

573

SCSL - 04 - 16 - T

19221

(19221 - 19225)

**SPECIAL COURT FOR SIERRA LEONE**  
**OFFICE OF THE PROSECUTOR**  
Freetown - Sierra Leone

Before: Hon. Justice Richard Lussick, Presiding  
Registrar: Mr. Lovemore G. Munlo SC  
Date filed: 18 October 2006

**THE PROSECUTOR**

Against

**ALEX TAMBA BRIMA**  
**BRIMA BAZZY KAMARA**  
**SANTIGIE BORBOR KANU**

Case No. SCSL - 2004 - 16 - T

---

**CONFIDENTIAL**

**MOTION TO VARY PROTECTIVE MEASURES**

---

**Office of the Prosecutor:**

Mr. Christopher Staker  
Mr. James C. Johnson  
Ms. Nina Jørgensen

**Defence Counsel for Brima**

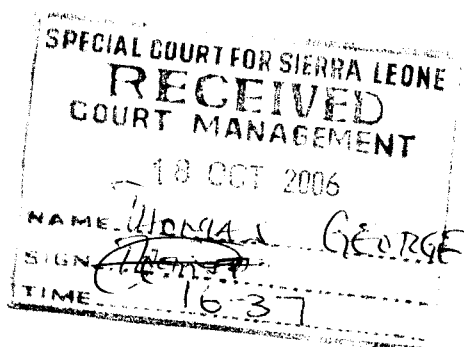
Mr. Kojo Graham  
Ms. Glenna Thompson

**Defence Counsel for Kamara**

Mr. Andrew Daniels  
Mr. Pa Momo Fofanah

**Defence Counsel for Kanu**

Mr. Geert-Jan Alexander Knoops  
Ms. Carry J. Knoops  
Ms. A.E. Manly-Spain



## I. INTRODUCTION

1. The Prosecution files this Motion pursuant to Rule 75(I) of the Rules of Procedure and Evidence (“**Rules**”) to request a variation of the protective measures in place for all witnesses covered by orders for protective measures in the proceedings of *Prosecutor v Brima et al* (“**AFRC proceedings**”).

## II. BACKGROUND

2. Prosecution witnesses in the AFRC proceedings are protected in accordance with three pre-joinder decisions on protective measures<sup>1</sup> and a post-joinder decision modifying and supplementing those protective measures for the trial phase (“**2004 Decision**”),<sup>2</sup> the continued effect of which was confirmed by Trial Chamber II in the *Prosecutor v Brima et al.* case<sup>3</sup>. The protective measures in place have subsequently been varied or rescinded on a case-by-case basis with respect to certain witnesses prior to their testimony. In accordance with Rule 75(F)(i) of the Rules, the protective measures granted to Prosecution witnesses in the AFRC proceedings will continue to have effect in any other proceedings before the Special Court, for example in Case No. SCSL-03-1, *Prosecutor v. Taylor* (“**Taylor case**”). The identities of the majority of Prosecution witnesses are protected and they are referred to by pseudonym.

## III. ARGUMENT

3. Article 16(4) of the Statute of the Special Court states that the Witness and Victim Section (“**WVS**”) “shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses.” Rule 34 of the Rules expands on this obligation and provides that WVS shall, in consultation with the Office of the Prosecutor (“**OTP**”) for

<sup>1</sup> *Prosecutor v Sesay*, SCSL-2003-05-PT-038, “Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure”, 23 May 2003; *Prosecutor v Kallon*, SCSL-2003-07-PT-033, “Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure”, 23 May 2003; and *Prosecutor v Gbao*, SCSL-2003-09-PT-048, “Decision on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure”, 10 October 2003.

<sup>2</sup> *Prosecutor v Sesay, Kallon & Gbao*, SCSL-2004-15-PT-T, “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses”, 5 July 2004 (“**2004 Decision**”).

<sup>3</sup> *Prosecutor v Brima et al.*, SCSL-04-16-PT-125, “Oral Decision on Prosecutions Motion for Protective Measures pursuant to Order to the prosecution for Renewed Motion for Protective Measures dated 2 April 2004, 3 February 2005.

Prosecution witnesses, perform the following functions for witnesses:

- (i) recommend to the Special Court the adoption of protective and security measures for them;
  - (ii) provide them with adequate protective measures and security arrangements and develop long- and short-term plans for their protection and support; and
  - (iii) ensure that they receive relevant support, counselling and other appropriate assistance.
4. Rule 34(B) provides that WVS should liaise where appropriate with non- and inter-governmental organisations in relation to the performance of their duties.
  5. According to the protective measures in force, documents of the Special Court identifying protected witnesses shall not be disclosed to the public or media. The term “the public” has been held to include “all persons, governments, organizations, entities, clients, associations and groups, other than the Judges of the Court and the staff of the Registry, the Prosecution and the Defence”.<sup>4</sup> In principle, therefore, governmental authorities fall within the definition of “the public”.
  6. The protective measures in force provide that “[t]he names and any other identifying information of all protected witnesses should be communicated only to the Victims and Witnesses Unit personnel by the Registry or the Prosecution in accordance with established procedure and only in order to implement protective measures for these individuals”.<sup>5</sup>
  7. In view of the transfer of the Accused Charles Taylor to stand trial in The Hague, Prosecution witnesses may be required to travel to the Netherlands to testify, most likely via third countries. In order for WVS to be able to book tickets and obtain passports and visas for witnesses, it will be necessary for the identities of protected witnesses to be disclosed to airlines and governmental authorities of various States, including immigration authorities.
  8. Furthermore, in relation to Prosecution witnesses in all proceedings before this Trial Chamber, in order to put appropriate protective measures in place or to enhance or alter the specific protective measures required by a witness, it may be necessary for the

---

<sup>4</sup> See *Prosecutor v Sesay*, SCSL-2003-05-PT-038, “Decision on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure”, 23 May 2003, Annex.

<sup>5</sup> *Ibid*, Order (d).

Prosecution and WVS to reveal the identities of protected witnesses or his or her dependents to government or other authorities, or to provide to government or other authorities documents or other materials that may reveal the identity of a protected witness or his or her dependents.

9. For the avoidance of any doubt, the Prosecution therefore seeks a variation of the protective measures ordered by the Trial Chamber to ensure that the provision of any document or information to the relevant authorities that discloses the identity of a witness or the identities of his or her dependents, or the fact that a witness is a protected witness, does not result in a breach of those orders. Specifically, the Prosecution seeks a variation of the protective measures to authorise the OTP and WVS to provide documents and information to relevant government or non-governmental authorities, international organizations, or other organizations (for example airlines) and individuals as may be directly and specifically necessary for the transportation of witnesses to the Special Court or third countries and for the provision of protection and support to witnesses and their families.
10. Any communication with any government or other authority or any individual would occur in conditions of complete confidentiality and would be accompanied by a notification of the protective measures in force with respect to the witness.

#### IV. CONCLUSION

11. The Prosecution requests an order to the effect that: “Notwithstanding any previous order of the Trial Chamber, in relation to any protected Prosecution witness, the OTP and WVS are authorised as they deem necessary to provide documents and information to the government or other authorities of any State, to any organization or to any individual, provided that if such materials or information divulge the identities of any protected Prosecution witness or his or her dependents, or disclose the fact that any protected Prosecution witness is a protected witness, they shall be provided on conditions of confidentiality and be accompanied by a notification of the protective measures in force”. “Protected Prosecution witness” means any witness or potential witness in respect of whom protective measures have been ordered in the AFRC proceedings at the request of the Prosecution.

Filed in Freetown,  
18 October 2006

For the Prosecution,



---

Christopher Staker  
Acting Prosecutor