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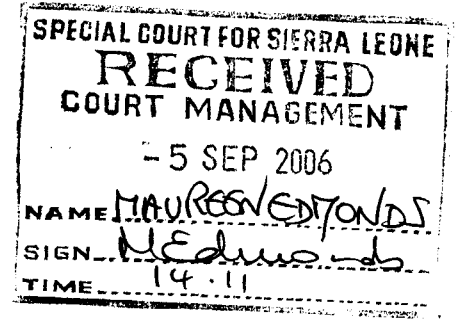
**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL-2004-16-T

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

Registrar: Lovemore G. Munlo, SC

Date filed: 5 September 2006



THE PROSECUTOR

against

ALEX TAMBA BRIMA

BRIMA BAZZY KAMARA

and

SANTIGIE BORBOR KANU

PUBLIC

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

Office of the Prosecutor:

Christopher Staker
Karim Agha

Defence Counsel for Kanu:

Geert-Jan A. Knoops, Lead Counsel
Cary J. Knoops, Co-Counsel
A.E. Manly-Spain, Co-Counsel

Defence Counsel for Brima:

Kojo Graham
Glenna Thompson

Defence Counsel for Kamara:

Andrew Daniels
Mohamed Pa-Momo Fofanah

I INTRODUCTION

1. On 21 August 2006, the Defence filed its “Joint Defence Application for Protective Measures for Defence Witnesses Appearing from 4 September 2006 Onwards”¹ (“**Motion**”), which Motion refers to the “Decision on Joint Defence Application for Protective Measures for Defence Witnesses” of 9 May 2006 (“**Decision**”).²
2. On 31 August 2006, the Prosecution filed its “Prosecution Response to Joint Defence Application for Protective Measures for Defence Witnesses Appearing from 4 September 2006 Onwards” (“**Response**”).³

II ARGUMENTS

2.1 Categories of Witnesses

3. The Prosecution purports that the Defence omitted to indicate whether the categories on which it founded its original request for protective measures, still apply to the current set of witnesses, and whether any new categories arise. The Defence submits that the same categories apply, and no new category arises.
4. In the “Public Joint Defence Application for Protective Measures for Defence Witnesses” filed on 25 April 2006,⁴ (“**Original Motion**”) the Defence indeed developed three categories of witnesses in this regard. However, it did not specify

¹ *Prosecutor v. Brima, Kamara and Kanu*, Joint Defence Application for Protective Measures for Defence Witnesses Appearing from 4 September 2006 Onwards, 21 August 2006, Case No. SCSL-2004-16-T-532.

² *Prosecutor v. Brima, Kamara and Kanu*, Decision on Joint Defence Application for Protective Measures for Defence Witnesses, 9 May 2006, Case No. SCSL-2004-16-T-488.

³ *Prosecutor v. Brima, Kamara and Kanu*, Prosecution Response to Joint Defence Application for Protective Measures for Defence Witnesses Appearing from 4 September 2006 Onwards, 21 August 2006, Case No. SCSL-2004-16-T-542.

⁴ *Prosecutor v. Brima, Kamara and Kanu*, Public Joint Defence Application for Protective Measures for Defence Witnesses, 25 April 2006, Case No. SCSL-2004-16-T-476.

which witness fell under which category, and neither did the Trial Chamber order the Defence to do so. Thus, these same categories remain in place, namely:

- (i) Witnesses who are presently serving soldiers in the Republic of Sierra Leone Armed Forces;
- (ii) Former soldiers of the said army; and
- (iii) Civilian witnesses living in the rural communities and Freetown.⁵

5. The Response only cites part of this last category in para. 6 of its Response, namely only “civilian witnesses living in rural communities.” However, in para. 6 of the Original Motion, the Defence set forth that the third category comprised “those civilian witnesses living in the rural communities and Freetown.” This category, as well as the first two categories, remains unchanged.

6. Therefore, the Prosecution assertion that “some witnesses clearly fall outside of those categories”⁶ cannot be sustained, since also the civilian witnesses living in Freetown can be categorized under the third category.

2.2 Security Threats

7. From the fact that some witnesses indicated in court that they did not know on whose behalf they were testifying, the Prosecution deduces that there would be no objective basis for the security threats. Yet, there is no causal relationship between a witness testifying for either Defence or Prosecution on the one hand and the existence of security threats on the other hand. Such inference cannot be

⁵ Original Motion, para. 6.

⁶ Response, para. 6.

made from the mere fact that statements by two witnesses are made who cannot recall for whom they are testifying.

2.3 Disclosure of Identifying Data of Defence Witnesses

8. The Prosecution in para. 11 of its Response asserts that there is no reason to withhold the identifying data of its witnesses to the Prosecution.
9. The reason for non-disclosure at an early stage is exactly the rationale of the existence of Rule 75(A) of the Rules as well as the rationale of the Trial Chamber's deliberation on p. 3, under (d) of the Decision.
10. However, irrespective of the position taken in the previous paragraph, the Defence is currently in the process of disclosing the names and identifying data of all its witnesses to the Prosecution. Up to date, it has disclosed such information for 32 of its common witnesses of the common witness list disclosed on 21 August and it strives to finalize this process by the end of September. Therefore, the Defence respectfully holds that the Prosecution assertions in paras. 12-14 and 16 are moot and redundant.
11. In para. 14, the Prosecution moreover states that "this aspect of the original Decision should be revised (...)." The Defence respectfully states that if the Prosecution seeks to request the Trial Chamber to revise its prior Decision, it should do so by separate motion, and not within the context of a response to a motion filed for different purposes and with a different scope.

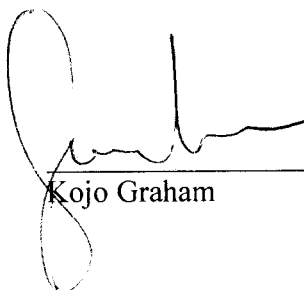
III PRAYER

12. The Defence respectfully prays the honorable Trial Chamber that the protective measures granted by the Decision be applied and implemented *mutatis mutandis* to the witnesses enlisted in the Witness Lists filed on 21 August 2006,⁷ with the exception of the expert witnesses.

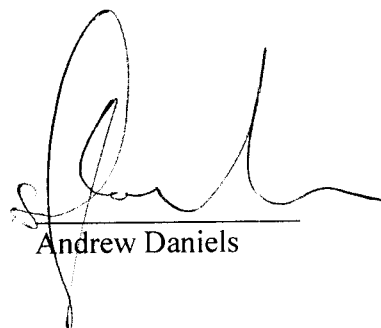
Respectfully submitted,
On 5 September 2006



Geert-Jan Alexander Knoops



Kojo Graham



Andrew Daniels

⁷ *Prosecutor v. Brima, Kamara and Kanu*, Confidential Kanu – Defence Filing of Witness List Pursuant to Trial Chamber Order of 17 May 2006, 21 August 2006, Case No. SCSL-2004-16-T-534.

TABLE OF AUTHORITIES

Prosecutor v. Brima, Kamara and Kanu, Public Joint Defence Application for Protective Measures for Defence Witnesses, 25 April 2006, Case No. SCSL-2004-16-T-476.

Prosecutor v. Brima, Kamara and Kanu, Decision on Joint Defence Application for Protective Measures for Defence Witnesses, 9 May 2006, Case No. SCSL-2004-16-T-488.

Prosecutor v. Brima, Kamara and Kanu, Joint Defence Application for Protective Measures for Defence Witnesses Appearing from 4 September 2006 Onwards, 21 August 2006, Case No. SCSL-2004-16-T-532.

Prosecutor v. Brima, Kamara and Kanu, Confidential Kanu – Defence Filing of Witness List Pursuant to Trial Chamber Order of 17 May 2006, 21 August 2006, Case No. SCSL-2004-16-T-534.

Prosecutor v. Brima, Kamara and Kanu, Prosecution Response to Joint Defence Application for Protective Measures for Defence Witnesses Appearing from 4 September 2006 Onwards, 21 August 2006, Case No. SCSL-2004-16-T-542.