

SEIZED of the Kallon Defence Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure filed publicly by Defence Counsel for the Second Accused, Morris Kallon (“Defence”) on the 18th of January 2007 (“Motion”);

NOTING the Response filed by the Office of the Prosecutor (“Prosecution”) on the 26th of January 2007 (“Response”) and the Reply thereto filed by the Defence on the 31st of January 2007 (“Reply”);

MINDFUL of the Scheduling Order Concerning the Preparation and the Commencement of the Defence Case filed on the 30th of October 2006 (“Scheduling Order”) and the Decision and Order on Defence Applications for an Adjournment of 16th of February Deadline for Filing of Defence Material filed on the 7th of February 2007;

MINDFUL of the Decisions and Orders of this Trial Chamber concerning protective measures for prosecution witnesses, including the Decisions on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure for each individual accused in the RUF trial^[1] and, in particular, the Decision on Prosecution Motion for Modification of Protective Measures for Witnesses filed on the 5th of July 2004;^[2]

MINDFUL of the Chamber’s Decision on Sesay Defence Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure filed on the 30th November 2006 and of its Decision on Sesay Defence Application for Leave to Appeal Decision on Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure filed on the 1st of March 2007;

CONSIDERING that the Motion is unsupported by any affidavit or documentary evidence substantiating the subjective fears of the Kallon witnesses themselves and instead relies on materials submitted by the Prosecution and the Sesay Defence in their requests for protective measures for their witnesses;^[3]

MINDFUL that, when protective measures are sought for witnesses, it must be shown that there is a real fear for the safety of a witness and of his or her family and that there is an objective justification for this fear;^[4]

CONSIDERING that Article 17(4)(c) of the Statute of the Special Court (“Statute”) provides that the Accused shall be entitled “to be tried without undue delay”;

CONSIDERING that the Special Court is located in Sierra Leone where the offences charged against the Accused are alleged to have been committed and that this fact has a substantial impact on the security considerations for victims and witnesses^[5] appearing for either the Prosecution or the Defence;

CONSIDERING that, to be able to make a specific assessment of the appropriateness of the measures sought by the Defence in its Motion, the Trial Chamber needs to be in possession of all the relevant information showing that there is a real fear for the Defence witnesses and their families;^[6]

CONSIDERING ALSO that, due to the imminent filing by the Defence of the list of the witnesses it intends to call during its case,^[7] it will be in the interests of justice, pending final deliberation on the Defence Motion, that the Defence witnesses for the Second Accused for which protection is sought be provisionally referred to by pseudonyms and that witness summaries be redacted as necessary;

PURSUANT to Articles 16 and 17 of the Statute and Rules 26*bis*, 54, 69 and 75 of the Rules of Procedure and Evidence;

THE TRIAL CHAMBER

ORDERS the Defence to provide adequate and appropriate materials in support of the Motion within 7 days of the service of the present Motion;

ORDERS the Prosecution to provide any further submission in rebuttal of the information filed by the Defence, if it wishes to do so, by no later than 3 days after service of the Defence submissions;

and, as an interim measure,

FURTHER ORDERS that, pending final deliberation on the Defence Motion, the witnesses for the Defence for the Second Accused, Morris Kallon, for which protection is sought shall be referred to by pseudonyms and that witness summaries be redacted as necessary.

Done at Freetown, Sierra Leone, this 1st day of March 2007

Hon. Justice Benjamin Mutanga
Itoe

Hon. Justice Bankole
Thompson
Presiding Judge
Trial Chamber I

Hon. Justice Pierre Boutet

[Seal of the Special Court for Sierra Leone]

[1] *Prosecutor v. Sesay*, SCSL-03-05-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 23 May 2003; *Prosecutor v. Kallon*, SCSL-03-07-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 23 May 2003; and *Prosecutor v. Gbao*, SCSL-03-09-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 10 October 2003.

[2] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004.

[3] See also the Prosecution Response, at paras 8-9 and 18.

[4] See, for instance, *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order for Submissions and Interim Order Pursuant to Rule 54, 1 December 2005 and *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Ruling on Motion for Modification of Protective Measures for Witnesses, 18 November 2004, paras 38 and 40. See also *Prosecutor v. Simba*, ICTR-01-76-I, Decision on Defence Request for Protection of Witnesses (TC), 25 August 2004, para 5; *Prosecutor v. Rugambarara*, ICTR-00-59-I, Decision on the Prosecutor's Motion for Protective Measures for Witnesses (TC), 28 October 2005, para 6 and *Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumva*, ICTR-98-41-T, Decision on Bagosora Motion for Protection of Witnesses (TC), 1 September 2003, para 2.

[5] See, for instance, *Prosecutor v. Gbao*, SCSL-03-09-PT, Decision on the Prosecution Motion for Immediate Protective Measures for Victims and Witnesses and for Non-Public Disclosure, 10 October 2003, paras 21-25. See also *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 8 June 2004, para 29.

[6] See *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order for Submissions and Interim Order Pursuant to Rule 54, 1 December 2005 and *Prosecutor v. Karera*, ICTR-01-74-R54, Order for Submission: Rule 54 of the Rules of Procedure and Evidence (TC), 21 November 2005. See also *Prosecutor v. Rugambarara*, ICTR-00-59-I, Decision on the Motion for Protective Measures for Defence Witnesses (TC), 8 May 2006 and *Prosecutor v. Nzabirinda*, ICTR-01-77-I, Decision on Extremely Urgent Defence Motion for Protective Measures for Defence Witnesses (TC), 5 October 2006.

[7] Scheduling Order, Order 1(a). The new deadline for the filing of Defence materials is the 5th of March 2007 (*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision and Order on Defence Applications for an Adjournment of 16th of February Deadline for Filing of Defence Material, 7 February 2007).
