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SCSL - 04 - 15 - 1  
(25888 - 25891)

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IN THE SPECIAL COURT FOR SIERRA LEONE

**THE TRIAL CHAMBER**

**Before:** The Trial Chamber

Justice Bankole Thompson, presiding  
Justice Pierre Boutet.  
Justice Benjamin Itoe.

**Registrar:** Mr Lovemore G Munlo SC

**Date filed:** Friday 26 January 2006

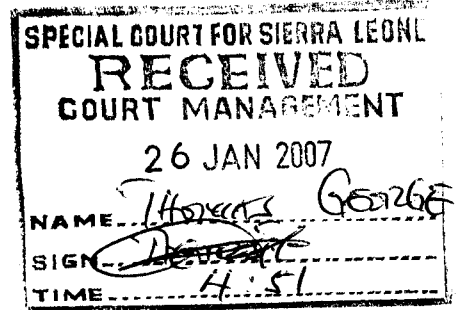
**Case No.** SCSL 2004 - 15 - T

**In the matter of:**

**THE PROSECUTOR**

**Against**

**ISSA SESAY  
MORRIS KALLON  
AUGUSTINE GBAO**




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**PUBLIC**  
**GBAO MOTION FOR IMMEDIATE PROTECTIVE MEASURES**

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**Office of the Prosecutor**

James Johnson  
Peter Harrison

**Court Appointed Counsel for Augustine Gbao**

Andreas O'Shea  
John Cammegh

**Counsel for co-accused**

Wayne Jordash and Sareta Ashraph for Issa Sesay  
Shekou Touray, Charles Taku and Melron Nicol-Wilson for Morris Kallon

1. The Defence for Augustine Gbao hereby applies for protective measures under Rules 69 and 75 for the witnesses who have agreed to testify at the defence team's request and future witnesses who may agree to testify at this team's request.

#### **Basis for seeking protective measures**

2. There are significant security concerns for Defence witnesses which necessarily arise out of the circumstances in which this trial is taking place. The opposing party to the conflict holds the reigns of power in the country. Testifying for the RUF accused implies testifying for the former enemies of the state. Witnesses may fear retribution from the state or members of the community in which they live or work. The witnesses who have agreed to testify for the third accused have only done so in the expectation that their identities will be kept secret from the public because they fear retribution if they testify for the RUF. In the absence of such measures to ensure this secrecy, the defence witnesses will not testify and the accused would accordingly not receive a fair trial.
3. Further, it is submitted that the principle of equality of arms may come into play in the determination of the issue of protective measures for defence witnesses under the Court's discretion. Article 17 (4) (e) of the Statute provides that the accused is entitled to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him. Witnesses are less likely to testify in the absence of protective measures and therefore it is in the interests of justice that in so far as possible protective measures for defence witnesses should be at least as effective as those for prosecution witnesses. Equally, it is submitted that there cannot be any reasonable justification for providing measures of protection to one co-accused that are less effective than those measures provided to another co-accused.
4. The Defence makes reference to those materials relied upon by the prosecution in seeking protective measures for their witnesses and by the first

accused in providing protective measures for their witnesses. These materials include the declarations of Mr Morie Lengor<sup>1</sup> and Mr Alan White,<sup>2</sup> of 5 March 2003 and 7 April 2003 respectively, the statement of Saleem Vahidy, head of Victim and Witness Protection,<sup>3</sup> as well as the statement of one Chantale Refahi, an assistant of the first accused (referred to in the Sesay motion for protective measures at par 14).<sup>4</sup> This Chamber has already made a finding as recently as 30 November 2006, that there was a prima facie case made out for the protection of witnesses testifying in defence of the first accused. The same principles apply by implication to the third accused.

### Orders sought

5. It is requested that the following protective measures be granted to all Gbao defence witnesses, in the absence of an express waiver from that witness and consent of the Chamber, in line with those measures granted to Prosecution witnesses.
  - (a) all witnesses be referred to by pseudonym throughout the proceedings, whether during a hearing, or in documents.
  - (b) That the names, addresses, whereabouts and any other identifying information of the witnesses not included in any public records of the tribunal.
  - (c) Documents containing information regarding protected witnesses shall not be disclosed to the media
  - (d) All witnesses testify with the use of a screening device from the public

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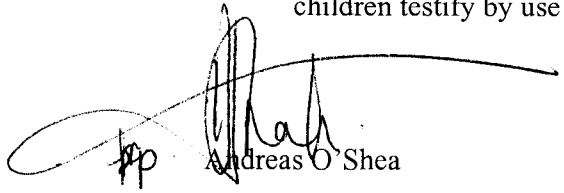
<sup>1</sup> Attachment A to Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 7 May 2003, SCSL-2003-09-PT-018

<sup>2</sup> Attachment B to Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 7 May 2003, SCSL-2003-09-PT-018

<sup>3</sup> Annex F to Renewed Prosecution Motion for Protective Measures Pursuant to Order to The Prosecution for Renewed Motion for Protective Measures Dated 2 April 2004, SCSL-2004-15-PT-102

<sup>4</sup> See statement of Ms Chantale Refahi of 20 July 2006, Annex A to Sesay Defence Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure of 25 July 2006, SCSL-04-15-T-608.

- (e) The photographing video recording or reproducing in any other manner of images of any witness while in the precincts of the Special Court be prohibited
  - (f) The Prosecution and co-defendants refrain from sharing, discussing or revealing, directly or indirectly, any disclosed non-public materials of any sort, or any information contained in such documents to any person or entity other than the Gbao defence team.
  - (g) The Prosecution and co-defendants provide to the victims and Witnesses Unit the designation of all persons working on their respective teams, who have access to protected information, and that any changes therein be notified to the Victims and Witnesses Unit.
6. It is further requested that the voices of insider witnesses be distorted in line with measures granted to prosecution witnesses. Such witnesses by exposing their role in the RUF may be at risk of acts of reprisal if their voices are recognised by members of the community in which they live or work.
7. It is further requested, in line with measures provided to the Prosecution, that children testify by use of closed circuit television.



pp Andreas O'Shea

For Augustine Gbao



