

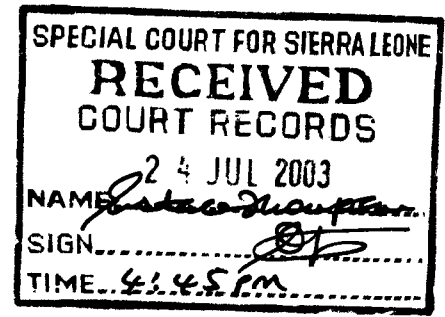
023

SCSL-2003-10-PF-023  
(310-318)

310

SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR  
FREETOWN - SIERRA LEONE

Before: Designated Judge  
Registrar: Robin Vincent  
Date filed: 24 July 2003



**THE PROSECUTOR**

**Against**

**BRIMA BAZZY KAMARA also known as**

**IBRAHIM BAZZY KAMARA also known as ALHAJI IBRAHIM KAMARA**

CASE NO. SCSL - 2003 - 10 - PD

---

**PROSECUTION REPLY TO DEFENCE "RESPONSE TO THE PROSECUTION  
MOTION FOR IMMEDIATE PROTECTIVE MEASURES"**

---

Office of the Prosecutor:  
Luc Côté, Chief of Prosecutions  
James C. Johnson, Senior Trial Counsel  
Sharan Parmar, Assistant Trial Counsel

Defence Office:  
Sylvain Roy, Acting Chief of Defence Office  
Ibrahim Sorie Yillah, Defence Associate

Defence Counsel:  
Ken Fleming QC

**SPECIAL COURT FOR SIERRA LEONE**  
OFFICE OF THE PROSECUTOR  
FREETOWN – SIERRA LEONE

**THE PROSECUTOR**

**Against**

**BRIMA BAZZY KAMARA also known as**

**IBRAHIM BAZZY KAMARA also known as ALHAJI IBRAHIM KAMARA**

CASE NO. SCSL – 2003 – 10 – PD

---

**PROSECUTION REPLY TO DEFENCE “RESPONSE TO THE  
PROSECUTION MOTION FOR IMMEDIATE PROTECTIVE  
MEASURES”**

---

**INTRODUCTION**

The arguments raised in the Response of Defence Counsel should be rejected as they are either incorrect or are not supported by the jurisprudence of the international ad hoc tribunals. The assertions fail to realize that it has been accepted by the International Criminal Tribunals for Yugoslavia and Rwanda and the Special Court that the rights of the Accused must be balanced with the need for protective measures for witnesses and victims. Finally, the Defence Response is clearly in violation of the prescribed time limit for the filing of documents, which can not be corrected by bringing an application for extension of time within the said Response.

## **ARGUMENT**

### **I. Procedural Matters**

1. On 22 July 2003, the Defence filed its response (the “**Defence Response**”) to the Prosecution motion for immediate protective measures for witnesses and victims and for non-public disclosure dated 11 July 2003 (the “**Prosecution Motion**”).
2. The Prosecution notes that the Defence Response exceeds the time period provided under Rule 7, which prescribes a seven day time period to respond to preliminary motions “unless otherwise ordered”. The Defence requests an extension of time to file the Defence Response within the response itself. Clearly, it is improper to seek authority and then proceed without having been granted the requested extension of time. Any request for extension of time must be made separately and sought in advance. The Prosecution submits that the Defence has clearly disregarded the letter of the Rules, and in any event fails to raise any evidence of good cause warranting the requested extension (See para. 20, Defence Response).
3. The Defence also requests that the matter be heard orally. As a pre-trial motion, it is well within the discretion of the Designated Judge of the Trial Chamber to make a determination on the Prosecution Motion for witness protection matters without an oral hearing. The Prosecution submits that the Designated Judge make a decision without an oral hearing as was done in the cases of *The Prosecutor v. Issa Hassan Sesay*, SCSL-2003-05-PT, *Alex Tamba Brima*, SCSL-2003-06-PT, *Morris Kallon*, SCSL-2003-07-PT, and *Samuel Hinga Norman*, SCSL-2003-08-PT.
4. For the record, the Prosecution corrects the reference in para. 24 (d) and (h) of the Prosecution Motion, which should make reference to para. 24 and not para. 23, and paragraph 24(a), which should make reference to para. 18 and not para. 16.

### **II. Balance between rights of the Accused with need for protective measures**

5. The Prosecution submits that throughout its Response, the Defence misconstrues the provisions of the Rules and this Court’s Statute, which in fact “seek to balance the right of the Accused to a fair and public trial with the interest of the witnesses in

being given protection”.<sup>1</sup> Furthermore, the Defence assertions overlook the philosophy of the International Tribunals and this Court, which is “pre-eminently mindful of the need to guarantee the utmost protection and respect **for the rights of the victims and witnesses**”.<sup>2</sup>

6. While the Prosecution fully recognises the rights of the Accused as they are stipulated in Article 17 of this Court’s statute,<sup>3</sup> the prevailing practice of the ad hoc Tribunals, as stipulated in Article 17.2 of the Court’s statute and as held by the Court<sup>4</sup>, the right of the Accused to a fair and public trial may be subject to derogation in exceptional circumstances, which includes the interest of witness and victim protection.

### III. Demonstration of exceptional circumstances and objective fear

7. The Prosecution submits that the Defence objections in paragraphs 9 – 16 of the Defence Response incorrectly characterize and interpret the onus outlined in Rule 69 upon a party seeking protective measures and should therefore be rejected. In particular, the Defence assertion that the Prosecution is obligated to demonstrate through specific evidence, on a case by case basis, the dangers attendant to the disclosure of identifying data to the Accused is incorrect.
8. The jurisprudence of the International Tribunals and this Court clearly demonstrates that the party seeking protective measures must show the existence of a real fear for the safety of a witness or the witness’ family, an objective basis for the fear. Furthermore, the plain language of Rule 69 establishes a requirement that there be a showing of exceptional circumstances to warrant the protective measures that are being sought. The Prosecution submits that the affidavit evidence clearly demonstrates exceptional circumstances and a real and objective fear for the safety of its witnesses and victims.

---

<sup>1</sup> See para. 15 of “Decision on the Prosecutor’s Motion For Immediate Protective Measures For Witnesses and Victims and for Non-Public Disclosure”, dated 23 May 2003 in *Prosecutor Against Issa Hassan Sesay*, SCSL-2003-05-PT, *Alex Tamba Brima*, SCSL-2003-06-PT, *Morris Kallon*, SCSL-2003-07-PT, and *Samuel Hinga Norman*, SCSL-2003-08-PT.

<sup>2</sup> *Ibid*, para. 9, 15. See also para 14, which refers to ICTY decision in *Blaskic*, IT-95-14, 5 November 1996.

<sup>3</sup> Of note, the language of Article 17 of the Statute of the Special Court for Sierra Leone (“**the Statute**”) is almost identical to Article 20 of the Statute of the International Criminal Tribunal for Rwanda (ICTR) and Article 21 of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY).

<sup>4</sup> *Supra* note 2, para. 15.

Exceptional circumstances

9. The Prosecution submits that the circumstances set forth in Attachments A through D, in particular the Investigator's Statement of Thomas Lahun, dated 10 June 2003, and the Declaration of Dr. Alan White, the Chief of Investigations, dated 10 June 2003, provide a sufficient basis to find that exceptional circumstances exist to support the relief requested, including protective measures for categories of witnesses.
  
10. These circumstances include, as in Rwanda, the presence of perpetrators who actually carried out the crimes alleged in the indictment in the general population, the fact that potential witnesses live among these perpetrators, the fact that the Government of Sierra Leone is not actively prosecuting such perpetrators, and the fact that many potential witnesses live among these perpetrators in remote areas where there is no appreciable police presence or other security available. As these circumstances are sufficient to reflect a security situation vis à vis all potential witnesses which supports applying the requested protective measures to the categories listed in the Prosecution motion, the Prosecution submits that the Defence assertion that the supporting materials provide nothing but the status quo is incorrect (See para. 16, Defence Response).<sup>5</sup> In addition, the objective basis for the fears expressed is provided by the "horrendous nature and ruthless character of the alleged crimes".<sup>6</sup>
  
11. The Prosecution submits that, where, as here, the security situation relative to witnesses in a country or region puts all witnesses in that country or region potentially at risk, based on real and objectively validated fears, exceptional circumstances exist to justify providing protective measures for categories of people, as has been done in the ICTR. In addition to the authorities cited in the Prosecution motion, see especially *Rwamakuba*, wherein the Trial Chamber found that the security situation could be of such a nature to put at risk the lives of victims and potential Prosecution witnesses, and granted the relief requested for categories of witnesses. Therefore, the

---

<sup>5</sup> See *Prosecutor v. Rwamakuba*, ICTR - 98 - 44- T, 22 September 2000; and the authorities cited in the Prosecution Motion.

<sup>6</sup> See *Prosecutor v. Tadic*, IT- 94- 1-T, "Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses", 10 August 1995, para. 62.

Defence argument that protective measures may not be granted on general security situation is incorrect and should be rejected (See para. 16, Defence Response).

Real and objective fears

12. The Prosecution submits that the existence of real fear for the safety of potential witnesses is set forth in the Confidential Investigator's Statement of Thomas Lahun, dated 10 June 2003, while the Declaration of Dr. Alan White provides information which establishes both a real fear for the safety of witnesses and their families and an objective basis for these fears. Attachments A, B and D in particular demonstrate that these fears are genuine and well founded. Thus, as was held by the Judge Thompson:

the combined effect of these affirmations is to demonstrate ... the delicate and complex nature of the security situation in the country and the level of threat from several quarters of the ex-combatant population that participated in the conflict to witnesses and potential witnesses. It is significant to note that there is no affidavit in opposition.<sup>7</sup>

13. There is much commonality between the situation in Sierra Leone and that in Rwanda: the victims, witnesses and the perpetrators live together in close knit communities; the situation in the region surrounding Sierra Leone is still volatile as reflected by recent events in Ivory Coast and Liberia, which involve members of the same factions which fought in the Sierra Leone conflict. This commonality supports the application of similar protective measures, which are applicable to all witnesses and victims, such as those requested by the Prosecution. Furthermore, these regional threats and instability warrant protective measure for witnesses who are outside the territory of Sierra Leone, which is especially demonstrated within the Declaration of the Chief of Investigations, Dr. Alan White.

**IV. Scope and purpose of Rule 69**

14. The Prosecution submits that the Defence objections to the protective measures requested in the Prosecution Motion mistake the intended object and purpose of the requested measures and, as previously stated, overlooks the fact that they are

---

<sup>7</sup> See para. 11 See para. 15 of "Decision on the Prosecutor's Motion For Immediate Protective Measures For Witnesses and Victims and for Non-Public Disclosure", dated 23 May 2003 in *Prosecutor Against Issa Hassan Sesay*, SCSL-2003-05-PT, *Alex Tamba Brima*, SCSL-2003-06-PT, *Morris Kallon*, SCSL-2003-07-PT.

routinely implemented by the International Tribunals, and therefore should be rejected.

15. On the basis of its supporting material, the Prosecution Motion duly requests the Chamber to order protective measures for any disclosed non-public material in order to ensure the safety and security of witnesses both before and after these proceedings, and prevent any ongoing investigations, existing indictments and the integrity of the system from being compromised. The Defence argument that the Prosecution request is “unworkable” and usurps the authority of this Chamber is incorrect and should be rejected outright (See para. 14, Defence Response).
16. The use of specific categories outlined in para.18 of the Prosecution Motion sufficiently permits the Court to ascertain those witnesses and victims to whom the requested protective measures apply, contrary to the Defence assertions (See para. 13 and 15, Defence Response). As demonstrated by Attachments A to G, the Prosecution submits that there exists a real and objective fear to warranting protective measures for *all* witnesses in order to ensure their protection.
17. The Defence Response objects to the order outlined in the Prosecution Motion at para. 24 (j). The order requested under para. 24 (j) is essential in that it serves to prevent protected identifying witness information from passing into the public realm **“at the conclusion of the proceedings in this case”**, as has occurred at the ICTR, following which dangers may still present themselves to the safety of witnesses and victims. The Defence argument at para. 17 of the Defence Response fails to appreciate the precise language of the measure and its intended purpose and again, should therefore be rejected.

**V. Rule 69(C)**

18. Likewise, the Defence argument that the protective measures as requested enable the Prosecution to “pre-empt, second guess or control the defence of an accused” does not take into account that such measures are common to the practice of the ad hoc tribunals and are well within their objective of balancing the rights of the Accused with witness protection (See para. 5-8, Defence Response).
19. Initially, the Prosecution submits that the Defence construction of Rule 69(C) is incorrect and should be rejected. Simply, Rule 69 refers to “adequate time for preparation of the Prosecution and the Defence” because both parties may in fact have witnesses who are subject to protective measures (See para. 6, Defence Response).
20. Furthermore, the Defence’ claim that “it is necessary to know all of the facts material to the defence of a matter at the beginning of the prosecution case” fails to consider that the substance of the witnesses’ testimony will have been previously disclosed to the Defence and that only the data that could lead to the identity of the witness will be withheld for a certain period prior to testimony (See para. 7, Defence Response). Since the Defence will be in possession of the substance of anticipated testimonies, the Prosecution submits that 21 days before testimony is sufficient time to allow the Defence to conduct any inquiries relating to remaining issues, such as the credibility of the identified witness.<sup>8</sup>
21. Rule 69 (C) of the Court states that the triggering event for the disclosure of identifying data shall be the date on which the witness is to be called to testify. The Prosecution maintains that the provision of identifying data 21 days prior to witness testimony, which was established by the jurisprudence of the ICTR, as a general practice, is a sufficient balance between the rights of the Accused and the need for protective measures for witnesses.
22. The Prosecution submits that it has made a reasonable case for measures of confidentiality through withholding identifying data during the pre-trial phase. In

---

<sup>8</sup> See *Prosecutor v. Zigiranyirazo*, ICTR 2001-73-I, 25 February 2003, para. 17; *Prosecutor v. Muvunyi*, ICTR-2000-55-I, 25 April 2001, para. 26; *Prosecutor v. Rwamakuba*, *supra*, para. 15 f.



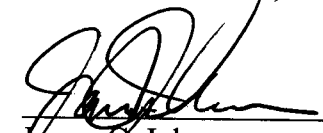
matters of such delicacy and sensitivity, as the Court stated in recent decisions, “it would be unrealistic to expect ... the Prosecution ... to carry the undue burden of having each witness narrate in specific terms or document the nature of his or her fears as to the actual or anticipated threats or intimidation”.<sup>9</sup> Furthermore, individual measures may be sought in the future where warranted for individual witnesses. Accordingly, the arguments raised by the Defence should be rejected.

## CONCLUSION

The Prosecution submits that much of the objections brought by the Defence to the Prosecution Motion mischaracterize the intended object and purpose of witness protection measures. The protective measures requested in the Prosecution Motion are soundly based upon the prevailing jurisprudence and general practice of the International Tribunals concerning witness protection, which strike an appropriate balance between the interest of witness and victim protection and the eminent interest of effectively protecting the right of the Accused to a fair and expeditious trial. On this basis, the Court should grant the relief requested in the Prosecution Motion for protective measures.

Freetown, 24 July 2003

For the Prosecution,



---

James C. Johnson  
Acting Chief of Prosecutions

---

<sup>9</sup> See e.g. *Prosecutor v. Sesay*, SCSL-2003-05-PT, 23 May 2003, para. 14; *Prosecutor v. Brima*, SCSL-2003-06-PT, 23 May 2003, para. 14; *Prosecutor v. Kallon*, SCSL-2003-07-PT, 23 May 2003, para. 15; *Prosecutor v. Norman*, SCSL-2003-08-PT, 23 May 2003, para. 14.