

706)

SCSL-04-15-T  
(25958 - 25964)

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

Before: Judge Bankole Thompson, Presiding Judge  
Judge Pierre Boutet  
Judge Benjamin Mutanga Itoe

Registrar: Mr. Lovemore G. Munlo S.C.

Date filed: 8 February 2007

**THE PROSECUTOR**

**Against**

**ISSA HASSAN SESAY  
MORRIS KALLON  
AUGUSTINE GBAO**

Case No. SCSL - 2004 - 15 - T

---

**PUBLIC**  
**PROSECUTION RESPONSE TO GBAO MOTION FOR IMMEDIATE**  
**PROTECTIVE MEASURES**

---

Office of the Prosecutor:  
Mr Peter Harrison  
Mr Mohamed A. Bangura

Defence Counsel for Sesay  
Mr Wayne Jordash  
Ms Sareta Ashraph

Defence Counsel for Kallon  
Mr Shekou Touray  
Mr Charles Taku

Defence Counsel for Gbao  
Mr Andreas O'Shea  
Mr John Cammegh

**SPECIAL COURT FOR SIERRA LEONE**  
**RECEIVED**  
**COURT MANAGEMENT**

08 FEB 2007

NAME: *Achera Nsiima K.*  
SIGN: *Nsiima*  
TIME: *12:22*

## I. INTRODUCTION

1. The Prosecution files this Response to the “Public Gbao Motion for Immediate Protective Measures” (“**Motion**”).<sup>1</sup>
2. The Motion seeks protective measures that in some respects are similar to those granted by this Trial Chamber in the Sesay Protective Measures Decision.<sup>2</sup> The Motion also seeks to rely on the material filed in support of the Sesay Protective Measures Motion,<sup>3</sup> and materials filed by the Prosecution in its protective measures application.<sup>4</sup>
3. The wording of the relief sought in the Motion seeks protective measures to prevent the public from learning the identity of the proposed witness. No relief is sought in regard to the Office of the Prosecution.
4. The Prosecution says that the Motion should be dismissed, as the Defence has not provided any factual materials in support of its application. In the event the Trial Chamber takes the view that some relief should be granted, then to the extent that the relief sought is the ordering of protective measures to prevent the public, but not the Prosecution, from knowing the identity of Gbao Defence witnesses the Prosecution does not oppose the granting of such relief.

## II. MOTION IS WITHOUT EVIDENCE

5. Unlike the Sesay and Kallon applications for protective measures, the Motion does not attempt to specify whether the witnesses belong to any particular groupings or categories, and if so, what variations in the protective measures should be considered for each group.<sup>5</sup>

<sup>1</sup> *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-T-695, “Public Gbao Motion for Immediate Protective Measures”, 26 January 2007.

<sup>2</sup> *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-T-668, “Decision on Sesay Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure” (“**Sesay Protective Measures Decision**”), 30 November 2006.

<sup>3</sup> *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-T-608, “Public Sesay Defence Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure” (“**Sesay Protective Measures Motion**”), 27 July 2006.

<sup>4</sup> *Prosecutor v. Kallon*, SCSL-03-07-PT-16, “Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure”, 7 April 2003.

<sup>5</sup> Sesay Protective Measures Motion, para 20.

6. The implication from the recent Gbao filing in regard to seeking an adjournment of the date for filing Defence materials is that the Gbao Defence does not yet have an adequate understanding of the likely Defence witnesses. The filing states:

More importantly we have also now experienced some reluctance on the part of witnesses to come forward and have not yet sufficiently canvassed the terrain of witnesses in relation to all the allegations against Gbao. We have also had problems tracing certain important witnesses, which has constituted a strain on our time and resources.<sup>6</sup>

7. Witnesses may or may not need protective measures, there are subjective and objective factors to be considered. If the witnesses are unknown it is hard to see how it can be determined whether the witnesses require protective measures, or want them, and which protective measures should be imposed. Motions should not be decided in a factual vacuum. It is the case that the Motion refers to materials prepared by the Prosecution in 2003 and materials filed by the Sesay Defence over 6 months ago. But, in circumstances where it is unclear who will be the witnesses for Gbao, those materials cannot be dispositive in seeking protective measures for Gbao witnesses.
8. The Motion argues that “the principle of equality of arms may come into play in the determination of the issue of protective measures for the Defence,”<sup>7</sup> and 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.”<sup>8</sup> The principle of equality of arms cannot be read so broadly as to mean that an order granted to one party, whether for protective measures or otherwise, should in the name of equality of arms be granted to the opposing party.
9. The same applies to granting differing protective measures orders between co-Accused. For example, witnesses of one co-Accused may reside in a West African country where, if it became known that the witness was going to testify for an RUF Accused, might be at risk. Whereas witnesses of another co-Accused

---

<sup>6</sup> *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-T-698, “Gbao Submissions on Sesay Request for Modification of Time Limits for Filing,” 29 January 2007, para 20.

<sup>7</sup> Motion, para 3.

<sup>8</sup> Motion, para 3.

may reside in a West African country where no such risk exists. It certainly may be the case that orders should be made in both cases, but it may be necessary and appropriate to tailor the order to the anticipated harm or risk.

10. The Motion also says that witnesses may fear retribution from the state. That allegation and others are made without any supporting information, and they should not be given any consideration.

### III. PROTECTIVE MEASURES IN RELATION TO THE PUBLIC

11. The wording of the Motion does not seek any protective measures in relation to the Prosecution. The Motion does not seek a delay in the disclosure of witness names to the Prosecution, which order was granted in the Prosecution Protective Measures Decision and the Sesay Protective Measures Decision (identities did not have to be disclosed until 42 days before the witness testifies), and has been sought in the Kallon Protective Measures Motion.<sup>9</sup> Similarly, the Motion makes no application for a procedure to be imposed should the Prosecution or the other Accused wish to communicate with a Gbao witness.
12. All of the protective measures sought are in relation to protecting the identity of witnesses from the public. The Trial Chamber is capable to assess and weigh the interests and rights of the public. Although, it remains unclear to the Prosecution where all of the intended Gbao witnesses reside, we assume that some must reside in Sierra Leone and for the reasons given in the Sesay Protective Measures Decision, it may be appropriate for some protective measures to be granted here.
13. Therefore, to the extent that the relief sought in the Motion is to protect the identity of witnesses from the public, and is not sought as against the Prosecution, the Prosecution does not oppose the relief sought in paragraphs 5 (a) – (g) of the Motion. However, with respect to paragraph 5 (g) the relief sought is that the lists of Prosecution and First and Second Accused members having access to the protected material be submitted to the Witness and Victims Unit. Other protective measures orders previously granted required the lists to be given to the

<sup>9</sup> *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-T-682, “Public Kallon Defence Motion for Immediate Protective Measures for Witnesses and Victims and For Non-Public Disclosure”, 18 January 2007, para 15 (c).

Registry.<sup>10</sup> The Prosecution does not oppose lists being made and held by a body of the Court, but the Registry may be a more appropriate institution and may have better facilities to store such a list.

14. The Prosecution also does not oppose the relief sought in paragraph 5 of the Motion, that there be voice distortion for insider witnesses, and paragraph 6, that children be permitted to testify by closed circuit television.

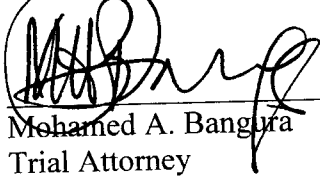
### III. Conclusion

15. Where assertions are made in a motion supporting materials should be filed to provide an evidentiary basis for those assertions. That has largely been ignored in the Motion. The Prosecution says the Motion is premature and should be dismissed. The Defence has not identified its witnesses, and until that is done it cannot be known if protective measures are necessary, and if so, which protective measures are appropriate.
16. Alternatively, given the Sesay Protective Measures Decision and because the relief sought in the Motion is for protective measures to shield the identity of witnesses from the public, should the Trial Chamber decide to grant some of the measures even in light that there are no supporting materials, the Prosecution does not oppose the relief sought (excepting the comments above regarding paragraph 5(g) of the Motion), as it applies to the public. The Prosecution says the pleading does not seek to protect the identity of witnesses from the Prosecution, and no evidence is adduced to justify such an order, and the Prosecution opposes any orders withholding the identity of witnesses from the Prosecution.

---

<sup>10</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-180, “Decision on the Prosecutor’s Motion for Modification of Protective Measures for Witnesses and Victims”, 5 July 2004, under *Disposition, Further Orders*, at page 16, para. L: “The Defence shall provide to the Registrar and the Defence Office a designation of all persons working on the Defence team who, pursuant to paragraph 35(f) above, have access to any information referred to in paragraphs 35(a) through 35(d) above, and requiring the Defence to advise the Registrar and to the Defence Office in writing of any changes in the composition of this Defence Team.”

Filed in Freetown,  
8 February 2007  
For the Prosecution



---

Mohamed A. Bangura  
Trial Attorney

**Index of Authorities**

**DECISIONS AND MOTIONS**

1. *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-T-668, “Decision on Sesay Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure”, 30 November 2006.
  
2. *Prosecutor v. Kallon*, SCSL-03-07-PT-16, “Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure”, 7 April 2003.
  
3. *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-T-608, “Public Sesay Defence Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure” 27 July 2006.
  
4. *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-T-682, “Public Kallon Defence Motion for Immediate Protective Measures for Witnesses and Victims and For Non-Public Disclosure”, 18 January 2007.
  
5. *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-T-695, “Public Gbao Motion for Immediate Protective Measures”, 26 January 2007.
  
6. *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-180, “Decision on the Prosecutor’s Motion for Modification of Protective Measures for Witnesses and Victims”, 5 July 2004.
  
7. *Prosecutor v Sesay, Kallon and Gbao*, SCSL-04-15-T-698, “Gbao Submissions on Sesay Request for Modification of Time Limits for Filing,” 29 January 2007.