

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

Before: Judge Benjamin Itoe  
Judge Bankole Thompson  
Judge Pierre Boutet

Case No: 2004-15-T

Registrar: Mr. Robin Vincent

Date filed: 16 November 2004

**THE PROSECUTOR**

Against

**ISSA SESAY  
MORRIS KALLON  
AUGUSTINE GBAO**

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**PROSECUTION REPLY TO RESPONSE TO APPLICATION FOR  
PROTECTIVE MEASURES FOR ADDITIONAL WITNESSES PURSUANT TO  
THE TRIAL CHAMBER “DECISION ON PROSECUTION’S INTENTION TO  
EXTEND PROTECTIVE MEASURES FOR ADDITIONAL WITNESSES”**

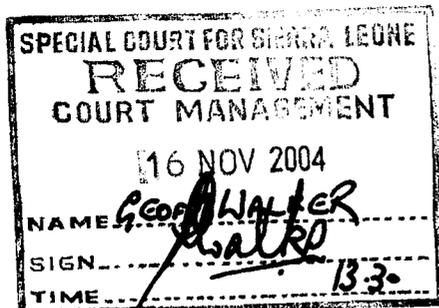
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**I. INTRODUCTION**

1. The Prosecution files this reply to the response to the Prosecution’s application for protective measures for additional witnesses filed on behalf of the accused Augustine Gbao, on 12 November 2004. In the response, the Defence opposes in its current form the disclosure period of unredacted statements of Prosecution witnesses and requests that the Prosecution be ordered to disclose unredacted statements of its witnesses either 42 days before they testify or 14 days before the start of a trial session, whichever comes first. The Prosecution submits that the Defence request should be denied and the Prosecution’s application for protective measures for additional witnesses, including the non-disclosure of their unredacted statements until at least 42 days before they testify, be granted.

**II. BACKGROUND**

2. On 2 November 2004, the Prosecution filed an application seeking protective measures for additional Prosecution witnesses.

3. On 12 November 2004, the Defence for the accused Augustine Gbao filed a reply to the Prosecution's application. In the said reply, the Defence opposed the measure which requires the unredacted statements of Prosecution witnesses to be disclosed at least 42 days before the witnesses testify. The Defence requests that the unredacted statements of Prosecution witnesses be disclosed 42 days before they testify or 14 days in advance of the commencement of the trial session, whichever comes first.

### III. ARGUMENT

#### **There is insufficient justification for varying the time period for the disclosure of unredacted witness statements**

4. The Defence request in effect seeks to modify the existing protective measure i.e. the 42-day disclosure period already ordered by the Chamber. The proposed modification could conceivably result in a requirement that unredacted statements, thus the identity of witnesses, be disclosed earlier than 42 days before the witnesses testify. The Defence response proffers no cogent justification for this variation.
5. The Prosecution submits that in order to modify the witness protective measures granted by the Trial Chamber, a factor to be considered is whether there has been a substantial change in the security situation of witnesses. This position is supported by the Trial Chamber's decision in *The Prosecutor v. Issa Sesay et al., SCSL-04-15-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses*, dated 5 July 2004. In that decision, the Chamber concluded that the protective measures granted during the pre-trial phase would continue to remain in effect as "there exists no substantial change in the circumstances regarding the security of witnesses that would justify any

modification to the protective measures decisions that were previously issued at the pre-trial phase . . . ”<sup>1</sup>

6. In relation to the 42-day disclosure period, the Chamber, in the afore-mentioned decision, considered the information provided in support of the Prosecution’s application and pointedly stated that due to the fragile security situation still existing in Sierra Leone, the rolling disclosure of unredacted statements 42 days prior to the testimony of witnesses is to remain unchanged.<sup>2</sup>
7. It is submitted that a substantial change affecting the rights of the accused would also be a factor to consider in determining whether to modify witness protective measures.
8. The Defence response provides no evidence either of a substantial change in the circumstances regarding the security of witnesses nor of a substantial change in the circumstances affecting the rights of the accused to support its position that the current order should be changed. The reason given in the Defence response for the proposed modification i.e. adequate time for Defence investigation and trial preparation does not arise from a new situation. Such factor existed at the time the Chamber made the order for the 42 days disclosure period to remain in place in its decision on the Prosecution’s Motion for Modification of Protective Measures for Witnesses, dated 5 July 2004. In reaching that decision, the Trial Chamber gave due consideration to the rights of the accused persons.<sup>3</sup>
9. The Prosecution notes that the Defence which now opposes the 42-day disclosure period in its current form, did not file any response at the time the Prosecution filed its application for the modification of protective measures for witnesses, and should therefore not be permitted to raise arguments which it should have raised then.

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<sup>1</sup> See paragraph 21 of that decision.

<sup>2</sup> See paragraph 23 of that decision.

<sup>3</sup> See generally the decision in that case.

10. At any rate, the rights of the accused to a fair trial as guaranteed by Article 17 of the Statute for the Special Court is subject to protective measures for victims and witnesses. The Prosecution submits that the 42-day disclosure period in its current form strikes an adequate balance between the rights of the accused and the need to protect victims and witnesses, as it gives the Defence ample time to receive identifying witness information and prepare for cross-examination whilst also protecting witnesses. Further, each defence team is assigned an investigator, and the remaining investigation to be undertaken viz the identity of a witness does not entail cumbersome legal work so as to detract a lawyer from on-going trial work. Moreover, 42 days amount to 6 weeks, the anticipated duration of a trial session, therefore all of the unredacted statements of the witnesses selected for a given trial session would have been disclosed in advance of the commencement of the trial session.
  
11. The Prosecution submits that pegging the disclosure of unredacted witness statements to the date of commencement of a trial session rather than to the anticipated date of the testimony of a witness runs the risk of exposing the identity of witnesses much longer than is necessary, as in the case for example, where the unredacted statement of a witness is disclosed before the start of a trial session and the witness ends up not testifying during that trial session as a result of some unforeseen circumstance. In such a scenario and under the Defence proposal, for a given trial session of six weeks, it is conceivable that the identity of a witness could be disclosed at least 14 weeks before the witness testifies.
  
12. Linking disclosure to the date of testimony allows for more control over the length of period of exposure of the identity of the witness. The pace of the trial session could reasonably be used to assess whether a witness scheduled to testify that session will testify or not, with the resulting effect of minimizing overly long periods of disclosure of the identity of witnesses.

#### IV. CONCLUSION

13. For the foregoing reasons, the Prosecution requests that the Trial Chamber reject the Defence opposition to the 42-day disclosure period for unredacted witness as it currently stands and dismiss the Defence request for such statements to be disclosed earlier. The Prosecution requests that the Trial Chamber grant the Prosecution's application for protective measures for additional witnesses.

Done in Freetown on this 16<sup>th</sup> day of November 2004

For the Prosecution,



Luc Côté  
Chief of Prosecution



Boi-Tia Stevens  
Associate Trial Counsel