



SPECIAL COURT FOR SIERRA LEONE

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THE TRIAL CHAMBER

Before: Judge Bankole Thompson, Presiding Judge
Judge Benjamin Mutanga Itoe
Judge Pierre Boutet

Registrar: Robin Vincent

Date: 2 April 2004

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

**ORDER TO THE PROSECUTION FOR RENEWED
MOTION FOR PROTECTIVE MEASURES**

Office of the Prosecutor:

Luc Côté
Robert Petit

Defence Counsel for Alex Tamba Brima:

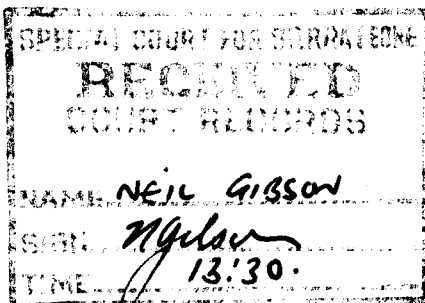
Terence Terry

Defence Counsel for Brima Bazy Kamara:

Ken Fleming

Defence Counsel for Santigie Borbor Kanu:

Geert-Jan Alexander Knoops



THE TRIAL CHAMBER ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court");

NOTING the Status Conference held in this case on 8 March 2004, and the discussions therein on the protective measures granted to victims and witnesses in this case;

NOTING that in the Decisions for protective measures¹, the Trial Chamber ordered, as requested by the Office of the Prosecutor ("Prosecution"), that the Prosecution may withhold identifying data and any other information which could lead to the identity of such persons from the Defence, and may delay the disclosure of these witnesses' identities until 42 days before the witnesses testify in the cases against Alex Tamba Brima and Brima Bazzy Kamara and 21 days in the case against Santigie Borbor Kanu, for three categories of witnesses:

- (a) witnesses presently in Sierra Leone who have not affirmatively waived their right to protective measures;
- (b) witnesses who reside outside Sierra Leone but in West Africa who have not affirmatively waived their right to protective measures; and
- (c) witnesses outside of West Africa who have requested protective measures;

RECALLING the submissions of the Prosecution at the Status Conference that in accordance with the Decisions for protective measures, it has disclosed redacted witness statements or witness summaries in lieu of witness statements, and that it has not disclosed the identity of any witnesses, save one, to the Accused or the Defence Counsel;

RECALLING FURTHER the submissions from the Prosecution that certain categories of witnesses, including victim-witnesses or "insider" witnesses, may require greater levels or forms of protection than other categories of witnesses;

RECALLING the submissions of the Defence at the Status Conference on the impact of the protective measures granted in this case on their trial preparation;

CONSIDERING that the Statute of the Special Court specifically provides for the protection of victims and witnesses in Article 16(4), which prescribes that:

¹ *Prosecutor v. Alex Tamba Brima*, SCSL-03-06-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003 ("Brima Decision"); *Prosecutor v. Brima Bazzy Kamara*, SCSL-03-10-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 October 2003 ("Kamara Decision"); *Prosecutor v. Santigie Borbor Kanu*, SCSL-03-13-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 24 November 2003 ("Kanu Decision").

The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses. The Unit personnel shall include experts in trauma, including trauma related to crimes of sexual violence and violence against children.

And that Article 17(2) of the Statute provides that “[t]he accused shall be entitled to a fair and public hearing, *subject to measures ordered by the Special Court for the protection of victims and witnesses*”,²

CONSIDERING Rules 69 and 75 of the Rules which implement Articles 16(4) and 17(2) of the Statute;

CONSIDERING Article 17 (“Rights of the accused”) of the Statute, which prescribes certain minimum guarantees that must be afforded to each accused, including the right to have adequate time and facilities for the preparation of his defence;

CONSIDERING the distinction to be drawn between granting protective measures vis-à-vis the public versus granting protective measures that amount to non-disclosure or delayed disclosure to the Accused and the Defence;

CONSIDERING that the Decisions for protective measures specified that the protective measures granted were applicable at that stage of the proceedings, namely at the start of the pre-trial phase;³

FINDING that at this advanced stage of the pre-trial proceedings, it would be in the interests of justice to review the protective measures required in this case, and make any necessary and appropriate variations consistent with the pre-eminent need to balance the interests of the Prosecution and those of the Defence;

PURSUANT TO Article 17 of the Statute and Rules 69 and 75 of the Rules;

HEREBY ORDERS that:

- 1) The Prosecution file a renewed motion for protective measures by 3 May 2004, pursuant to Rules 69 and 75 of the Rules, for each witness who appears on the Prosecution Witness

² Emphasis added.

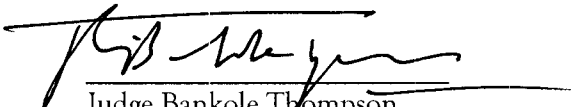
³ See, e.g., *Brima* Decision, para 14 (“at this preliminary stage”), *Kamara* Decision, para 19 (“justify, at this point in time, delaying the disclosure of the identities of the witnesses during the *pre-trial phase*); *Kanu* Decision, para 39 (“at this stage of the proceedings”) and paras 34-41 generally.

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List, which will be filed on 26 April 2004 in accordance with “Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial,” of 1 April 2004. The motion shall specify the form of protection being sought for each witness including delayed disclosure, pseudonym, face distortion or closed session, to the extent that the Prosecution can provide such specification. This motion shall further provide an overview of the reasons for the protective measures sought for witnesses whose names appear on the witness list. In this regard, the Trial Chamber finds that the Prosecution’s reference to specific categories of witnesses may facilitate the Prosecution’s task; and

- 2) The protective measures granted in this case⁴ shall remain in force until further notice.

Done at Freetown this 2nd day of April 2004


Judge Bankole Thompson

Presiding Judge,
Trial Chamber



⁴ See note 1.