

(10475-10489)



SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

THE TRIAL CHAMBER I

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

Registrar: Robin Vincent

Date: 11th of February, 2005

PROSECUTOR	Against	Issa Hassan Sesay Morris Kallon Augustine Gbao (Case No. SCSL-2004-15-T)
------------	---------	---

**DECISION ON PROSECUTION REQUEST FOR LEAVE TO CALL
 ADDITIONAL WITNESSES AND DISCLOSE ADDITIONAL WITNESS STATEMENTS**

Office of the Prosecutor:

Luc Côté
 Lesley Taylor
 Peter Harrison

Defence Counsel for Issa Hassan Sesay:

Wayne Jordash
 Abdul Serry Kamal
 Sareta Ashraph

Defence Counsel for Morris Kallon:

Shekou Touray
 Melron Nicol Wilson

Defence Counsel for Augustine Gbao:

Girish Thanki
 Andreas O'Shea
 John Cammegh

NEIL GIBSON
 16:15

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

SEIZED of the *Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements, Pursuant to Rules 66(A)(ii) and 73bis(E)*, filed on the 23rd of November, 2004 (“Motion”);

MINDFUL of the Defence Response to the Motion, filed by Counsel for the First Accused, Issa Sesay, on the 3rd of December, 2004 (“Sesay’s Response”);

MINDFUL of the Defence Response to the Motion, filed by Counsel for the Second Accused, Morris Kallon, on the 3rd December, 2004 (“Kallon’s Response”);

MINDFUL of the Defence Response to the Motion, filed by Counsel for the Third Accused, Augustine Gbao, on the 3rd of December, 2004 (“Gbao’s Response”);

MINDFUL of the Consolidated Reply to the Defence Responses, filed by the Prosecution on the 8th of December, 2004 (“Consolidated Reply”);

NOTING the *Order to Prosecution Concerning Witness List* filed on the 3rd of December 2004;

MINDFUL of the Trial Chamber’s *Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial* of the 1st of April, 2004, wherein the Trial Chamber ordered the Prosecution to file by the 26th of April, 2004 a witness list of all the witnesses that the Prosecution intended to call at trial with the name or the pseudonym of each witness, and that, should the Prosecution seek to add any witnesses to this list after the 26th of April, 2004, it should be permitted to do so only upon good cause being shown;

NOTING that the Prosecution filed a witness list on the 26th of April, 2004 (“Witness List”);¹

NOTING that the Prosecution filed a modified witness list on the 12th of July, 2004 (“Modified Witness List”);²

¹ See Materials Filed Pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial of the 1st of April, 2004, 26 April 2004.

² See Materials Filed Pursuant to ‘Order to Prosecution to Produce Witness List and Witness Summaries’, 12 July 2004.

MINDFUL of the Prosecution Renewed Witness List filed on the 23rd of November, 2004 and the Corrigendum thereto, filed on the 25th of November, 2004 (“Renewed Witness List”);

RECALLING of the Trial Chamber *Decision on Prosecution Request for Leave to Call Additional Witnesses* of the 29th of July, 2004 (“Decision of the 29th of July, 2004”);

PURSUANT to the provisions of Article 17 of the Statute of the Special Court (“Statute”) and Rules 66(A)(ii), 67, 69, 73bis(E) and 75 of the Rules of Procedure and Evidence (“Rules”);

HEREBY ISSUES THE FOLLOWING DECISION:

I. SUBMISSIONS OF THE PARTIES

A. The Motion

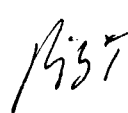
1. The Prosecution seeks to vary its Renewed Witness List by adding three more witnesses to it, namely, witness TF1-366, witness TF1-367, and witness TF1-368, and submits that the content of the expected testimonies from these witnesses meets the “good cause” standard for the addition of witnesses, and that their addition to the list will be in the interest of justice. It is, furthermore, submitted by the Prosecution that the testimony of each witness is not merely corroborative or cumulative, but is new, direct, and will provide distinctive evidence on the individual criminal responsibility of one or more of the Accused in relation to specific crimes and time periods alleged in the indictment.³

2. The Prosecution asserts that the statements of these witnesses were recently taken by its investigators and, with particular reference to Witness TF1-367, his statement was disclosed to the Defence as soon as practicable after it was available.⁴ Due to the requirement in Rule 66(A)(ii) of the Rules that a witness statement can only be disclosed after the period of sixty days prior to the commencement of the trial has expired with good cause being shown, the Prosecution indicates that it has not yet disclosed to the Defence the statements of Witnesses TF1-366 and Witness TF1-368.⁵ The Prosecution states that it has now decided to call these three witnesses at trial.

³ Motion, paras 10-11.

⁴ This statement contains exculpatory evidence and was therefore disclosed pursuant to Rule 68 of the Rules on the 9th of November, 2004. See Motion, para. 17.

⁵ *Id.*, paras 14-17.



3. The Prosecution further argues that the rights of the Accused are protected given that the Prosecution does not plan to call these witnesses to testify until at least after March 2005⁶ during which time the Accused will have had enough time to examine and prepare for these additional witnesses. In addition, the Prosecution contends that the significant reduction of the number of witnesses in the Renewed Witness List will allow the defence to better prepare for the examination of all the Prosecution witnesses contained therein.⁷

4. Based on its request to add these witnesses to the Renewed Witness List, the Prosecution seeks permission from the Trial Chamber to disclose to the Defence the statements of Witness TF1-366 and Witness TF1-368 pursuant to Rule 66(A)(ii) of the Rules.⁸

5. In addition, the Prosecution avers that, if its application to add these proposed witnesses into the witness list is granted, it reserves the right to apply for the inclusion of these witnesses in the Witness Category C - namely the so-called "insiders witnesses" - and accordingly for an extension to them, of the existing relevant protective measures regime for this witness category.⁹

6. Regarding the contents of the testimonies of the three proposed additional witnesses and its investigative efforts to secure statements from them, the Prosecution submits, as is set out *in extenso*, in paragraphs 7 to 12 below:¹⁰

Witness TF1-366

7. That the witness, originally a member of the G-4 in charge of ammunitions and later a senior frontline commander of the RUF, will testify to joint decision-making by the RUF and AFRC high command during the Junta period. The witness will give direct evidence of the individual criminal responsibility of the Accused Morris Kallon in relation to radio communications, arms shipment, troops coordination and, more particularly, the invasion of Freetown. The witness will also provide evidence on the individual criminal responsibility of the Accused Issa Sesay in relation to arms shipments, radio communications, troops coordination, forced labour and diamond mining operations, the joint criminal enterprise with Charles Taylor

⁶ The Prosecution refers to a "March 2005 Session" of the RUF Trial. This reference appears erroneous as no trial session for the RUF Trial is scheduled for that time period. The RUF trial session closer to that date is scheduled to commence on the 5th of April, 2005. See Order Detailing Judicial Calendar, 8 October 2004.

⁷ *Id.*, para. 13.

⁸ Motion, paras 5 and 18.

⁹ *Id.*, para. 19.

and the military offensive in Kono District in 1998. Moreover, this witness will provide evidence of the individual criminal responsibility of the Accused Issa Sesay and Augustine Gbao in relation to the killing of alleged Kamajors in Kailahun District. Finally, the witness will also give evidence on the direct criminal responsibility of all the Accused during the attacks against the UN Peacekeepers in 2000. The paragraphs of the Amended Consolidated Indictment to which the witness will testify include paragraphs 34, 36, 37, 38 and 39.

8. That investigations in locating this particular witness were on-going since September 2003. Investigators travelled to a remote area of Sierra Leone in search of this witness in early 2004. The witness produced a first statement on the 4th of February, 2004 but subsequently expressed unwillingness to testify. Following further contact with the investigators, the witness rendered another statement on the 30th of August, 2004 and finally agreed to testify on September 2004.

Witness TF1-367

9. That this witness will provide evidence as to the command authority of all three Accused. This witness will give evidence concerning the overall command responsibility of the Accused Issa Sesay as a senior RUF commander in Kailahun District. In addition, the witness will testify that he was present with Issa Sesay at an arms shipment in Kailahun District for use during the military offensive in Kono District in 1998 and the invasion of Freetown. The witness will provide evidence of the individual criminal responsibility of the Accused Morris Kallon in Bo District during the Junta period. The witness will also provide evidence of the individual criminal responsibility of the Accused Augustine Gbao in relation to killings in Kailahun District. More specifically, the witness will give evidence of the participation of Issa Sesay and Morris Kallon in the joint criminal enterprise, coordinating key diamond and arms transactions with agents of Charles Taylor. The paragraphs of the Amended Consolidated Indictment to which the witness will testify include paragraphs 34, 36, 37, 38 and 39.

10. That investigations to identify and locate this witness were on-going since August 2003. Further information was obtained in September 2003, and in March and June 2004. The witness was finally located and contacted in August 2004. A statement was obtained from this witness on the 20th of August, 2004.

¹⁰ *Id.*, para. 11.





Witness TF1-368

11. That this witness, a senior mining coordinator in 1998 and 1999, will present detailed evidence on the mining operations of the RUF in Kono District. The witness will provide evidence on the individual criminal responsibility of the Accused Issa Sesay and Morris Kallon in Kono District. More specifically with reference to Issa Sesay, this witness will give evidence in relation to forced labour and diamond mining operation during a time period subsequent to that of the evidence to be presented by Witness TF1-367 above, and well as in relation to diamond transactions with Charles Taylor. In particular, the witness will also testify to the authenticity of a diamond collection log. The paragraphs of the Amended Consolidated Indictment to which the witness will testify include paragraphs 34, 36, 37, 38 and 39.

12. That the name and location of this witness was provided by a source in early September 2004. A statement was obtained from this witness on the 4th of September, 2004.

B. The Responses

13. In each of their Responses, the Defence submits that the Motion should be dismissed in that it does not satisfy the prescribed 'good cause' requirement. Three common themes of these Responses are firstly, that the Prosecution failed to disclose the redacted witness statement for its proposed additional witnesses prior to or concurrently with the Motion; secondly that the addition of these witnesses to the list will be in breach of the doctrine of equality of arms, and thirdly, that the evidence arising from the proposed additional witnesses is limited to cumulative and corroborative evidence. A brief outline of each of the Responses is provided below.

a. The Sesay's Response

14. In its Response, Defence Team for Issa Sesay claims that the Prosecution ought to attach to the Motion the statements of its proposed additional witnesses. Without this evidence, the Defence submits that it will be unable to properly litigate the issue raised in the Motion. The Defence further submits that the provisions of Rule 66(A)(ii) should be interpreted with reference to the right of an accused pursuant to Article 17 of the Statute and the doctrine of equality of





arms in order to allow disclosure of statements of potential witnesses, while the prescribed showing of good cause should be limited to the inclusion of such witnesses in the witness list.¹¹

15. With specific reference to each of the proposed additional witnesses, the Defence also submits that each of their testimonies will be merely repetitive or corroborative evidence already presented by the Prosecution and it is therefore not new or unique. Further, the Defence submits that the information provided by the Prosecution on its investigative efforts to locate and contact these witnesses in order to justify the late timing of the Motion is inadequate.¹²

b. *The Kallon's Response*

16. In its Response, the Defence Team for Morris Kallon submits that the Motion fails to clearly indicate whether the proposed witnesses should be added to the Renewed Witness List as "core" witnesses or as "backup" witnesses.¹³ The Defence further submits that the evidence of the three proposed witnesses is merely corroborative or cumulative and will therefore bear no further impact on the Prosecution's case.¹⁴ Noting that this is the second request from the Prosecution to add additional witnesses to its witness list after the commencement of the trial, the Defence submits in conclusion that the rights of the Accused are potentially threatened and prejudiced in that these witnesses might also have been contacted by the Defence in order to become their Defence Witnesses.¹⁵

The "Kallon's Counter Motion"

17. In its Response, the Kallon Defence Team also raises fresh issues pertaining to the composition of the Renewed Witness List. In particular, the Defence submits that the list contains reference to witnesses previously excluded or withdrawn from the list by the Prosecution and therefore requests that the Prosecution seek appropriate leave in order to reinstate them in such list.¹⁶

¹¹ Sesay Response, paras 1-5 and 13.

¹² *Id.*, paras 7-13.



¹³ Kallon Response, para. 24.

¹⁴ *Id.*, para. 26.

¹⁵ *Id.*, paras 28-30.

¹⁶ *Id.*, paras. 2-18.

11th of February, 2005

c. *The Gbao's Response*

18. In its Response, the Defence Team for Augustine Gbao raises the issue of the element of surprise and prejudice to the Defence from the Motion and submits that the Prosecution had not fulfilled its disclosure obligations in good faith in that it should have disclosed the statements of these witnesses prior to the last trial session.¹⁷ The Defence further submits that the Prosecution is in breach of its obligations pursuant to Rule 67(D)¹⁸ on the discovery of additional evidence.¹⁹

19. In addition, the Defence submits that the essential nature of the evidence of these witnesses in the context of the total evidence of the Prosecution witnesses is merely repetitive and indeed cumulative and therefore, does not satisfy the requirement of good cause and justify the late timing of the Motion.²⁰

C. The Prosecution's Reply

20. In its Consolidated Reply, the Prosecution firstly, addresses the common submissions made by the Defence in each of their responses to the Motion. With reference to the non-disclosure of the witness statements, the Prosecution asserts that a similar issue was already taken into consideration by this Chamber in its Decision of the 29th of July, 2004.²¹ As regards the doctrine of equality of arms, the Prosecution reiterates its argument that the reduced number of its witnesses and the fact that these proposed witnesses will be called at a later stage of the proceeding will afford the Defence adequate time to prepare for their testimony.²² Finally, on the issue of the corroborative or cumulative nature of the evidence of these witnesses, the Prosecution, while noting that the only requirement for the addition of a witness to the witness list is the showing of good cause rather than the novelty of the evidence, reiterates that the proposed additional witnesses are insiders who can give specific, unique and direct evidence against all the three Accused.²³

¹⁷ Gbao Response, paras 2-3.

¹⁸ The Gbao Response, erroneously refers to Rule 66(D) and (E). As correctly pointed out by the Prosecution in its Consolidated Reply, the appropriate reference should be to Rule 67(D) instead.

¹⁹ *Id.*, paras 3-5.

²⁰ *Id.*, paras 18-24.

²¹ Consolidated Reply, paras 3-8.

²² *Id.*, paras 11-12.

²³ *Id.*, paras 19-20.





21. With specific reference to the submissions by the Defence for Morris Kallon on the qualification of the proposed additional witnesses, the Prosecution submits, by way of clarification, that for the purpose of the Renewed Witness List, the proposed witnesses are to be considered as "core" witnesses.²⁴

22. Finally, as to the contention by the Defence for Augustine Gbao that the Prosecution had breached its obligations pursuant to Rule 67(D) of the Rules, the Prosecution submits that this Rule requires a party, in accordance with the provision of Rule 66, to promptly notify the opposing party when it intends to call an additional witness. The Prosecution submits, in conclusion, that it had complied with this obligation as soon as it formed the intention to call these additional witnesses at trial.²⁵

II. THE APPLICABLE LAW

23. Rule 66(A)(ii) of the Rules, on the disclosure of witness statements, provides that the Prosecution shall:

(ii) Continuously disclose to the Defence copies of the statements of all additional prosecution witnesses whom the Prosecutor intends to call to testify, but not later than 60 days before the date for trial, or as otherwise ordered by a Judge of the Trial Chamber either before or after the commencement of the trial, upon good cause being shown by the Prosecution. Upon good cause being shown by the Defence, a Judge of the Trial Chamber may order that copies of the statements of additional prosecution witnesses that the Prosecutor does not intend to call be made available to the defence within a prescribed time.

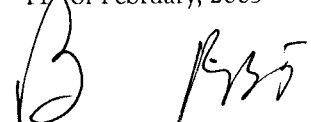
24. The law governing requests by the Prosecution to vary the witness list and add additional witnesses is Rule 73bis(E) of the Rules, which reads as follows:

(E) After the commencement of the Trial, the Prosecutor may, if he considers it to be in the interests of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary his decision as to which witnesses are to be called.

25. This Chamber has already outlined the general principles of law applicable to the variation of the witness list in its Decision of the 29th of July, 2004, full reference to which is made herein

²⁴ *Id.*, paras 22.

²⁵ *Id.*, paras 28-31.

for the purposes of this Decision.²⁶ In particular, in this Decision we previously held that, when interpreting the provisions of Rule 66(A)(ii) of the Rules, and articulating the circumstances that give rise to a showing of good cause and the interest of justice, certain factors should be taken into consideration.²⁷ Quoting from the *Nahimana* case of the ICTR, we noted that:

“In assessing the “interests of justice” and “good cause” Chambers have taken into account such considerations as the materiality of the testimony, the complexity of the case, prejudice to the Defence, including elements of surprise, on-going investigations, replacements and corroboration of evidence. The Prosecution’s duty under the Statute to present the best available evidence to prove its case has to be balanced against the right of the Accused to have adequate time and facilities to prepare his Defence and his right to be tried without undue delay.”²⁸

26. Continuing, we observed that additional factors “include the sufficiency and time of disclosure of the witness information to the Defence and the probative value of the proposed testimony”.²⁹ Quoting from the *Bagosora* case of the ICTR, that expanded the factors identified in the *Nahimana* case above, we further observed that:

These considerations [under Rule 73bis(E)] require a close analysis of each witness, including the sufficiency and time of disclosure of witness information to the Defence; the probative value of the proposed testimony in relation to existing witnesses and allegations in the indictments; the ability of the Defence to make an effective cross-examination of the proposed testimony, given its novelty or other factors; and the justification offered by the Prosecution for the addition of the witness.³⁰

27. Consistent with these recent Decisions, we reassert the principle of law that the Prosecution should not be allowed to take the Defence by surprise with additional witnesses and should fulfil in good faith its disclosure obligations.

²⁶ See Decision of the 29th of July, 2004, paras 28-32. See also *Prosecutor v. Sam Hinga Norman, Moinina Fofana, Allieu Kondewa*; SCSL-04-14-T, Decision on Prosecution Request for Leave to Call Additional Witnesses, 29 July 2004.

²⁷ Decision of the 29th of July, 2004 para. 29.

²⁸ *Prosecutor v. Nahimana*, Decision on the Prosecutor’s Oral Motion for Leave to Amend the List of Selected Witnesses, 26 June 2001, para. 20. See also *Prosecutor v. Nahimana*, Decision on the Prosecutor’s Application to Add Witness X to its List of Witnesses and for Protective Measures, 14 September 2001, para. 5.

²⁹ Decision of the 29th of July, 2004, para. 30.

III. THE MERITS OF THE APPLICATION

A. The “Kallon’s Counter Motion”

28. The Chamber wishes to express its strong disfavour of the practice of expanding the nature of submissions in response to a motion to the extent of introducing specific, new and separate arguments amounting to, as it has been identified by the Defence in its Response, a “counter motion”. The proper course of action in order to avoid confusion with reference to the nature and time limits for subsequent responses and replies is for the Defence to identify and distinguish the new legal issue, and then file a separate and distinct motion. In the context of the instant Motion, the Prosecution had indeed filed a separate response to these Defence submissions and no reply had been filed by the Defence.³¹ However, in the interest of justice, the Chamber will on this occasion address the issues raised therein.

29. On the 3rd of December, 2004, the Chamber directed in its *Order to Prosecution Concerning Renewed Witness List* that the Prosecution seek leave to add certain witnesses to its Renewed Witness List and to identify them as either “core” or “backup” witnesses. This Order, as correctly perceived by the Prosecution in its Response to the Kallon Counter Motion, accordingly renders moot the specific requests by the Defence for Kallon contained in its Response to the Motion.

B. The Application for Leave to Add Additional Witnesses to the Renewed Witness List

30. We have noted that the objection by the Defence to the granting of this application is based on the argument that each of the testimonies of the three new witnesses will be merely repetitive or corroborative of evidence already adduced by the Prosecution and that it is not as new or as unique as the Prosecution professes, nor will it have any further impact on the case for the Prosecution.

31. In our opinion, the Prosecution in this regard, enjoys a prosecutorial latitude in the domain of the strategies it puts in place to establish its case particularly in the light and within the context of the provisions of Article 15(1) of the Statute which confers on the Prosecutor, of

³⁰ *Prosecutor v. Bagosora*, Decision on Prosecution Motion for Addition of Witnesses Pursuant to Rule 73bis(E), 26 June 2003, para. 14.

³¹ See Prosecution Response to the Counter Motion of the Accused Kallon for an Order that Witnesses TF1-103, TF1-106, TF1-146, TF1-189, TF1-274, TF1-013 and TF1-302 Be Excluded from the Prosecution Renewed Witness List, 8 December 2004.



course, within the limits and confines of the Law and the applicable Rules and the doctrine of equality of arms, the competence to act independently as a separate Organ of the Special Court.

32. In this context, we would like to observe that even if it were conceded, as the Defence contends, that the testimony of these three witnesses may be merely corroborative of the testimony that is already available on record, The Chamber is not prepared to impose on the Prosecution, at this stage, a limit on the number of witnesses it considers necessary to prove or to corroborate a particular fact or facts. This contention by the Defence is therefore, in our opinion, without merit.

33. Furthermore, The Chamber cannot be certain as to whether the information provided by these witnesses may give rise to new facts or details which are relevant to the issues at stake.

34. In our opinion and in this context, the criterion "upon good cause being shown", by the Prosecution, means and connotes a responsibility on the part of the Prosecution to advance a credible reason, reasons or justification, for failing to either meet up with or to fulfil, within the time limits imposed by Rule 66(A)(ii) of the Rules, the obligation of disclosing to the Defence, the existence of these witnesses and more importantly, the statements on which their viva voce testimony will be based.

35. To discharge this obligation, the Prosecution, in our view, must satisfy the Chamber:

- i) That the circumstances surrounding these reasons or explanations as advanced by the Prosecution are directly related, and are material to the facts in issue;
- ii) That the facts to be provided by these witnesses in their statements and eventually in their testimony, are relevant to determining the issues at stake and would contribute to serving and fostering the overall interest of the law and justice;
- iii) That granting, at this stage, leave to call new witnesses and the disclosure of new statements, will not unfairly prejudice the right of the accused to a fair and expeditious trial as guaranteed by Article 17(4)(a) and 17(4)(b) of the Statute as well as by the provisions of Rules 26bis of the Rules;
- iv) That the evidence the Prosecution is now seeking to call, could not have been discovered or made available at a point earlier in time notwithstanding the exercise of due diligence on their part.



36. The Chamber, in these circumstances, given the explanations furnished by the Prosecution, recognises that in trials of this magnitude and complexity, it would not be unusual for some key witnesses to manifest, for diverse reasons, a reluctance and a lukewarmness to cooperate with investigators and the Prosecution in their attempt to get them to volunteer statements and to eventually testify on matters relevant to the issues for determination.

37. In the light of the above, The Chamber is satisfied that the explanation provided by the Prosecution in this regard and particularly in relation to the difficulties they encountered in securing the cooperation of these 3 new witnesses is credible.

38. We hold therefore that there has been, on the part of the Prosecution, a showing of "good cause" under the provisions of Rule 66(A)(ii) of the Rules, warranting and justifying the granting of this application.

39. The Chamber has carefully examined the late timing of the application and the non-disclosure of the statements of witnesses TF1-366 and TF1-368 pursuant to the Prosecution's obligation under Rule 66(A)(ii) against the materiality of the evidence. The Chamber has also taken note of the disclosure of the statement of witness TF1-367 pursuant to the Prosecution's disclosure obligations under Rule 68 of the Rules.

40. Accordingly, we make the following findings, only for the limited purposes of this ruling:

- i) That the investigative efforts of the Prosecution in locating, contacting, and securing the co-operation of the proposed additional witnesses do justify their inclusion in the Witness List, now reduced from 266 to 102;
- ii) That the evidence of all the proposed additional witnesses purports to be, as alleged, mainly evidence of the individual criminal responsibility of one or all of the three Accused, as well as of the military organisation of the RUF, the collaboration between the AFRC and RUF forces during the junta period, arms shipments and military operations, forced labour, diamond mining operations as well as a joint criminal enterprise and that specifically, as alleged, that of witness TF1-368 will relate to the authenticity of a diamond log;
- iii) That the evidence of all the proposed witnesses, TF1-366, TF1-367, and TF1-368 appears to be relevant and could have some probative value as regards the allegations in paragraphs 34, 36, 37, 38 and 39 of the Amended Consolidated Indictment.



41. In the light of the above and given the significant reduction in the total number of the Prosecution witness from 266 to 102 as contained in its Renewed Witness List and the representation by the Prosecution that it would not be calling these witnesses until a much later stage in the trial, the Trial Chamber is of the view that the provisions of Article 17(4)(b) of the Statute would not be violated as the Defence would not suffer any unfair prejudice if the Prosecution's application were granted.

42. In this regard, we are of the opinion that the Defence will have adequate time and resources to investigate and prepare for the cross-examination of these witnesses as they will only be called upon to testify any time during or after the 4th session of this trial beginning on the 5th of April, 2005.

43. Furthermore, with reference to the specific request of the Prosecution for disclosure, we hold that good cause exists for the disclosure of the statements of witnesses TF1-366 and TF1-368 pursuant to Rule 66(A)(ii) of the Rules.

44. In addition, consistent with the Chamber's *Decision on Prosecution Motion for Modification of Protective Measures for Witnesses*,³² Orders a, b, c, d, e, f, j, k, l, m, n, o, p, thereof providing for the protective measures for witnesses appearing in this trial, shall apply to witness TF1-366, witness TF1-367 and witness TF1-368.

FOR THE ABOVE REASONS, THE CHAMBER

GRANTS the Motion requesting the addition of witnesses TF1-366, TF1-367 and TF1-368 to the Renewed Witness List; and

CONSEQUENTIALLY ORDERS:

- 1) That the redacted statements of witnesses TF1-366 and TF1-368 be disclosed to the Defence on or before the 14th of February, 2005;

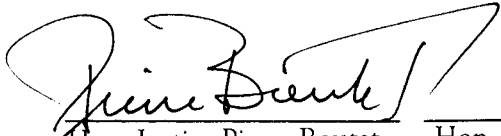
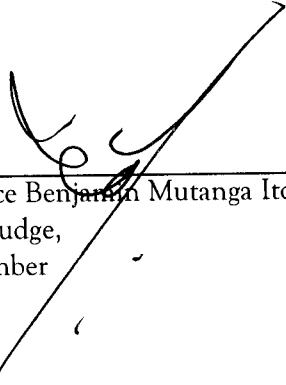
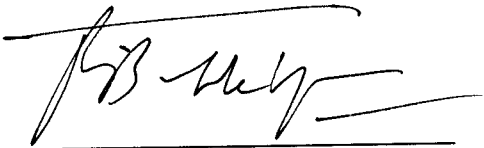
³² Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004. See also *Prosecutor v. Issa Hassan Sesay*, SCSL-2003-05-PT, Decision on the Prosecution's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 23 May 2003; *Prosecution v. Morris Kallon*, SCSL-2003-07-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. Augustine Gbao*, SCSL-2003-09-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 10 October 2003. See also Order on Protective Measures for Additional Witnesses, 24 November 2004.

11th of February, 2005

2) That Orders a, b, c, d, e, f, j, k, l, m, n, o, and p of the *Decision on Prosecution Motion for Modification of Protective Measures for Witnesses* shall apply to witnesses TF1-366, TF1-367 and TF1-368; and

3) That these witnesses shall be called upon to testify only at a time during or after the 4th Session of this trial beginning on the 5th of April, 2005.

Done in Freetown, Sierra Leone, this 11th day of February, 2005

 _____ Hon. Justice Pierre Boutet	 _____ Hon. Justice Benjamin Mutanga Itoe Presiding Judge, Trial Chamber	 _____ Hon. Justice Bankole Thompson
--	---	--

