

THE TRIAL CHAMBER ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Hon. Judge Benjamin Mutanga Itoe, Presiding Judge, Hon. Judge Bankole Thompson, and Hon. Judge Pierre Boutet;

NOTING the *Decision on the Prosecution Request for Leave to Call Additional Witnesses*, delivered on the 29th of July, 2004, in which the Trial Chamber found that it was satisfied as to a showing of 'good cause' and permitted the Prosecution to amend its Modified Witness List by adding six further witnesses to it, namely Witness TF1-359, Witness TF1-360, Witness TF1-361, Witness TF1-363, Witness TF1-314 and Witness TF1-362 ("Additional Witnesses");

SEIZED of the Prosecution *Application for Protective Measures for Additional Witnesses Further to Trial Chamber Decision on Prosecution's Intention to Extend Protective Measures for Additional Witnesses of 22 October 2004*, filed on the 2nd of November, 2004, ("Motion") in which the Prosecution requested the extension to the Additional Witnesses of the prescribed set of protective measures currently applicable to the original prosecution witnesses;¹

NOTING the *Decision on Prosecution Motion for Modification of Protective Measures for Witnesses*, delivered on the 5th of July, 2004 ("Decision of the 5th of July, 2004"), and in particular Order (p) thereof;

NOTING that in its Response, filed on the 8th of November, 2004, Counsel for Issa Sesay did not oppose the Motion;

NOTING that Counsel for Morris Kallon did not file any response to the Motion within the prescribed time limits;

NOTING that in its Response, filed on the 12th of November 2004 ("Gbao Response"), Counsel for Augustine Gbao, while not opposing the majority of the Motion, proposed that the current applicable protective measure (p) providing for the 42 day rolling disclosure period prior to the date of each witness testimony be if necessary set aside in lieu of a time period of 14 days² prior to commencement of each trial session, whichever is the earliest;³

NOTING that in its Reply to the Gbao Response, filed on the 16th of November, 2004, the Prosecution submitted that the 42 day rolling disclosure period be maintained in that, *inter alia*, a substantial change of circumstances does not exist surrounding the security for the witnesses and warranting the variation of the existing protective measures;⁴

NOTING that of the Additional Witnesses, five are Category C insider witnesses. Four Witnesses TF1-359, TF1-360, TF1-361, TF1-363, are former radio operators for the Revolutionary United

¹ See also *Decision on Prosecution Intention to Extend Protective Measures for Addition Witnesses*, 25 October 2004.

² The Defence notes that the period of 14 days accords with the Trial Chamber's *Order to Prosecution to Provide Order of Witnesses* delivered on the 15th of September, 2004, stating that the Prosecution shall provide to the Chamber and the Defence the order of witnesses it intends to call 14 days prior to each trial session. See Gbao Response, para. 3.

³ *Id.* No specific jurisprudence in support has been provided by the Defence. However, this position appears consistent with an emerging practice of the ICTR, albeit limited to certain cases. See *Prosecutor v. Bizimungu et al.*, ICTR-56-T, *Decision on Bizimungu's Motion for Reconsideration of the Chamber's 19 March 2004 Decision on Disclosure of Prosecution Materials*, 3 November 2004 ("Bizimungu Decision"); *Prosecutor v. Bagosora et al.*, ICTR-96-7, "Decision on Defence Motion for Reconsideration of the Trial Chamber's Decision and Scheduling Order of 5 December 2001", 18 July 2003.

⁴ Reply, paras 4-10.

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Front/Armed Forces Revolutionary Council (RUF/AFRC); the fifth, TF1-362, is a former military trainer of abducted civilians forcibly recruited by the RUF; while the sixth, TF1-314, is a Category B witness and former female child soldier within the RUF who was forcibly married to an RUF combatant;

MINDFUL that in its Decision of the 5th of July, 2004 the Trial Chamber noted that insider witnesses and their families were particularly vulnerable to acts of retaliation and potential harm if their identities were to be known to the public and that vulnerable witnesses such as children have a high risk of re-traumatisation and the possibility of stigmatisation and rejection is real and high;⁵

NOTING Articles 16(4) and 17(2) of the Statute of the Special Court for Sierra Leone ("Statute");

NOTING Rules 75(A) and (B), 53(A) and (C), 69 and 26bis of the Rules of Procedure and Evidence ("Rules");

APPLYING THE PRINCIPLE that a decision on protective measures requires a balance to be struck between full respect for the rights of the Accused and the protection needs of victims and witnesses, within the legal framework of the Statute and Rules and within the context of a fair trial;

NOTING that the Trial Chamber in its Decision of the 5th of July, 2004, granted the following protective measures to all witnesses in Group I (Witnesses of fact, including witnesses who are victims of sexual assault and gender crimes (Category A); child witnesses (Category B) and insider witnesses (Category C)):

- a. That all witnesses shall be referred to by pseudonyms at all times during the course of proceedings whether during the hearing or in documents, including the transcript of the proceedings;
- b. That the names, addresses, whereabouts and any other identifying information of witnesses shall be sealed and not included in any of the public records of the Special Court;
- c. That to the extent that the names, addresses, whereabouts or other identifying data concerning witnesses are contained in existing public documents of the Special Court, that information shall be expunged from those documents;
- d. That documents of the Special Court identifying witnesses shall not be disclosed to the public or media;
- e. That all witnesses testify with the use of a screening device from the public;
- f. That photographing, video-recording, sketching and recording or reproducing in any other manner of images of any witness of Group I (witnesses of fact) are prohibited while he or she is in the precincts of the Special Court;
- g. That the voice of witnesses in Category A (victims of sexual violence) during their testimony in trial be distorted in the speakers for the public;
- h. That witnesses in Category B (children) testify with the use of a closed-circuit television; the image appearing on the public's monitors being distorted;
- i. That the voice of witnesses in Category C (insider witnesses) during their testimony in trial be distorted in the speakers for the public;
- j. 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;

⁵ Decision of the 5th July, 2004, paras. 33-34.

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- k. The Defence shall maintain a log indicating the name, address and position of each person or entity which receives a copy of, or information from, a witness statement, interview report or summary of expected testimony, or any other non-public material, as well as the date of disclosure; and that the Defence shall ensure that the person to whom such information was disclosed follows the order of non-disclosure;
- l. The Defence shall provide to the Registrar and to 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;
- m. The Defence shall ensure that any member leaving the Defence team remits to the Defence team all disclosed non-public materials;
- n. The Defence shall return to the Registry, at the conclusion of the proceedings in this case, all disclosed materials and copies thereof, which have not become part of the public record;
- o. The Defence Counsel shall make a written request to the Trial Chamber or a Judge thereof, for permission to contact any Prosecution witness who is a protected witness or any relative of such person, and such request shall be timely served on the Prosecution. At the direction of the Trial Chamber or a Judge thereof, the Prosecution shall contact the protected person and ask for his or her consent or the parent's or guardian's consent if that person is under the age of 18, to an interview by the Defence, and shall undertake the necessary arrangements to facilitate such contact; and
- p. That the unredacted witness statements are to be disclosed to the Defence 42 days prior to the testimony at trial of these witnesses.

EMPHASIZING the position held in the Kondewa Decision,⁶ that:

“The Republic of Sierra Leone is a relatively small community where people are bound to and in fact know and identify themselves very easily thereby increasing the danger of risk of a recruitment of hostilities against potential witnesses and victims and their families if they are identified by the indictees of their sympathisers as those whose testimony would incriminate them, or in due course and more still, the indictees who they support out there;”

MINDFUL of the fact that the security risks for witnesses who testify before the Special Court are acute, and the additional witnesses have not waived their right to protection;⁷

RECOGNISING the unique feature of the Special Court being 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;⁸

⁶ *Prosecutor v. Kondewa*, SCSL-03-12-PT, Ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure and Urgent Request for Interim Measures until Appropriate Protective Measures are in Place, 10 October 2003, para. 30.

⁷ Motion, para. 12.

⁸ See for example *Prosecutor v. Gbao*, SCSL-2003-09-PT, Decision on the Prosecution Motion for Immediate Protective Measures for Victims and Witnesses and for Non-Public Disclosure, 10 October 2003 (“*Gbao* Protective Measures Decision”), paras. 21-25; see also *Prosecutor v. Norman et al.*, SCSL-2004-14-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 8 June 2004, para. 29.

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REITERATING that Rule 69(C) of the Rules clearly states that the date of testimony of each witness is to be considered as the starting point for the rolling disclosure of the relevant unredacted witness statements;⁹

CONSIDERING that the current 42 day rolling disclosure period adequately provides the Defence with sufficient time to prepare to cross examine the Prosecution witnesses to be called in each trial session;

CONSIDERING that insider witnesses and their families are particularly vulnerable to acts of retaliation and harm and threats to their security;

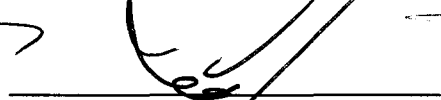
CONSIDERING that in fulfilling its affirmative obligation to provide appropriate measures to safeguard the privacy and security of witnesses, and to ensure that these measures are consistent with the rights of the Accused, the Trial Chamber considers that it is in the interests of justice for the protective measures granted for Group I witnesses, namely witnesses of facts, in the Decision of the Trial Chamber of 5 July 2004, to be applied to Witness TF1-359, Witness TF1-360, Witness TF1-361, Witness TF1-363, Witness TF1-314 and Witness TF1-362 for their protection.

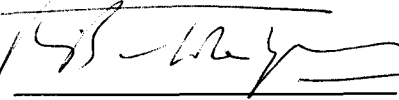
FOR ALL THE ABOVE-STATED REASONS, THE TRIAL CHAMBER

ORDERS that the protective measures granted for witnesses in Group 1 (Category A, B and C) of the Trial Chamber's Decision on Prosecution Motion for Modification of Protective Measures of the 5th of July, 2004, as outlined above, be applied for Witness TF1-359, Witness TF1-360, Witness TF1-361, Witness TF1-363, Witness TF1-314 and Witness TF1-362.

Done in Freetown, Sierra Leone, this 24th day of November, 2004


Hon. Judge Pierre Boutet


Hon. Judge Benjamin Mutanga Itoe
Presiding Judge
Trial Chamber


Hon. Judge Bankole Thompson



⁹ *Gbao Protective Measures Decision*, para. 55. Worthy of note is that, while Rule 69(C) of the Rules provides that "the identity of the victim or witness shall be disclosed in sufficient time before a witness is to be called to allow adequate time for preparation of the prosecution and the defence", ICTR Rule 69(C) provides that "the identity of the victim or witness shall be disclosed within such time as determined by Trial Chamber to allow adequate time for preparation of the Prosecution and the Defence". See *Bizimungu Decision*, para. 23.