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SCSL-04-15-T
(25677 - 25687)

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CASE No.SCSL-2004-15-T

**SPECIAL COURT FOR SIERRA LEONE
TRIAL CHAMBER 1**

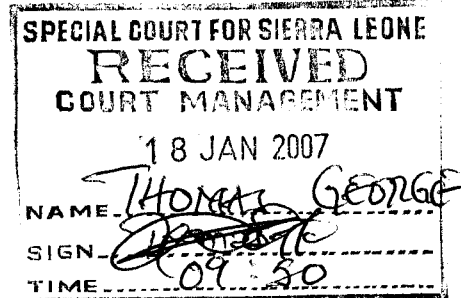
Before:

Hon Justice Bankole Thompson, Presiding Judge
Hon Justice Pierre Boutet
Hon Justice Benjamin Mutanga Itoe

Registrar:

Mr. Lovemore G. Munlo SC

Date: 18 January 2007



PROSECUTOR **Against** **ISSA HASSAN SESAY**
MORRIS KALLON
AUGUSTINE GBAO

PUBLIC

**KALLON DEFENCE MOTION FOR IMMEDIATE PROTECTIVE MEASURES FOR
WITNESSES AND VICTIMS AND FOR NON-PUBLIC DISCLOSURE**

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INTRODUCTION

1. The Defence for Morris Kallon (the “Kallon Defence”) applies for protective measures for its witnesses and non-public disclosure.¹

APPLICABLE LAW

2. The applicable law concerning protective measures for victims and witnesses has been well delineated in several applications and decisions. The Statute of the Special Court for Sierra Leone (“Special Court”) enshrines the importance of protective measures for witnesses and victims. Article 16(4) establishes the Victims and Witness Unit within the Registry. Further, Article 17(e) provides that the accused has the right to obtain and examine witnesses on his behalf under the same conditions as the witnesses against him.
3. Rule 26*bis* of the Rules of Procedure and Evidence (“the Rules”) empowers the Trial Chamber and the Appeals Chamber to “ensure that a trial is fair and expeditious and that proceedings before the Special Court are conducted in accordance with the Agreement, the Statute and the Rules, with full respect for the rights of the accused and due regards for the protection of victims and witnesses.”
4. Rule 75(A) of the Rules states: “A Judge or Trial Chamber may, of its own motion, or at the request of either party, or of the Witnesses and Victims Sections, order appropriate measures to safeguard the privacy and security of victims and witnesses provided that the measures are consistent with the rights of the accused.”
5. Rule 75(B) of the Rules allow for a variety of measures to protect the identity of victims and witnesses. Pursuant to this Rule, the designated Judge or Trial Chamber may hold an in camera proceeding to determine whether to order:

¹ The Kallon Defence gave verbal notice of its intention to seek protective measures for its witnesses at the Status Conference on 27 October 2006. See RUF Trial Transcript, 27 October 2006, page 19, lines 28 – 29.

- I. Measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or witness, or of persons related to or associated with him by such means as:
 - a. Expunging names and identifying information from the Special Court's public records;
 - b. Non-disclosure to the public or any records identifying the victim or witness;
 - c. Giving of testimony through image-or voice-altering devices or closed circuit television, video link or other similar technologies; and
 - d. Assignment of a pseudonym.
 - II. Closed sessions, in accordance with Rule 79;
 - III. Appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television.
6. Rule 69 of the Rules provide that a Judge or Trial Chamber may order at the request of either party "the non-disclosure of the identity of a victim or witness who may be in danger or risk, until the Judge or Chamber decides otherwise."
7. Rule 53(A) of the Rules states that a designated Judge may "in the interests of justice, order the non-disclosure to the public of any documents or information until further order."

FACTUAL BASIS FOR THE REQUEST

8. A recent ruling by this Trial Chamber found that the Defence for the First Accused, Issa Sesay, had established a prima facie case for the issuing of certain protective measures for its witnesses.² The Kallon Defence submit that these considerations readily apply to potential and existing witnesses for the Second Accused who possess many of the similar fears and anxieties characteristic of testifying on behalf of one of the accused in the RUF trial before the Special Court. For example many witnesses, living inside and outside

² *Prosecutor v Sesay et al.* Case No. SCSL-04-15-T-668, Decision on Sesay Defence Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (the "Sesay Decision"), 30 November 2006.

Sierra Leone, fear public condemnation for associating with the RUF due to its negative portrayal in the national and international media. Many civilians live in areas where there is significant anti-RUF sentiment leading to concerns for their safety and/or possible social exclusion should it become known they intend to testify for Mr. Kallon. Many insider witnesses fear reprisals from fellow ex-combatants who bear various grudges against Mr. Kallon particularly due to his support of the disarmament process. This Chamber has noted that “insider witnesses as well as their families are particularly vulnerable to acts of retaliation and potential harm if their identities were to be known to the public” and recognised that these considerations apply to insider witnesses testifying on behalf of either the Prosecution or the Defence.³

9. Due note has been taken that these proceedings take place within Sierra Leone which is an important factor in weighing the need for granting protective measures to victims and witnesses.⁴ Commonly witnesses live in small communities alongside those who may not welcome their participation in proceedings before the Special Court,⁵ for example members of the former belligerent parties to the Sierra Leone conflict or relatives, friends and associates of other Accused before the Special Court.
10. Counsel, legal assistants and investigators of the Kallon Defence regularly interact with potential and existing witnesses for Mr Kallon who report stigmatisation from their community and fear and intimidation as a result of being, or thought to be, a defence witness for Mr Kallon. For example, some witnesses have stated that stigmatisation from their communities has affected their ability to secure jobs and or housing. Others report intimidation and insults. In fact, in 2005 the Kallon Defence Investigator and a witness were arrested in a province in Sierra Leone following false allegations made to the police by a senior member of the community. This person intimated to them that his action was

³ *Prosecutor v Sesay et al.* Case No. SCSL-04-15-T-551, Decision on Prosecution Motion to Amend Protective Measures for Witnesses TF1-168 and TF1-041, 9 May 2006. See also the Sesay Decision, para 19, footnote 22.

⁴ *Prosecutor v Gbao*, Case No. SCSL-2003-09-PT-48, Decision on the Prosecution Motion for Immediate Protective Measures for Victims and Witnesses and for Non-Public Disclosure, 10 October 2003, paras 21 – 25; see also *Prosecutor v Norman et al*, Case No. SCSL-2004-14-T-126, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 8 June 2004, para 29.

⁵ See further *Prosecutor v Kondewa*, SCSL-03-12-PT-38, Ruling on 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, 10 October 2003, para. 30.

largely driven by the witness' status as an ex-RUF combatant. It has also been necessary for a few witnesses to be relocated by the Witness and Victim's Unit. An important solace we can offer such witnesses is to explain to them that the Special Court Trial Chamber has power to order protective measures which can protect their identities from the wider public during and after the conclusion of these proceedings, and the Prosecution and Defence teams of the other Accused until the requisite time before they come to testify.

11. This subjective fear has an objective basis as recognised by this Trial Chamber.⁶ Ample evidence exists as to the unstable security situation in Sierra Leone and the surrounding West African region.⁷ For example, these arguments were used to justify the change of venue for the trial of Charles Taylor.⁸ These security concerns by extension apply to the RUF Accused given the alleged nexus between the activities of Charles Taylor and the RUF. Notably the Prosecution recently affirmed that there were no significant changes in the security situation in Sierra Leone that would warrant a variation of the protective measures regime.⁹ These security concerns have direct bearing on potential witnesses for Mr. Kallon across West Africa and especially in Sierra Leone.¹⁰

⁶ The Sesay Decision, Para 24.

⁷ For example, the United Nations Integrated Office in Sierra Leone details the fragility of Sierra Leone's reconstruction process as well as the overall lack of stability within the region. (The Sesay Decision, Annex B) Further, Security Council Resolutions 1657 (2006) and 1682 (2006) state that the situation in Ivory Coast poses "a threat to international peace and security in the region". See also Security Council Resolution 1683 (2006) in this regard in relation to the security situation in Liberia. (The Sesay Decision, Annex A) The Kallon Defence also relies on the Declarations of Mr. Morie Longor and Dr. Alan White, attached to the Prosecution's original Motion for Protective Measures of 7 April 2003, which describe the situation in Sierra Leone as volatile and suggest that individuals loyal to the belligerent parties remain employed by the Sierra Leone Police. Considering that the Prosecution rely heavily on employment of current and former police officers, this creates further risks for Kallon Defence witnesses. (See *Prosecutor v Issa Hassan Sesay*, SCSL-2003-05-I-015, "Prosecution Motion for Immediate Protective Measures for Witnesses and Non-Public Disclosure," 7 April 2003.)

⁸ See Security Council Resolution 1688 (2006).

⁹ *Prosecutor v Sesay et al.* Case No. SCSL-04-15-T-556, Decision on Prosecution Motion to Vary Protective Measures for Group I Witnesses TF1-042 and TF1-044, 23 May 2006. See also the decision of Trial Chamber II, *Prosecutor v Brima et al.*, Case No. SCSL-04-16-T-551, Decision on Joint Defence Application for Protective Measures for Defence Witnesses Appearing From 4 September 2006 Onwards, 13 September 2006, page 2.

¹⁰ Trial Chamber II held that protective measures may be ordered "on the basis of a current security situation even where the existence of threats or fears as regards specific witnesses has not been determined." *Prosecutor v Brima et al.*, Case No. SCSL-04-16-T-448, Decision on Joint Defence Application for Protective Measures for Defence Witnesses, 9 May 2006, page 18135

ORDERS REQUESTED

12. The Kallon Defence request the following protective measures which are substantially similar to those granted to the Prosecution¹¹ and crucial in maintaining equal protection of both Prosecution and Defence witnesses participating in the RUF trial before the Special Court.

13. The Kallon Defence seek that the following orders apply to all its categories of witnesses who have not affirmatively waived their right to protective measures, namely:

- (a) Witness who reside in Sierra Leone;
- (b) Witnesses who presently reside in other countries in West Africa;
- (c) Witnesses who reside outside Sierra Leone who have relatives in Sierra Leone;
- (d) Witnesses who reside outside West Africa.

14. The Kallon Defence acknowledges that the measure requested in paragraph 13(d) was denied by this Trial Chamber in the Sesay Decision¹² and is the subject of an application for leave to appeal.¹³ While endorsing those arguments made by the Sesay Defence, the Kallon Defence would like to emphasise that this same measure was granted to the Prosecution based on the same security concerns as put forward in this motion¹⁴. The Kallon Defence request that this same level of protection be extended to its witnesses residing outside West Africa or this will impact on their readiness to testify.

¹¹ See *Prosecutor v Sesay et al.* Case No. SCSL-04-15-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004.

¹² The Sesay Decision, Para 24(ii)

¹³ *Prosecutor v Sesay et al.* Case No. SCSL-04-15-T-669, Application for Leave to Appeal the Decision (30th November 2006) on Sesay Defence Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 4 December 2006.

¹⁴ See *Prosecutor v Sesay*, Case No. SCSL-2003-05-PT-IP-038, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and For Non-Public Disclosure, 23 May 2003 and Case No. SCSL-2004-15-T-38, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004 at Para 21.)

15. Considering the serious and immediate problems and fears affecting its witnesses, the Kallon Defence requests that the Trial Chamber issue the following Orders necessary to ensure the safety of its witnesses as well as their willingness to continue co-operating and to contribute their testimony before the Special Court:

- (a) An Order that all witnesses should testify with the use of a screening device from the public;
- (b) An Order that there should be no photographing, audio or video recording, sketching or reproducing in any other manner of images of such witnesses without prior leave of the Trial Chamber;
- (c) An Order allowing the Kallon Defence to withhold the name or any other identifying data of its witnesses until 42 days prior to their testimony at trial;
- (d) An Order requiring the Registry to seal the names or any other identifying data of all Kallon Defence witnesses, and for this information not to be included in any of the public records of the Special Court;
- (e) An Order permitting the Kallon Defence to designate a pseudonym for each of its witnesses, to be used during pre-defence case disclosure of witness materials and other materials and during trial proceedings;
- (f) An Order that the names or any other identifying data of Kallon Defence witnesses shall not be disclosed to the public or the media, during and after the conclusion of these proceedings;
- (g) An Order prohibiting the Prosecution, the Defence for the First Accused, Issa Sesay, and the Defence for the Third Accused, Augustine Gbao, sharing or revealing, directly or indirectly, any disclosed witness related non-public materials to any entity other than the Kallon Defence;
- (h) An Order that the Prosecution shall maintain a log indicating the name, address, and position of anyone who receives a Defence witness statement, interview report, summary of expected testimony, or any non-public material, as well as the date of disclosure; the Prosecution shall ensure that individuals to whom information is disclosed adhere to the non-disclosure order;

- (i) An Order requiring the Prosecution, the Defence for the First Accused, Issa Sesay, and the Defence for the Third Accused, Augustine Gbao, respectively, at the conclusion of proceedings, return to the Registry all disclosed witness-related materials which have not become part of the public record;¹⁵
- (j) An Order that, following disclosure of the Kallon Defence witnesses' names or other identifying data pursuant to order (c) above, the Prosecution, the Defence for the First Accused and the Defence for the Third Accused shall make a written request, if any, to the Trial Chamber or Judge thereof, for permission to contact any protected witnesses or relative of such person and that such request be timely served on the Kallon Defence. At the direction of the Trial Chamber or Judge thereof, the Kallon Defence shall contact the protected person and ask for his or her consent or the parents or guardian of that person if that person is under the age of 19 to an interview by the Prosecution or the Sesay or Gbao Defence and shall undertake the necessary arrangements to facilitate such contact.

16. The order requested above in paragraph 15(j) was denied by this Trial Chamber in the Sesay Decision¹⁶ and is currently the subject of an application for leave to appeal.¹⁷ The Kallon Defence wish to stress the importance of this order requested. A similar order was granted to the Prosecution¹⁸ and the Kallon Defence submit that this measure is likewise necessary to secure the safety and privacy of Kallon Defence witnesses. Trial Chamber II has also considered this measure necessary with regard to witnesses testifying on behalf of the AFRC accused.¹⁹ In the Norman Case the Trial Chamber stated that it would have placed the same restrictions upon the Prosecution (as requested above in paragraph 14 (j)) regarding contacting Defence witnesses through the Trial Chamber only if the "Defence

¹⁵ The requested orders in para 15 (a) – (i) were ordered by this Trial Chamber in the Sesay Decision, para 25 (a) – (i).

¹⁶ The Sesay Decision, Para 24(viii)

¹⁷ *Prosecutor v Sesay et al.* Case No. SCSL-04-15-T-669, Application for Leave to Appeal the Decision (30th November 2006) on Sesay Defence Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 4 December 2006.

¹⁸ *Prosecutor v Sesay*, Case No. SCSL-2003-05-PT-IP-038, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and For Non-Public Disclosure, 23 May 2003.

¹⁹ Note order (i) "The Prosecution shall not directly or indirectly contact any protected Defence witness except with the written consent of the Defence or leave of the court." *Prosecutor v Brima et al.*, SCSL-04-16-488, "Decision on Joint Defence Application for Protective Measures for Defence Witnesses", 9 May 2006, Page 18136. Other tribunals similarly have found such an order necessary.

had made the necessary applications before The Chamber, and asserted that Defence witnesses expressed fear that “by placing their names on the defence witness list, they would expose themselves to harassment by agents of the Prosecution.”²⁰ The Kallon Defence submit that these considerations readily apply to its witnesses, many of whom would be reluctant to testify before this Court without the assurance that they could only be contacted by the Prosecution following an order by the Trial Chamber and that, if granted, they would be informed by persons from the Kallon Defence whom they know and with whom they have established relationships to provide reassurance and an explanation of their rights rather than unfamiliar representatives of the Witness and Victim’s Unit.

17. The Kallon Defence reserves its right to apply to the Trial Chamber to amend the protective measures sought or to seek additional protective measures if to do so may safeguard the safety and security of witness and those associated with them.

CONCLUSION

18. The Kallon Defence requests that the Trial Chamber grant the above orders listed in paragraph 14 in order to ensure the safety and security of witnesses for Mr Kallon and their families, so that these witnesses may be able to give full and free testimony before the Special Court in order to effectuate the rights of the Accused and safeguard the integrity of the trial proceedings.

Dated 18 January 2007



PP. Shekou Touray
Lead Counsel 1

²⁰ *Prosecution v Norman et al.*, Case No. SCSL-04-14-T-629, Decision on Joint Defence Motion regarding the Propriety of Contacting Defence Witnesses, 20 June 2006, Para 18.

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