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SCSL-2004-16-PT  
(5432-5437)

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**SPECIAL COURT FOR SIERRA LEONE**

OFFICE OF THE PROSECUTOR

FREETOWN – SIERRA LEONE

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

Registrar: Robin Vincent

Date filed: 18 May 2004

**THE PROSECUTOR**

**Against**

**ALEX TAMBA BRIMA also known as TAMBA ALEX BRIMA also known as GULLIT  
BRIMA BAZZY KAMARA also known as IBRAHIM BAZZY KAMARA  
also known as ALHAJI IBRAHIM KAMARA**

**AND**

**SANTIGIE BORBOR KANU also known as 55 also known as  
FIVE-FIVE also known as SANTIGIE KHANU also known as SANTIGIE KANU also  
known as S. B. KHANU also known as S.B. KANU also known as SANTIGIE BOBSON  
KANU also known as BORBOR SANTIGIE KANU**

(Case No. SCSL-2004-16-PT)

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**BRIMA AND KANU - PROSECUTION'S CONSOLIDATED REPLY TO DEFENCE  
RESPONSE TO RENEWED PROSECUTION MOTION FOR PROTECTIVE  
MEASURES PURSUANT TO OORDER TO THE PROSECUTION FOR RENEWED  
MOTION FOR PROTECTIVE MEASURES DATED 2 APRIL 2004**

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**Office of the Prosecutor:**

Mr. Luc Côté  
Mr. Robert Petit  
Mr. Paul Flynn  
Mr. Abdul Tejan-Cole  
Ms. Leslie Taylor  
Ms. Boi-Tia Stevens  
Mr. Christopher Santora  
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**Defence Counsel for ALEX  
TAMBA BRIMA**

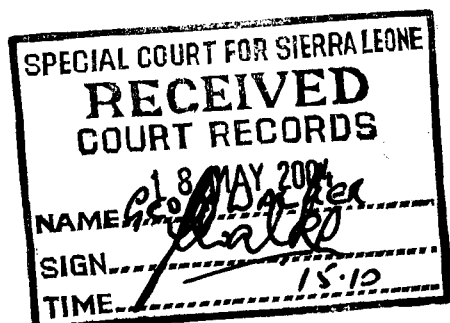
Mr. Terence Terry

**Defence Counsel for BRIMA  
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**Defence Counsel for  
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Mr. Geert-Jan A. Knoops



**SPECIAL COURT FOR SIERRA LEONE**

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FREETOWN – SIERRA LEONE

**THE PROSECUTOR****Against**

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The Prosecution files this consolidated reply to the Response of Defence Counsel for Alex Tamba Brima and Santigie Borbor Kanu to Prosecution Motion "Renewed Prosecution Motion for Protective Measures pursuant to Order to the Prosecution for Renewed Motion for Protective Measures dated 2 April 2004."

**I. BACKGROUND**

1. On 4 May 2004, the Prosecution filed a Motion "Renewed Prosecution Motion for Protective Measures pursuant to Order to the Prosecution for Renewed Motion for Protective Measures dated 2 April 2004." Counsel for Accused Kanu filed a response dated 13 May 2004 and Counsel for Accused Brima filed a response dated 14 May 2004. The Prosecution files this consolidated reply to the Defence Responses.

## II. SUMMARY OF DEFENCE SUBMISSIONS

2. Defence Counsel for Accused Kanu objects to the Motion on the following grounds:
  - a. That the Prosecution has not been sufficiently precise in making its request for protective measures.
  - b. That orders (j) and (k) sought by the Prosecution in its Motion are too broadly formulated.
3. Defence Counsel for Accused Brima objects to the Motion on the sole ground that the three categories into which the witnesses have been divided by the Prosecution is too wide and submits that the Prosecution should have sought individual protective measures for each witnesses and not based its application on categories.

## III. PROSECUTION ARGUMENTS

### A. The Prosecution has been sufficiently precise in making its request for protective measures.

4. The Defence argues that the Prosecution has not been sufficiently precise in making its request for protective measures. It submits that request for protective measures must be made on an individual basis and not be based on apparently general assessment categorizing 260 witnesses into three groups.
5. The Prosecution submits that there is nothing in the rules that precludes the request for protective measures for a category of common witnesses for whom similar reasons could be advanced. Rather than making multiple applications for all of its 266 witnesses, the Prosecution submits that it is in the interest of expediency and consistency to make a categorized rather than individual application. It further submits that the Chamber will always have the possibility of reviewing the imposition of protective measures on a case-by-case basis.
6. The Defence cites as authority a couple of ICTY authorities and relies on these authorities in support of its argument that the Prosecution needs to specifically indicate its reasons for requesting protective measure for each witness. The Defence cites no authority which states that this could not be done collectively.
7. The Prosecution submits that the previous jurisprudence of this Court supports the categorization of witnesses. In *Prosecutor v Alex Tamba Brima* “Decision on the

Prosecutor's Motion for immediate Protective measures for witnesses and victims and for Non-public disclosure" the Court granted the prosecution request for protective measures for three categories of witnesses namely "(a) Witnesses who presently reside in Sierra Leone and who have not affirmatively waived their rights to protective measures; (b) Witnesses who presently reside outside Sierra Leone but in other countries in West Africa or who have relatives in Sierra Leone, and who have not affirmatively waived their rights to protective measures; (c) Witnesses residing outside West Africa who have requested protective measures." The Court granted the Prosecution request based on these categories.

8. The Prosecution further emphasises that the Chamber's Order to the Prosecution for Renewed Motion for Protective Measures dated 2 April 2004 suggested that the application for protective measures be based on the categorization of witnesses.
9. The Prosecution submits that it has advanced sufficient and detailed reasons why protective measures need to be granted on behalf of each category of witness and humbly submit that the same satisfies the legal considerations discussed in paragraph II of its motion. Rather than focusing on the nature of the application i.e. individual or category, the Prosecution submits that emphasises should be on the reasons advanced by the Prosecution for the said measures. The Prosecution submits that it has furnished the Chambers with adequate reasons to ensure that the correct balance is struck between the security for the Prosecution witnesses and the rights of the Accused to a fair and public hearing. It therefore urges the Chamber to dismiss the Defence argument advanced under this rubric.

**B. Orders (j) and (k) sought by the Prosecution in its Motion are too broadly formulated.**

10. Counsel for Accused Kanu submits that in the event that the Chamber does not agree with its arguments above and even in case the Prosecutor were to specify reason for the protective measures, orders (j) and (k) of the Prosecution should not be granted.
11. Order (j) sought by the Prosecution requests that "*the Defence shall refrain from sharing, discussing or revealing, directly or indirectly, any disclosed non-public materials of any sort, or any information contained in any such documents, to any person or entity other than the Defence.*" This Defence for Accused Kanu argues that this order sought is too

broadly formulated and that it is practically impossible to comply with the same. Without providing any authority or basis for its argument, the Defence argues that this measure is granted will seriously handicap the Defence in properly preparing their case.

12. Further, the Defence for Accused *Kanu* asserts that order (k) sought by the Prosecution is broadly formulated in that it requests that “*the Defence shall ensure that the person to whom such information was disclosed follows the order of non-disclosure.*” It submits that the order sought is in practice not workable for the Defence as the Defence can never ensure that persons to whom the same is disclosed follows the non-disclosure order. It suggests that the instead of the word “ensure”, a less strict formulation such as “*the Defence shall verify that the person to whom such information was disclosed follows the order of non-disclosure*” would be more realistic.
13. The Prosecution respectfully submits that the Defence arguments are contradictory. On the one hand, the Defence argues that it must not be restricted to discussing or revealing disclosed non-public materials of any sort to any person or entity other than the Defence and on the other hand it acknowledges that it is impossible to ensure that persons not in the Defence to whom such material is disclosed comply with the non-disclosure order. The Defence acknowledgment that it is impossible to ensure that any person or entity other than the Defence comply with the non-disclosure order buttresses the Prosecution’s position that disclosed non-public materials should not be revealed or discussed by the Defence to third parties. The Prosecution respectfully submits that this is not an impossible task to accomplish.
14. It reiterates its submission in its motion that measures of confidentiality are entirely consistent with the doctrinal reasons for and practical application of a fair and public hearing. It submits that if the orders (j) and (k) sought the same will not be an impediment to the Defence preparation for trial. It therefore urges the Chamber to dismiss the Defence response on this issue.

#### **Categories too wide**

15. Defence Counsel for Accused *Brima* submits that the number of witnesses as well as the “three” categories into which they have been divided is too wide. He argues further that the Prosecution ought to have sought an individual protective measure order for each

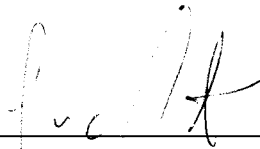
witness and not based on categories. The Prosecution repeats its arguments submitted above on the categorization of witnesses and victims. Contrary to the Defence assertion that the categories are wide, the Prosecution submits that the categories of witnesses have been further sub-divided thereby making the same more specific and focused. It urges the Trial Chamber to dismiss the Defence arguments under this rubric.

### III. CONCLUSION

16. For the foregoing reasons, the Trial Chamber should dismiss the respective Responses filed by the Defence for Brima and Kanu and grant the Prosecution's Motion and the orders sought therein in their entirety.

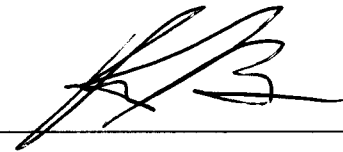
Freetown, 18 May 2004.

For the Prosecution,



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Luc Cote  
Chief of Prosecutions



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Robert Petit  
Senior Trial Attorney