SPECIAL COURT FOR SIERRA LEONE
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TRIAL CHAMBER II

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

Interim Registrar: Lovemore Munlo

Date: 21 October 2005

PROSECUTOR Against Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu
(Case No.SCSL-04-16-PT)

SEPARATE AND CONCURRING OPINION OF JUSTICE DOHERTY ON PROSECUTION REQUEST FOR LEAVE TO CALL AN ADDITIONAL WITNESS PURSUANT TO RULE 73*bis* (E) AND JOINT DEFENCE APPLICATION TO EXCLUDE THE EXPERT EVIDENCE OF ZAINAB HAWA BANGURA OR ALTERNATIVELY TO CROSS-EXAMINE HER PURSUANT TO RULE 94*bis*

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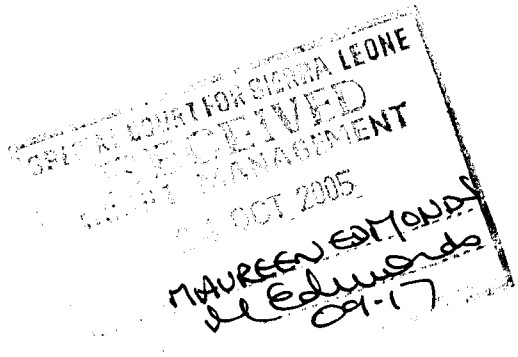

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1. I have read the Decision and Orders of my learned colleagues of 5 August 2005 and add my reasons herewith. The pleadings leading up to that decision are detailed in the preamble of the majority decisions.

I. SUBMISSIONS OF THE PARTIES

Prosecutions Motion

2. The Prosecution in effect makes 3 applications by way of motion:

a) To call an additional witness;

b) To have the witness declared an expert witness on the issue of forced marriage;

c) To have her Report disclosed to the Defence.

3. Prosecution explain the chronological background and the reasons why the application is made at this time notwithstanding orders on 1 April 2004 to file and disclose statements and other materials and subsequent orders on 26 April 2004 and 9 February 2005 to provide an order of witnesses and witness statements.

4. They had included an expert witness, Ms. Vann, in the list of witnesses filed and served in compliance with the order of 26 April 2004 but when her report was received, almost 6 months later, concluded "that one aspect of sexual violence did warrant an expert opinion [....], namely expertise focussing on the issue of forced marriage, as charged as an inhumane act in Court 9 of the Further Amended Consolidated Indictment." Given the "extremely sensitive topic" the Prosecution argued that the Trial Chamber would be best served to hear testimony from a Sierra Leonean expert on this matter.

5. They "immediately commenced procedures" to identify and recruit such an expert but it was not until 14 February 2005, that a letter of instruction was sent to Mrs. Zainab Bangura instructing her to compile a report on the issue of forced marriage and its "long-term social, cultural, physical and psychological meanings and consequences ...".

6. The Prosecution detail Mrs. Bangura's personal and professional qualifications, her participation in community and political life in Sierra Leone and the non-government organizations which she promoted or worked with. They submit this will qualify Mrs. Bangura as an expert.

7. The Prosecution name particular issues to which Mrs. Bangura will testify, which include:

a) The context within which forced marriage occurred during the conflict;

b) The socio-cultural meaning of forced marriage during the conflict;

c) The long-term social, cultural, physical and psychological consequences of forced marriage during the conflict for its victims.

8. The Prosecution further submit there will be minimal prejudice to the Defence as her report will be disclosed in full accordance with the provisions of Rules 66 and 94*bis*, thus giving sufficient time to investigate and prepare rebuttal evidence.

9. The Prosecution refer to a decision in the case of *the Prosecutor v. Sesay and others*[1] where Trial Chamber I of the Special Court for Sierra Leone established a test in regard the calling of additional witnesses. In that decision Trial Chamber I held:

a) that the circumstances being argued to demonstrate good cause are "directly related and material to the facts in issue";

b) that the evidence to be provided by the witnesses is "relevant to determining the issues at stake and would contribute to serving and fostering the overall interest of the law and justice".

10. The Prosecution submits the foregoing facts and submissions demonstrate good cause and that the addition of Mrs. Bangura's name to the Witness List is in the interests of justice.

Defence Response

11. The Defence filed two documents on 13 May 2005:

a) A Response to the Prosecution Request for Leave to Call an Additional Witness pursuant to Rule 73*bis* (E);

b) A notice pursuant to Rule 94*bis* that it does not accept Mrs. Bangura as an expert on forced marriages.

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[1] *Prosecutor v. Sesay, Kallon, Gbao*, Case No. SCSL-04-15-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements, 11 February 2005.

12. The Defence cites the Decision of Trial Chamber I in the case of *the Prosecutor v. Sesay and others*, stating that four requirements must fulfilled before an additional witness can be called. They deal with each of these criteria.

13. Firstly, Defence submits that the Prosecution has failed to indicate that its reasons for bringing this witness late in the proceedings "are directly related and material to the facts in issue" and therefore the requirements of Rule 73*bis* have not been fulfilled.

14. Secondly, the Defence submits that the Prosecution only state that the evidence is "highly relevant and important" but fails to explain why the testimony is relevant.

15. Thirdly, they submit that the calling of the witness is prejudicial as the Prosecution could have informed the Defence in February 2005 of their intention to call Mrs. Bangura.

16. Fourthly, the Defence again states that the Prosecution could have informed the Defence in February 2005 of the intention to call Mrs. Bangura, that is before the trial started, and submit that notice now contravenes their duty to disclose. In this regard they refer to a decision in *the Prosecutor v. Norman and others* Case which held "that the Prosecution should not be allowed to surprise the Defence with additional witnesses and should fulfil in good faith its disclosure obligations."[2]

Further there is no explanation why it took four months to select the witness.

17. The Defence seek to have the Prosecution application denied and her report not be admitted in evidence. In their Notice, the Defence announced pursuant to Rule 94*bis* (B) that it:

> 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.

18. In support of this application they submit that Mrs. Bangura lacks relevant expertise as her curriculum vitae shows she is a professional insurer although the Prosecution itself stated that "the testimony of this Sierra Leonean expert [...] would truly be able to inform the Court of the long-term social, cultural, physical and psychological meanings and consequences of forced marriage".

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[2] *Prosecutor v. Norman, Fofana, Kondewa*, Case No. SCSL-2004-14-T, Decision on Prosecution Request for Leave to Call Additional Expert Witness Dr. William Haglund, 1 October 2004, para. 15.

19. Defence submit Mrs. Bangura is not qualified in any of the fields of sociology, anthropology, psychology or medicine to enable her to attest on the information the Prosecution wishes to adduce. Further, her roles and experience in government, women's development etc., are not "closely connected to the issue of forced marriages."

20. The Defence then objects to the admission of the report into evidence as

a) its title suggests the witness has particular knowledge of the RUF and AFRC organizations, which is not elaborated on anywhere in the Prosecution Rule 73*bis* Request;

b) the research is mainly confined to research done in the province of Kailahun;

c) the report is inaccurate and incomplete, as it omits reference to sources, data and does not provide sources for statements on customary marriage;

d) the list of references used is "insufficient to provide a proper basis for [the] research", and it contains "numerous [...] unfounded general statements."

21. In the alternative, the Defence notifies the Trial Chamber of its wish to cross-examine Mrs. Bangura and her co-author as Mrs. Bangura, they submit, might be "unable to answer all questions regarding this report or the underlying research."

Prosecutions Joint Reply

22. In a joint reply to both the Defence Response and Defence Notice the Prosecution re-state the chronology and acknowledge their obligations under Rule 66(A)(ii) of the Rules. They state that "forced marriage as an inhumane act under Article 2(i) of the Statute, is a novel legal charge. The complexity and sensitivity of the issue renders an expert opinion both material and relevant".

23. Prosecution submits that they took "all measures necessary and within its means to identify an expert and to obtain the said report", which, they submit, they did "expeditiously".

24. Prosecution submit that Mrs. Bangura's curriculum vitae demonstrates that she can be qualified as an expert. Further, that the Defence has not specifically identified what prejudice the accused will suffer by calling an additional witness. In reply to the Defence objection that they failed to inform the Defence in February 2005 of its intention to call Mrs. Bangura, the Prosecution re-state that they had merely identified her as a candidate and had giving an instruction. They are not under any obligation to reveal such research. The legal obligation is to disclose evidence and that they did so

as soon as it was available. Further they argue that it is in the interests of justice that the witness be called and rely on a ICTY Decision in the *Delalic et al. Case.*[3]

25. To the Joint Defence Notice the Prosecution respond that it is unfair for Defence to rely on Mrs. Bangura's practice in the insurance industry without regard for her other experience, work with national and international organizations and exposure to the "issues surrounding forced marriage and sexual violence generally", to submit she lacks expertise. They further rely on *the Prosecutor v. Bizimungu et al.*[4], that the expert must have acquired relevant specialized knowledge through education, experience or training and stress that Mrs. Bangura has acquired relevant specialization through experience.

26. In relation to the Defence objection on content and methodology of the report, the Prosecution respond that this should be addressed in cross-examination instead of in the pleadings. They submit that the Defence did not comply with Rule 94*bis* by raising these issues. They further object to the calling of Ms. Solomon, as she is not a "co-author".

27. The Defence filed a Reply to the "second part of the Prosecution Combined Reply" viz that part dealing with the Defence Notice to inform the Trial Chamber "of its position vis-a-viz the Proposed Expert Witness Mrs. Bangura pursuant to Rule 94bis."

28. Defence object that the Prosecution Combined Reply was not properly formatted and state that Rule 7(C) requires separate documents. They submit that the part of the Prosecution Combined Reply dealing with their motion should be disregarded. Alternatively, on the merits of the Response the Defence submits the Prosecution have misconstrued their arguments concerning Mrs. Bangura's curriculum vitae. Whilst experience may qualify a person to be an expert, it does not apply as Mrs. Bangura's experience does not qualify her as an expert nor can her knowledge on the subject be deduced from her curriculum vitae. They submit the subject of forced marriages is "highly controversial and contested in a legal sense" and cannot 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."

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[3] *Prosecutor v. Delalic et al.*, Case No. IT-96-21-T, Decision on Confidential Motion to seek Leave to call Additional Witnesses, 4 September 1997.
[4] *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Official Transcript, 2 May 2005.

29. Defence re-states its objections that there is a lack of authority to support the views stated in Mrs. Bangura's report.

II. DELIBERATIONS

Calling of an Additional Witness

30. The application is made pursuant to Rule 73*bis* (E) which provides:

> *After the commencement of the Trial, the Prosecutor may, if he considers it to be in the interests of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary his decision as to which witnesses are to be called.*

31. The Prosecutor must therefore show that it in the interests of the justice that he may vary the list of witnesses to be called before leave can be granted by the Trial Chamber.

32. In their submissions the Prosecution relies on the Decision in *the Prosecutor v. Norman et al. Case*[5] referring to each of the four criteria enunciated therein. The Defence traverse these in seriatim.

33. I note that Rule 73*bis* (E) does not use the term "good cause". That term is used in Rule 66(A)(ii) which obliges the Prosecution to continuously disclose copies of all additional Prosecution witnesses on which it intends to rely and sets a time limit for such disclosure, unless the Trial Chamber varies that time limit on "good cause" being shown.

34. The Prosecutor must consider it in the interests of justice to vary his list of witnesses, and, it must follow, he must convince the Trial Chamber that it is, indeed, in the interests of justice to give leave to vary that list.

35. Rule 73*bis*(E) does not provide that the Prosecutor must prove leave is both justified by "good cause" and "in the interests of justice". In this regard, I must respectfully disagree with my learned colleagues of Trial Chamber I and their findings in *the Prosecutor v. Norman* and the majority decision. The Prosecutor will also have to conform with Rule 66 (A)(ii) and may need to show good cause to

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[5] *Prosecutor v. Norman, Fofana, Kondewa*, Case No. SCSL-2004-14-T, Decision on Prosecution Request for Leave to Call additional Witnesses, 29 July 2004.

vary the notice period for disclosure of additional prosecution witnesses. Hence the Prosecutor may well eventually have to show both, but in my view for the purposes of Rule 73bis (E), he need only show the calling of the witness is in "the interests of justice".

36. The "interests of justice" has been considered in other International Tribunals. The ICTR has held that the "interests of justice" shall be assessed in the light of the following elements:

> *[t]the materiality of the testimony, the complexity of the case, prejudice to the Defence, including elements of surprise, on-going investigations, replacements and corroboration of evidence [...], the presentation of the best available evidence [...] balanced against the right of the accused to have adequate time and facilities to prepare his Defence and his right to be tried without undue delay.*[6]

And further

> *that the relevance of the evidence that could be brought by the Expert Witness overwhelms the potential prejudice of any delays caused by the time frame for the disclosure of the Expert Report and his appearance before the Trial Chamber.*[7]

37. In their consideration, cited above, the ICTR had followed *Prosecutor v. Nahimana*, which held the final decision whether it is in the interests of justice to allow the Prosecution to vary its list of witnesses rests with the Chamber and "such interest must not prejudice the principle that the accused has the right to trial without undue delay".[8]

38. The Decision in the Case of *the Prosecutor v. Nahimana* referred to the purpose of Rule 66 and held it was to give Defence "sufficient notice and adequate time" and at the same time to ensure Prosecution evidence is not excluded merely on procedural grounds.[9] The Chamber made clear that it was when a Trial Chamber has granted leave under Rule 73*bis* that "statements [...] will form part

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[6] *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Prosecution's Motion for Leave to add a Handwriting Expert to his Witness List, 14 October 2004, para. 11 citing *Prosecutor v. Nahimana, Ngeze, Barayagwiza*, Case No. ICTR-99-52-T, Decision on the Prosecutor's Oral Motion for Leave to Amend the List of Selected Witnesses, 26 June 2001.

[7] *Prosecutor v. Nyiramasuhuko et al.*, Case No. ICTR-98-42-T, Decision on Prosecution's Motion for Leave to add a Handwriting Expert to his Witness List, 14 October 2004, para. 18.

[8] *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-T, Decision on the Prosecutor's Oral Motion for Leave to Amend the List of Selected Witnesses, 26 June 2001, para. 17.

[9] *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-T, Decision on the Prosecutor's Oral Motion for Leave to Amend the List of Selected Witnesses, 26 June 2001.

of the case against an Accused." [10] It is at that juncture the issue of "good cause" under Rule 66 becomes pertinent. "Good cause" and "interests of justice" are not, in my view, conjunctive when considering leave to vary pursuant to Rule 73*bis*.

39. The issue whether "forced marriages" constitute an inhumane act has not previously been canvassed in any of the International Tribunals. The term has not been defined in the Statute, the Geneva Conventions or in any precedent of other Tribunals and the Prosecution is obliged to show the case the accused must answer.

40. I accept the Prosecution submission that this is an extremely sensitive topic, particularly given its distinct social and cultural consequences and its uniqueness to the Sierra Leone conflict, the Trial Chamber would be best served to hear testimony from a Sierra Leonean expert on the matter.

41. Given that there have been no recognised experts who have appeared in other Tribunals on the issue of forced marriages, I also accept that the Prosecution would have been obliged to find a witness competent to give expert evidence. Research to identify such a person and then have that person prepare a report would take time. I have no reason to dispute Prosecution submission that they acted with due diligence. I consider the sensitivity of the topic and lack of precedent on it contribute to the complexity of the case.

42. I adopt with respect the *ratio* of ICTY in the *Prosecutor v. Delalic et al.* stating that:

> *The Trial Chamber is enjoined to utilise all its powers to facilitate the truth finding process in the impartial adjudication of the matter between the parties. It is thus important to adopt a flexible approach when considering the management of witnesses. Where the testimony of a witness is important to the Prosecution or the Defence, the trial Chamber will ensure that such witness is heard, subject, naturally, to the limits prescribed in the Statute of the International Tribunal ("the Statute") and Rules. In the present case, these two particular witnesses, 6 and 7, are deemed material to the Prosecution and it would be contrary to the interests of justice to exclude their testimony. The rights of the Accused enunciated in Article 21 of the Statute are in no sense affected by the adoption of such a flexible approach.*[11]

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[10] *Prosecutor v. Nahimana et al.*, Case No. ICTR-99-52-T, Decision on the Prosecutor's Oral Motion for Leave to Amend the List of Selected Witnesses, 26 June 2001, para. 19.

[11] *Prosecutor v. Delalic et al.*, Case No. IT-96-21-T, Decision on Confidential Motion to seek Leave to call Additional Witnesses, 4 September 1997, para. 7.

43. I do not consider the calling of Mrs. Bangura will unfairly prejudice the rights of the accused to a fair and expeditious trial. The testimony is relevant to the case the accused must answer and it is in the interest of justice that they know that case in detail.

44. I consider it in the interest of justice that the Prosecution vary the list of witnesses to include Mrs. Bangura as a witness.

Disclosure of the Report pursuant to Rule 66(A)(ii).

45. Both Prosecution and Defence address the obligations of the Prosecution to continuously disclose copies of all additional Prosecution witnesses, "not later than 60 days before the date for trial "unless otherwise ordered "upon good cause being shown".

46. As I have noted above the Prosecution must show "good cause" to vary the notice period and this is an obligation which is separate to the obligation imposed by Rule 73*bis*(E). This Rule has been considered by this Chamber in the Decision on Joint Defence Motion on Disclosure of all Original Witness Statements, Interview Notes and Investigator's Notes pursuant to Rules 66 and/or 68, dated 4 May 2005.[12]

47. The Prosecution has explained the reasons why Mrs. Bangura was not identified earlier and the time taken to prepare her report. The Defence submit that the Prosecution

> *fails to indicate that the reasons why is bringing forward this witness at so late a stage in the proceedings against the Accused, are directly related and material to the facts in issue, although it formulated this criterion in its own motion under para. 9 thereof.*

48. I agree, with respect, with the majority herein and with the views of Trial Chamber I in the Case of *the Prosecutor v. Sesay et al.*:

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[12] *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-2004-16-T, Decision on Joint Defence Motion on Disclosure of all Original Witness Statements, Interview Notes and Investigator's Notes pursuant to Rules 66 and/or 68, 4 May 2005.

> *In the absence of any evidence to the contrary, this Chamber finds the explanation put forward by the Prosecution as to the difficulties encountered in securing the cooperation of the proposed expert witness and the final preparation of her report acceptable.*[13]

49. I have no cause to dispute that the Prosecutions acted timeously and with due diligence in identifying the witness and having the report compiled. I concur with the majority opinion and find that the proposed evidence seems relevant for the Prosecution's case.

Defence Objection that Mrs. Bangura is not an Expert

50. The Defence submits that Mrs. Bangura is not an expert witness on forced marriage for the various reasons outlined above. The Prosecution respond giving Mrs. Bangura's experience and "extensive" work "within many aspects of Sierra Leonean civil society". It is common ground between both Prosecution and Defence that experience may qualify a witness as an expert. As held in *the Prosecutor v. Bizimungu et al*:

> *The role of an expert is to assist the Chamber in understanding the context in which the events took place. The expert must possess a relevant specialised knowledge acquired through education, experience,* ***or*** *training in his proposed field of expertise.*[14]

51. The ICTR has ruled in *the Prosecutor v. Bagosora* that the test for admission is "whether the specialized knowledge possessed by the expert, applied to the evidence which is the foundation of opinion, may assist the Chamber in understanding the evidence."[15]

52. For the report of an expert to be admissible four core elements must be fulfilled:

a) The subject matter must be proper topic for expert evidence;

b) The evidence must be capable of assisting the Trial Chamber to determine the issue in dispute;

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[13] *Prosecutor v. Sesay, Kallon, Gbao*, Case No. SCSL-2004-16-T, Decision on Prosecution Request for Leave to Call an Additional Expert Witness, 10 June 2005, para. 11.
[14] *Prosecutor v. Bizimungu et al.*, Case No. ICTR-99-50-T, Official Transcript, 2 May 2005.
[15] *Prosecutor v. Bagosora et al.*, Case No. ICTR-41-98-T, Official Transcript, 4 September 2002, at 6.

c) The person purporting to be an expert must have the necessary qualifications and used proper methods in their research;

d) The person purporting to be an expert must be independent and impartial.

I will deal with each element individually.

53. Firstly, Is the subject matter must a proper topic for expert evidence? Expert evidence must be fact and information outside the ordinary experience and knowledge of the Trial Chamber. It is for the Trial Chamber to make findings of fact, the expert is to assist, not take over, that role.[16] The type of evidence an expert may give to the Trial Chamber is wide ranging and, as has been shown in *Prosecutor v. Akayesu* in ICTR, may include expert evidence on social and cultural traditions.

54. I consider the social and cultural attitudes to customary marriage and whether there was a phenomenon of "forced marriage" and what constituted forced marriage a proper topic for expert evidence.

55. Secondly, is the evidence capable of assisting the Trial Chamber to determine the issue in dispute? An expert witness must not offer an opinion on the "ultimate issue" in a case, that is for the Trial Chamber to consider and determine. This was applied and held by the ICTY Trial Chamber in the *Prosecutor v. Kordic and Cerkez* when it excluded expert comment on command structures involving the accused as this was a central issue in the case which the Trial Chamber had to decide.[17] In that case, also, the Trial Chamber held the evidence was not based on the experts own observations and/or research but press reports and such "secondary" materials and it would not assist the Court.

56. In the current case the expert witness does not address issues of law, as final decisions of law are matters, ultimately for the Trial Chamber. This does not preclude an expert witness giving evidence on the definition of certain legal terms[18] and, in my view, an expert presenting evidence of what is the customary law e.g. the customary law relating to marriage.

57. Thirdly, does the person purporting to be an expert have the necessary qualifications and did that person use proper methods in the research? It is on this leg that the Defence base most of their

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[16] For example in *the Prosecutor v. Kordic* and *Cerkez* references by the witnesses to the accused were excluded.
[17] *Prosecutor v. Kordic and Cerkez*, Case No. IT-95-14/2, Transcripts, 28 January 2000, p. 13306, 13307.

argument. They refer to the background qualifications of Mrs. Bangura, and in their opinion the restricted nature of her research and its failure to refer to sources and data.

58. Similar arguments were presented in the ICTY case of *the Prosecutor v. Tadic*. The Trial Chamber distinguished the difference of presenting evidence to jurors and to judges and held the Trial Chamber would give it "appropriate weight".[19] The expert evidence in that case involved interviews with witnesses and summaries of those interviews. In contrast the expert evidence in *Prosecutor v. Akayesu* was more limited. The witness testified on the impetus and results of the conflict.[20] In *the Prosecution v. Bagosora et al.* the Trial Chamber held that "[t]he evidence shall be assumed to be reliable and credible unless convincing arguments have been raised that it is obviously unbelievable, such that no reasonable trier of fact could rely upon it."[21]

59. The Defence refer to Mrs. Bangura's lack of qualifications in such fields as sociology and anthropology while they accept that experience can be a basis to acknowledge a person as an expert. Mrs Bangura may have had an early professional career in insurance but is clear she has worked widely in the field of gender development, women's rights and has travelled widely and been exposed to facts and opinion which qualify her to undertake the research and formulate views from that research. The methodology adopted is set out in her report.

60. If, as Defence submit, it is too restricted in its area then that can be a matter for cross-examination and submission on weight. It is not a reason for rejecting the report *ab initio*.

61. Fourthly, is the expert independent and impartial? The role of the expert is to enlighten the Judges on specific issues requiring special knowledge in a specific field,[22] the expert differs from a witness of fact who is called to attest on the accused's involvement in any alleged offence. An expert does not take the side of any party. The expert is to assist the Tribunal of fact.

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[18] *Prosecutor v. Delalic* et al, ICTY IT-96-21-T, Order on the Prosecution Motion for Leave to Call Additional Expert Witnesses, 13 November 1997.
[19] *Prosecutor v. Tadic*, Case No. IT-94-1-T, Official Transcript, 20 May 1996, at 923.
[20] Expert Witness Des Forges mainly testified on such issues, see *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement, 2 September 1998.
[21] *Prosecutor v. Théoneste Bagosora et al.*, Case No. ICTR-98-41-T, Decision on Motions for Judgement of Acquittal, 2 February 2005, para. 10-11.
[22] *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness, 9 March 1998.

62. I emphasize this aspect of the expert's role, and note neither Defence nor Prosecution allege or suggest that Mrs. Bangura will do otherwise than present researched facts and conclusions based on that research.

63. I am therefore satisfied that Mrs. Bangura's meets the four pronged test outlined above and in particular that

(1) her background of experience in gender development and its related fields qualifies her to be an expert;

(2) research methodology is sufficiently detailed to conclude that her report is adequate as an expert report and I would overrule the Defence objections to her being called as an expert witness.

Defence Application for Cross-Examination of the Co-Author of the Report.

64. The Defence put the Trial Chamber on notice that they intend to cross-examine the co-author of the report.

65. Rule 94bis (B) and (C) provide:

(B) Within 14 days of filing of the statement of the expert witness, the opposing party shall file a notice to the Trial Chamber whether:

1. It accepts the expert witness statement; or

2. It wishes to cross-examine the expert witness.

(C) If the opposing party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

66. The practical implementation of Rule 94bis(C) depends on the Defence accepting the statement of the expert witness – if they do, then the Trial Chamber has a power to admit the report. Clearly, in the instant case, the Defence do not accept the report. Hence the provisions of Rule 94(B)(ii) apply and they have a right, on giving notice, to cross-examine the expert witness.

67. The right is to cross-examine the expert witness only. Rule 94(B) (ii) does not extend to cross-examine any other person, be they co-author or interviewee. For that reason, the relief sought by the Defence must fail.

68. I agree with the Defence in their Joint Defence Reply to Prosecution Combined Reply when they submit the Prosecution Reply is not properly formatted. The Prosecution, to conform with Rule 7(C) should have filed two separate documents by way of a Reply and a Response. However, failure to comply with this procedure is not in itself, grounds for disregarding the Combined Reply.

FOR THE FORGOING REASONS

I concur with the orders of the majority decision herein.

Done at Freetown, Sierra Leone, this 21st day of October 2005.

Justice Teresa Doherty
Presiding Judge

[Seal of the Special Court for Sierra Leone]