

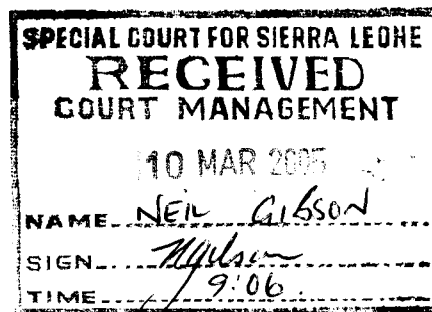
**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL-2004-16-PT

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

Registrar: Robin Vincent

Date filed: March 9, 2005

**THE PROSECUTOR****against**

ALEX TAMBA BRIMA also known as TAMBA ALEX BRIMA also known as
GULLIT

BRIMA BAZZY KAMARA also known as IBRAHIM BAZZY KAMARA
also known as ALHAJI IBRAHIM KAMARA

and

SANTIGIE BORBOR KANU ALSO KNOWN AS 55 also known as FIVE-FIVE also
known as SANTIGIE KHANU also known as SANTIGIE BOBSON KANU also known
as BORBOR SANTIGIE KANU

**JOINT DEFENCE MOTION ON DISCLOSURE OF ALL ORIGINAL WITNESS STATEMENTS,
INTERVIEW NOTES AND INVESTIGATORS' NOTES PURSUANT TO RULES 66 AND/OR 68**

Office of the Prosecutor:

Luc Coté
Robert Petit
Boi Tia-Stevens

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:

Kevin Metzger
Glenna Thompson
Kojo Graham

Defence Counsel for Kamara:

Wilbert Harris

I INTRODUCTION

1. During the cross-examination of witnesses TF1-024 and TF1-277, on the March 7 and 8, 2005, the Defence has observed the existence of discrepancies with respect to the testimony in chief given by these witnesses on the one hand, and their disclosed witness statements on the other hand.
2. The Defence deems it in the interests of justice that, in order to further verify the authenticity of the initial witness statements given to the Prosecution investigators – which were submitted to the mentioned witnesses during cross-examination as being prior inconsistent statements – the original witness interviews, notes of investigators pertaining to these respective interviews, ought properly to be disclosed to the Defence.

II Legal Argument

3. The Defence holds the view that the disclosure sought on this issue, forms part of the disclosure obligation under Rules 66 and/or 68.

2.1 Rule 68

4. In *Prosecutor v. Bagilishema*, the ICTR held that the obligation imposed on the Prosecution by Rule 68 extends to all materials which are in the custody and control of the Prosecution.¹
5. In the Blaskic case, the Appeals Chamber of the ICTY has defined a witness statement as: “*an account of a person’s knowledge of a crime which is recorded*”

¹ Case No. ICTR-95-1A-T, Decision on the Request of the Defence for an Order for Disclosure by the Prosecutor of the Admissions of Guilt of Witnesses Y, Z, and AA, of June 8, 2000.

*through due procedure in the course of an investigation into the crime.*² This definition clearly extends to the original witness statements and or the interview notes of the investigators taken from the particular witness. As the ICTY has held in another decision, the duty to disclose witness statements is intended “*to assist the Defence in its understanding of the case against the accused (...).*”³

6. It is the view of the Defence that the disclosure of the mentioned original statements and interview notes of investigators fall within the rationale of rule 68 as interpreted by the ICTY in the latter decision.
7. Rule 68 of the Rules specifically refers to any material or evidence which, *inter alia*, may affect the credibility of Prosecution evidence. The Defence pursues the argument that the disclosure sought in this Motion falls within the ambit of this criterion. After all, further verification of prior inconsistent statements may affect the credibility of said witnesses.

2.2 Rule 66

8. In the “Ruling on Oral Application for the Exclusion of Statements of Witness TF1-141 Dated Respectively 9th of October, 2004, 19th and 20th of October, 2004, and 10th of January, 2005 in Prosecutor v. Sesay et al., of February 3, 2005, before Trial Chamber I of the SCSL in para. 24 held that Rule 66 does “*in explicit legislative language, impose upon the Prosecution, the obligation to continuously disclose to the Defence, copies of all statements of all witnesses who they intend to call and which include new developments in the investigation in the form of “will-say” statements, interview notes, or in any other forms (...).*”⁴

² *Prosecutor v. Blaskic*, Appeals Chamber Decision on the Appellant’s Motion for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings, of September 26, 2000, paras. 15 – 16.

³ . *Kordic and Cerkez*, Order on Motion to Compel Compliance by Prosecution with Rules 66(A) and 68, Feb. 26, 1999

⁴ Underlining, GJK.

9. The Defence additionally draws the attention of the honorable Trial Chamber to the reference by Trial Chamber I to disclosure of interview notes. Accordingly, the Defence in this Motion relies on this authority.

2.3 Specificities of the Instant Case


10. The necessity of such disclosure emerges particularly in view of the discrepancies which could be observed in the statements of witness TF1-277.
11. The necessity thereof, or at least the emergence of a material Defence interest, arises also in view of the following. On p. 6296, 6302, 6311, and at various other locations of document called “Confidential Prosecution Proposed Order of First Ten Witnesses to Be Called at Trial and Their Statements” of February 21, 2005, notes are to be found which were not reviewed with the witness or read back to him/her. Particularly, on p. 6302, it is said that witness TF1-277 was confronted with his earlier statement and confirmed his existing statement. Particularly, it mentions: “*In response to question he clarified the circumstances surrounding the killing of Zainab by 55,*” but without further elaboration.
12. The Defence and also the Trial Chamber are not put in a position to verify the particular notes or additional information which was apparently given by the witness in question.
13. These specific circumstances surrounding the witness statements which are embodied in the abovementioned document of 21 February 2005, seen from the perspective of the cited case law of the ICTY, justify the disclosure of the mentioned original witness statements and the original notes of the OTP investigator who was responsible for interviewing the 63 core witnesses which are called to testify on behalf of the Prosecution.

III RELIEF SOUGHT

14. The Defence respectfully prays the honorable Trial Chamber to order the Prosecution, pursuant to Rules 66 and/or 68, to release all the original materials pertaining to the interviews of the Prosecution witnesses which are called to testify in chief, in particular:

- (a) The original witness statements;
- (b) The original notes of the OTP investigators who have taken the particular witness interviews; and
- (c) And/or any other materials pertaining to the initial witness interviews as specified in this Motion.


Respectfully submitted,
On March 9, 2005



Geert-Jan Knoops



Kevin Metzger



Wilbert Harris