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SCSL-2003-13-PT
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SPECIAL COURT FOR SIERRA LEONE

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THE TRIAL CHAMBER

Before: Judge Pierre Boutet, Designated Judge

Registry: Robin Vincent

Decision of: 15th day of October 2003

The Prosecutor against

Santigie Kanu
(Case No. SCSL-2003-13-PT)

**DECISION ON THE URGENT REQUEST FOR INTERIM MEASURES UNTIL
APPROPRIATE PROTECTIVE MEASURES ARE IN PLACE**

Office of the Prosecutor:
Luc Côté, Chief of Prosecutions
Robert Petit, Senior Trial Counsel
Boi-Tia Stevens, Assistant Trial Counsel

Defence Counsel:
Geert-Jan Knoop, Defence
Counsel

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COURT RECORDS	
NAME	Neil G. G. G. G.
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THE SPECIAL COURT FOR SIERRA LEONE (“the Special Court”),

SITTING as Judge Pierre Boutet, Designated pursuant to Rule 28 of the Rules of Procedure and Evidence (“the Rules”);

BEING SEIZED of the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure and Urgent Request for Interim Measures Until Appropriate Protective Measures are in Place (“the Motion”), filed on the 30th day of September 2003;

CONSIDERING that the Prosecution, pursuant to Rule 66 (A) (i) of “the Rules” identifies the 23rd day of October 2003 as the expiration date of its disclosure obligations towards the Defence;

CONSIDERING that, pending deliberation and appropriate ruling on “the Motion”, the Prosecution has grave concerns pertaining to the safety of witnesses and their willingness to testify and in addition, the Prosecution is also concerned that the integrity of these proceedings will be substantially jeopardised if witness’ identities and statements are prematurely disclosed under circumstances in which they cannot be protected;

CONSIDERING that, as interim measure the Prosecution requests:

- a) that the Designated Judge or Trial Chamber permit the transmission of the disclosure materials under Rule 66 (A) of “the Rules” to the Registrar and;
- b) that the Registrar keep the disclosure materials under seal until appropriate measures are in place;

Or in the alternative,

- c) the Prosecution requests the suspension of its disclosure obligation under Rule 66 (A) (i) of “the Rules” until protective measures are ordered;

TAKING NOTE of the Defence Response to “the Motion” of the 8th day of October 2003;

CONSIDERING that deliberation of “the Motion” is still pending;

CONSIDERING that the Initial Appearance of **Santigie Kanu** took place on the 23rd day of September 2003;

CONSIDERING the Memorandum from the Registrar on a Practice Direction for Disclosure by the Prosecutor, issued on the 10th day of April 2003;

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CONSIDERING the Statute of “the Special Court”, in particular Articles 16 and 17 thereof, and Rules 7, 53, 54, 66, 68, 69 and 75 of “the Rules”.

AFTER HAVING DELIBERATED

1. Rule 66 (A) (i) of “the Rules” provides that, within 30 days of the Initial Appearance of an Accused, the Prosecution shall disclose to the Defence copies of the statements of all witnesses whom he intends to call to testify and all evidence to be presented pursuant to Rule 92 bis of “the Rules” at Trial.

2. In addition, Rule 68 (B) of “the Rules” provides that, within the same time limit, the Prosecution shall also disclose to the Defence the existence of any known evidence which tends to suggest the innocence of the Accused, mitigate his guilt or affect the credibility of the Prosecution evidence. The Prosecution is under a continuing obligation to disclose such exculpatory evidence.

3. For reference herein, all materials envisaged in Rules 66 (A) (i) and 68 (B) of “the Rules” will be indicated as “disclosure materials”.

4. “The Special Court” notes that in the Memorandum from the Registrar on a Practice Direction for Disclosure by the Prosecutor issued on the 10th day of April 2003, the Registrar directs that disclosure pursuant to Rule 66 (A) (i) of “the Rules” shall be made to the Defence Counsel, identified either as a Counsel engaged by an Accused pursuant to Rule 44 of “the Rules” or a Counsel assigned to an Accused pursuant Rule 45 of “the Rules”, and that the Defence Office is not in a position to receive the “disclosure materials”.

5. Pending deliberation and ruling on “the Motion”, it is therefore necessary to guarantee the fulfilment of the Prosecution’s obligations to disclose and this shall encompass appropriate interim measures for the protection of witnesses and victims as well as for the confidentiality of all non-public materials subject to disclosure.

6. Considering the aforementioned and relying on a common practical procedure previously adopted by “the Special Court”, the Prosecution may comply with its disclosure obligations pursuant to Rule 66 (A) (i) and Rule 68 (B) of “the Rules” by transmitting the “disclosure materials” to the Registrar, the Registrar keeping the “disclosure materials” under seal until deliberation on “the Motion” is rendered and orders for appropriate protective measures for witnesses, victims and non-public materials have been issued.

FOR THESE REASONS “THE SPECIAL COURT”

HEREBY ORDERS the Prosecution to transmit, on or before the 23rd day of October 2003, the “disclosure materials” to the Registrar;

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INSTRUCTS the Registrar to certify receipt of the "disclosure materials" from the Prosecution. The Registrar shall seal and date the "disclosure materials" and liaise with the Prosecution to provide for their proper custody.

When a decision on "the Motion" is rendered and, if needed, ordered measures put in place, the Registrar shall then make available the "disclosure materials" to the Defence Counsel and the disclosure shall then take effect. The Registrar shall consult with the Prosecution and the Defence Office for this purpose.

Done in Freetown, this 15th day of October 2003



Judge Pierre Boutet
Designated Judge



Seal of the Special Court for Sierra Leone