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SCSL-04-16-T
(18996-19001)

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

Before: Hon. Justice Richard Lussick, Presiding
Hon. Justice Teresa Doherty
Hon. Justice Julia Sebutinde

Registrar: Mr. Lovemore G. Munlo SC

Date filed: 31 August 2006

THE PROSECUTOR

Against

Alex Tamba Brima
Brima Bazzy Kamara
Santigie Borbor Kanu

Case No. SCSL-04-16-T

PUBLIC

**PROSECUTION RESPONSE TO JOINT DEFENCE APPLICATION FOR PROTECTIVE MEASURES FOR
DEFENCE WITNESSES APPEARING FROM 4 SEPTEMBER 2006 ONWARDS**

Office of the Prosecutor:
Mr. James C. Johnson
Mr. Karim Agha
Ms. Nina Jørgensen

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Mr. Kojo Graham
Ms. Glenna Thompson

Defence Counsel for Brima Bazzy Kamara
Mr. Andrew Daniels
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SPECIAL COURT FOR SIERRA LEONE	
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I. INTRODUCTION

1. The Prosecution files this Response to the “Joint Defence Application for Protective Measures for Defence Witnesses Appearing from 4 September 2006 Onwards” filed by the Defence for all three Accused (“**Defence**”) on 21 August 2006 (“**Motion**”).¹
2. The Motion relies upon the “Decision on Joint Defence Application for Protective Measures for Defence Witnesses” filed on 9 May 2006 (“**Decision**”).²
3. For the reasons given below, the Prosecution submits that the Motion should be dismissed.

II. ARGUMENTS

General submissions on the requirements of witness protection motions

4. Rule 69 of the Rules of Procedure and Evidence requires an application for protective measures to be supported by sufficient evidence to allow the Court to make a reasonable and objective assessment of the appropriateness of the measures requested. The granting of protective measures is not an automatic exercise.³ The Rule 69 “exceptional circumstances” test requires the establishment of both the subjective fears of the witnesses, and an objective basis for assessing the threat to the witnesses’ security.⁴

The Defence failure to provide evidence of a threat to the witnesses’ security

5. The Defence apparently relies on the Decision to assume that the Court will, on the basis of that Decision, extend protective measures to any future witnesses.
6. In the original “Public Joint Defence Application for Protective Measures for Defence Witnesses” filed on 25 April 2006 (“**Original Motion**”),⁵ the Defence divided their witnesses into three categories, asserting specific fears and security threats, supported by declarations, in relation to each category. These three categories encompassed serving soldiers, ex-soldiers, and civilian witnesses living in rural communities. The current Motion does not indicate whether the future witnesses fall into these categories and if so,

¹ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-532 (“**Motion**”).

² *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-488 (“**Decision**”).

³ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T, Transcript, 27 October 2005, p. 19, lines 20-23; p. 23, lines 15-21.

⁴ *Prosecutor v. Delalić et al. (Čelebići case)*, IT-96-21-A, “Decision on Motion to Preserve and Provide Evidence”, Appeals Chamber, 22 April 1999, pp. 4-5; and see also the “Separate Opinion of Judge Hunt”, paras. 7-9.

⁵ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-476 (“**Original Motion**”).

which ones belong to which category. In fact, on an initial review of the disclosure material already provided to the Prosecution, some witnesses clearly fall outside of those categories. The Defence has not indicated whether these categories are still valid, and whether some witnesses fall into entirely new categories.

7. Thus, the current Motion does not establish that the basis for protective measures ordered in the Decision is in any way applicable to the upcoming witnesses, nor does it seek to establish any other basis for ordering protective measures in respect of the upcoming witnesses. The Defence simply asserts that the circumstances remain unchanged.⁶
8. It is pertinent to note that two of the Defence witnesses (DBK 102 and DAB 083)⁷ indicated during cross-examination that they did not know whether they were giving evidence for the Defence or the Prosecution. This suggests that certain Defence witnesses may not have been informed of any potential security risks connected with giving evidence on behalf of the Defence, which provides a further indication that there is no objective basis for the threats asserted. It similarly casts doubt on the argument that there is a subjective fear held by witnesses.
9. For these reasons, the Motion should be rejected.

The request for measures affecting disclosure to the Prosecution

10. The Motion apparently renews the request to withhold the identifying data of witnesses from the Prosecution until 21 days before the witness is due to testify at trial. Considering the Defence's repeated failure to disclose identifying data to the Prosecution in a timely fashion pursuant to the Decision, the 21 day time period is unworkable and requires reconsideration.
11. Neither the Motion, nor the Original Motion, identifies *any* possible threat to a Defence witness if the names of all of the Defence witnesses are disclosed to the Prosecution. The Original Motion mentions threats from the Government of Sierra Leone, police and military,⁸ "pro-government supporters,"⁹ and from chiefs and local communities¹⁰.

⁶ Motion, para. 5.

⁷ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-14-T, Transcripts, 19 July 2006, p. 11; 21 July 2006, p. 55. In addition, Witness DAB023, on questioning by Justice Sebutinde, seemed unsure of whether he was giving evidence on behalf of the Defence, Transcript, 3 August 2006, p. 123.

⁸ Original Motion, paras. 7, 8, 10 and 11.

⁹ Original Motion, para. 8.

However, there is no suggestion that the Special Court is incapable of maintaining the security of its confidential documents, or that members of the Office of the Prosecutor pose any threat to witnesses. Furthermore, Order (i) of the orders currently in effect prohibits the Prosecution from contacting directly or indirectly any protected Defence witness without the written consent of the Defence or leave of the court.

12. The order that the names of Defence witnesses be provided to the Prosecution on a 21 day rolling basis has proven unworkable. The Prosecution has suffered prejudice due to repeatedly late disclosures. Some of the disclosures were made to the Prosecution as little as 7 days before the witness was to testify. This is well below the 21 day requirement, and even below the 14 days that the Defence originally requested.¹¹ These delays may have prevented adequate Prosecution investigations of witnesses and their testimony and have resulted in adjournments that might otherwise have been unnecessary.
13. Specific delays and prejudice are discussed in further detail in the “Prosecution Reply to Defence Response to Motion for Relief in Respect of Violations of the Trial Chamber’s Decision of 9 May 2006” filed on 28 August 2006.¹²
14. Therefore, even if the Trial Chamber were to grant the rest of the Motion, this aspect of the original Decision should be revised and the identities of all future witnesses should be disclosed to the Prosecution immediately.

III. CONCLUSION

15. The Prosecution submits that the Defence has not made clear whether the categories relied upon in its Original Motion apply to the future witnesses, and has failed to offer sufficient bases for fears faced by the upcoming witnesses. For these reasons, the measures implemented in the Decision should not be imposed for the upcoming witnesses and the Motion should be dismissed.
16. Alternatively, the Prosecution submits that the rolling 21 day disclosure provision should not be put into effect for future Defence witnesses. The Defence’s continued failure to abide by this requirement should lead the Trial Chamber to order the immediate disclosure by the Defence to the Prosecution of the full identities of all remaining witnesses.

⁰ Original Motion, paras. 9 and 12.

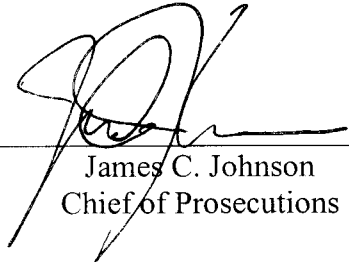
¹ Original Motion, para. 13(d).

² *Prosecutor v. Brima, Kamara, Kanu.*, SCSL-04-16-T-538.

Done in Freetown,

31 August 2006

For the Prosecution,



James C. Johnson
Chief of Prosecutions



Karim Agha
Senior Trial Attorney

Index of Authorities

- Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-532, “Joint Defence Application for Protective Measures for Defence Witnesses Appearing from 4 September 2006 Onwards”, 21 August 2006.
- Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-488, “Decision on Joint Defence Application for Protective Measures for Defence Witnesses”, 9 May 2006.
- Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T, Transcript, 27 October 2005, p. 19, lines 20-23; p. 23, lines 15-21.
- Prosecutor v. Delalić et al. (Čelebići case)*, IT-96-21-A, “Decision on Motion to Preserve and Provide Evidence”, Appeals Chamber, 22 April 1999, pp. 4-5; and see also the “Separate Opinion of Judge Hunt”, paras. 7-9.
- <http://www.un.org/icty/celebici/appeal/decision-e/90422EV37228.htm>
- <http://www.un.org/icty/celebici/appeal/decision-e/90422EV37230.htm>
- Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-476, “Public Joint Defence Application for Protective Measures for Defence Witnesses”, 25 April 2006.
- See *Prosecutor v Brima, Kamara, Kanu*, , SCSL-2004-16-T-481, “Public Prosecution Response to Public Joint Defence Application for Protective Measures for Defence Witnesses”, 1 May 2006.
- Prosecutor v. Brima, Kamara, Kanu.*, SCSL-04-16-T-538, “Prosecution Reply to Defence Response to Motion for Relief in Respect of Violations of the Trial Chamber’s Decision of 9 May 2006”, 28 August 2006.
- Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-14-T, Transcripts, 19 July 2006, p. 11; 21 July 2006, p. 55, 3 August 2006, p. 123.