR KANU**

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**JOINT DEFENCE RESPONSE TO PROSECUTION MOTION FOR A *LOCUS IN QUO* VISIT TO  
KARINA, BOMBALI DISTRICT, THE REPUBLIC OF SIERRA LEONE**

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Office of the Prosecutor:  
Luc Coté  
Lesley Taylor

Defence Counsel for Kanu:  
Geert-Jan A. Knoops, Lead Counsel  
Cary J. Knoops, Co-Counsel  
A.E. Manly-Spain, Co-Counsel

Defence Counsel for Brima:  
Kojo Graham  
Glenna Thompson

Defence Counsel for Kamara:  
Andrew Daniels  
Mohamed Pa-Momo Fofanah

## I INTRODUCTION

1. On 22 September 2005, the Prosecution filed a “Prosecution Motion for a *Locus in Quo* Visit to Karina, Bombali District, the Republic of Sierra Leone” (“**Motion**”). The Defence herewith files its response thereto, “Response to Prosecution Motion for a *Locus in Quo* Visit to Karina, Bombali District, the Republic of Sierra Leone” (“**Response**”).

## II LEGAL ARGUMENT

2. The Defence wishes to oppose the Motion, on the following grounds.

### 2.1 Prosecution Has Not Shown A Need for *Locus in Quo*

3. In its Motion, the Prosecution sets out that “a site visit is the best and most expedient way to convey necessary information regarding the environs, spatial configuration, and physical character of the locations of alleged criminal acts,” and that such visit “will greatly assist the Chamber in assessing the evidence relating to Karina.”<sup>1</sup>
4. Further on, in para. 12 of the Motion, the Prosecution states that “[a] site visit is necessary in order to provide the Chamber with all necessary evidence.” The Motion adds to this that “[t]o date, 49 witnesses have given evidence before the Tribunal and 48 Exhibits have been tendered, none of which has fully and clearly presented vital physical and spatial information regarding the town of Karina.”<sup>2</sup>
5. The Defence respectfully submits that the Prosecution in its examination-in-chief could have asked the forty-nine witnesses about this aspect, which the Prosecution has failed to do. It is the Defence submission that the Prosecution cannot now

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<sup>1</sup> See para. 4 of the Motion.

<sup>2</sup> See para. 12 of the Motion.

restore this omission by requesting a site visit, while the evidence could have been revealed during examination-in-chief.

## **2.2 Impairment of Right to Cross-Examine Witnesses**

6. Moreover, a *locus in quo* at this late stage of the proceedings, in particular after having heard the relevant witnesses regarding the district of Karina, would seriously infringe the rights of the Accused to effectively cross-examine these witnesses. Suppose that during such a site visit new information emerges, the Defence would not have any opportunity to confront the mentioned witnesses with this new information and therefore the rights to cross-examine such witnesses would be impaired.

## **2.3 No Necessity**

7. In addition the Defence does not agree with stated necessity for such site visit, especially since the Prosecution did not indicate of any contradictions in the evidence presented up until now. It is merely meant to inform the Trial Chamber of the physical characteristics of the town. If the request is merely for the purposes of showing the honourable Trial Chamber and the parties the particular locations where the alleged crimes have been committed, the Defence submits that such visit will not serve the interest of justice, nor will it be instrumental in the determination of the truth.
8. Therefore, the Defence is of the opinion that, in the current case, the requested *locus in quo* is not instrumental for the case, and should therefore be denied.

## **2.4 Visit Might Create Wrong Impression of the Conflict**

9. A further argument mentioned by the Prosecution in para. 17 of its Motion, concerns the statement that a site visit to Karina “will be helpful in the evaluation

of evidence in other areas of the country as well.” The Prosecution argues that Freetown, where the Court is based, is different from the rest of Sierra Leone. The Defence, of course, agrees to this, but denies that Karina would be representative of the rest of Sierra Leone, as stated by the Prosecution. The Prosecution states that “many physical reminders of the alleged crimes remain in Karina.” Yet this argument is not conclusive for the acceptance of the assumption Karina would be representative of the rest of Sierra Leone. Therefore the Defence contests the argument that the experience of visiting Karina “will assist the Chamber with its deliberations in relation to the events in other small, rural Sierra Leonean villages.”

10. In addition, the Defence holds the humble opinion that now that Karina is obviously not like other rural areas in Sierra Leone, it can thus provide a wrong impression to the Trial Chamber and the parties, given the fact that it might be the perception that the rest of the country will probably look like Karina.

## **2.5 Visit Will Unfairly Prejudice the Case against the Accused Persons**

11. The Defence submits that the proposed timing of the visit, after the close of the prosecution’s case, will unfairly prejudice the Defence of the accused person’s in respect of testimony given on Karina by Prosecution witnesses. As part of its Defence the Joint Defence intends to call witnesses to challenge the alleged role of the accused persons in the attack on Karina, particularly their command and control authority of the alleged massacre at Karina.
12. Further, the Defence intends to introduce testimony to the effect that the first accused at the time of the attack on Karina had been detained by forces under the command and control of the RUF.
13. The Defence submits that, if at all, the most propitious time for such a visit ought to be at a time when both the Prosecution and the Defence have closed their

respective cases before the Trial Chamber, which time, the Trial Chamber will be in a better position to assess and determine whether the Prosecution's evidentiary account of events at Karina remains "unchallenged in cross examination."

14. The Defence contends that, in the event the honorable Trial Chamber would consider that the Prosecution request is not untimely, it is presumptuous for such a visit to take place because there exists a real possibility of evidence being tendered by the Defence on the Karina attack which will challenge and contradict the account of events in Karina as given by Prosecution witnesses. In order to make a fair determination of the need for such a visit the Defence humbly submits that the Trial Chamber make the requested determination only after the Prosecution and Defence have closed their cases.
15. The Defence humbly submits that inconsistencies exist in the testimonies of the prosecution witnesses' account of events in Karina which cannot be fairly and definitively resolved by the proposed visit and that in the circumstances of these conflicting testimonial accounts the proposed visit will unfairly prejudice the case against the accused persons.

## **2.5 Possibility of Making Visit in One Working Day**

16. A more practical argument relates to the Prosecution submission that "the entire *locus in quo* inspection can be conducted in one working day." The Defence doubts whether this is realistic. The evidence on trial suggests, as also indicated by the Prosecution, that the attack on Karina took place in the early morning hours. The Transcript of 23 May 2005 reads as follows: "Karina – we came around there at about 2.00 a.m. in the morning. We were there till 7.00 a.m."<sup>3</sup>
17. The Prosecution states that the aim of the requested visit would be to "inform the Chamber of (...) the physical character of the locations and factors that are

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<sup>3</sup> P. 75, lines 16 – 17.

influenced by, or result from, the physical character of a place such as light and visibility and the conduction of sound. In this context it is noted that the evidence is that the attack on Karina took place in the early hours of the morning.”<sup>4</sup> The Defence understands this paragraph as indicating that the visit should anticipate the same conditions as alleged attack on Karina. If this were to be so, it seems not realistic that the requested locus in quo can be endorsed within one day.

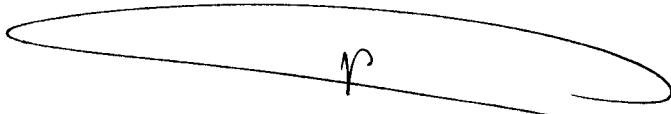
### III Conclusion

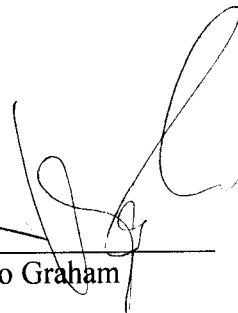
18. For these reasons, the Defence respectfully requests the honorable Trial Chamber to deny the Prosecution Motion in its entirety.

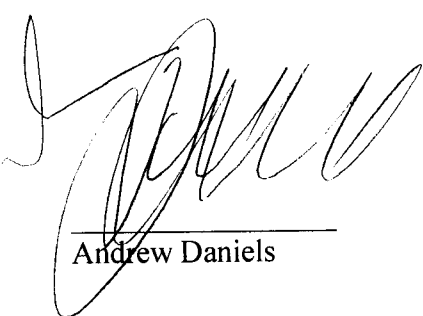
19. In the alternative, in the event the Trial Chamber would grant the Prosecution Motion, to allow the Defence to re-cross-examine the particular witnesses who were heard during the examination in chief pertaining to specifically the district of Karina with respect to the results and assessment of a potential *locus in quo* in Karina.

Respectfully submitted,

On 3 October 2005

  
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Geert-Jan Alexander Knoops

  
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Kojo Graham

  
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Andrew Daniels

<sup>4</sup> See para. 16 of the Motion.