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SCSL-04-15-T  
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**SPECIAL COURT FOR SIERRA LEONE**

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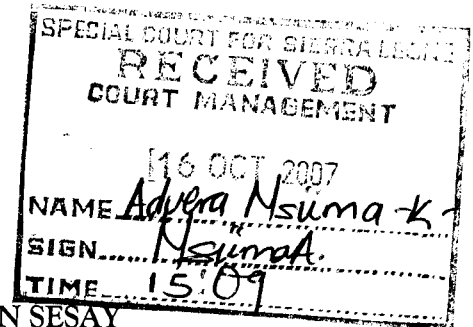
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**TRIAL CHAMBER I**

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

**Registrar:** Mr. Herman von Hebel

**Date:** 16<sup>th</sup> October 2007



**PROSECUTOR** Against **ISSA HASSAN SESAY**  
**MORRIS KALLON**  
**AUGUSTINE GBAO**  
(Case No. SCSL-04-15-T)

**Public Document**

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**DECISION ON GBAO REQUEST FOR LEAVE TO CALL ADDITIONAL  
WITNESSES AND FOR ORDER FOR PROTECTIVE MEASURES**

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**Office of the Prosecutor:**

Peter Harrison  
Reginald Flynn

**Defence Counsel for Issa Hassan Sesay:**

Wayne Jordash  
Sareta Ashraph

**Defence Counsel for Morris Kallon:**

Shekou Touray  
Charles Taku  
Melron Nicol-Wilson

**Court Appointed Counsel for Augustine Gbao:**

John Cammegh

**TRIAL CHAMBER I** (“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 Request for Leave to Call Additional Witnesses and for Order for Protective Measures, with Annex A and *ex parte* Annex B filed by Defence Counsel for the Third Accused, Augustine Gbao, (“Defence”) on the 4<sup>th</sup> of July 2007 (“Motion”);

**NOTING** the Response to the Motion filed by the Office of the Prosecutor (“Prosecution”) on the 11<sup>th</sup> of July 2007 (“Response”) and the Reply thereto filed by the Defence on the 16<sup>th</sup> of July 2007 (“Reply”);

**MINDFUL** of the Revised Witness List and Summaries of the Facts on which the Witnesses will Testify filed by the Defence on the 7<sup>th</sup> of May 2007;<sup>1</sup>

**MINDFUL** of the Decisions of this Trial Chamber concerning protective measures for other Defence witnesses, including the Decision on Gbao Motion for Immediate Protective Measures and Confidential Motion for Delayed Disclosure and Related Measures for Witnesses, filed on the 1<sup>st</sup> of March 2007 (“Gbao Decision on Protective Measures”);

**PURSUANT** to Articles 16 and 17 of the Statute of the Special Court (“Statute”) and Rules 26bis, 34, 69, 73ter and 75 of the Rules of Procedure and Evidence (“Rules”);

**THE TRIAL CHAMBER ISSUES THE FOLLOWING DECISION:**

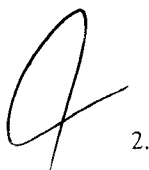
## I. SUBMISSIONS OF THE PARTIES

### A. The Motion


1. The Defence seeks leave of the Trial Chamber to add six additional witnesses to its witness list.<sup>2</sup> The Defence states that until late in the Prosecution’s case, the Accused Gbao (“Accused”) refused to cooperate with his Defence Counsel and provided them with no instruction or assistance in locating Defence witnesses. The Defence states that as a result of the Accused’s refusal to

<sup>1</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Gbao – Filing of Revised Witness List Complying with Oral Order of 2 May 2007, 7 May 2007, Annex A.

<sup>2</sup> Motion, para 1.

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cooperate, it was unable to identify fundamental insider witnesses, and only commenced investigation in May 2006.<sup>3</sup>

2. The Defence states that the six witnesses came to the attention of its investigator approximately one year before the Motion was filed. Two of these witnesses, DAG-084 and DAG-104, were not placed on the Defence witness list because the investigator was unable to locate them;<sup>4</sup> the remaining witnesses, DAG-089, DAG-099, DAG-101, and DAG-103, initially refused to testify for fear of being indicted.<sup>5</sup> The Defence submits that the impossibility of locating a witness and the unwillingness of a witness to testify constitute good cause for the later addition of such witnesses to the witness list.<sup>6</sup> The Defence asserts that adding the six witnesses to the witness list would not cause any delay in the proceedings.<sup>7</sup> It further asserts that since the Accused's case will not begin until late 2007 or early 2008, the other parties will have sufficient time to prepare for the cross-examination of these additional witnesses.<sup>8</sup> The Defence contends that each of the witnesses was either close to the Accused during the war, or is a member of the RUF, and can thus provide direct and original evidence.<sup>9</sup> Consequently, the Defence submits that allowing these witnesses to testify would be in the interests of justice.<sup>10</sup>

3. The Defence also requests that the protective measures previously granted to witnesses testifying on behalf of the Accused be extended to the six proposed additional witnesses; the Defence asserts that disclosure of the witnesses' identities could endanger the safety of witnesses due to their previous roles within the RUF, and would also cause them to refuse to testify.<sup>11</sup>

<sup>3</sup> *Ibid.*, paras 15-16.

<sup>4</sup> The Defence states that its investigator was initially unable to locate DAG-084, but met with him and took a statement in February 2007.<sup>4</sup> The Defence further states that its investigator began searching for DAG-104 in May 2006, but was unable to locate him until DAG-103 told him where DAG-104 was in May 2007; at the time the Motion was filed in July 2007, the investigator had not yet met him. (Motion, paras 18-23)

<sup>5</sup> Motion, para 17. The Defence states its investigator initially met DAG-089 in May 2006, although the witness feared being indicted if she testified on behalf of the Accused, because she had been involved with the RUF. She agreed to testify in May 2007, and the investigator took a statement on the 16<sup>th</sup> of May 2007. An investigator met with DAG-099 in May 2006, but he refused to testify for fear of indictment as he had worked for the RUF's Agricultural Committee. In May 2007, DAG-099 agreed to testify, and gave a statement on the 24<sup>th</sup> of May 2007. The investigator met with DAG-101 in May 2006, but she and her parents feared she would be indicted. The witness agreed to testify on the 26<sup>th</sup> of April 2007, and gave a statement on the 27<sup>th</sup> of April 2007. An investigator met with DAG-103 in May 2006, but the witness refused to testify because, as a former senior member of the RUF, he feared being indicted. The witness agreed to testify in May 2007, although at the time the Motion was filed, he had not given a statement.

<sup>6</sup> Motion, para 24.

<sup>7</sup> *Ibid.*, para 25.

<sup>8</sup> *Ibid.*, para 26.

<sup>9</sup> *Ibid.*, paras 30-31.

<sup>10</sup> *Ibid.*, para 32.

<sup>11</sup> *Ibid.*, paras 33-37.

4. In public Annex A to the Motion, as well as *ex parte* Annex B,<sup>12</sup> the Defence summarizes the expected testimony of each of the six proposed witnesses as follows:

- a) DAG-084 is expected to testify about accusations of looting, child soldiers, and mutilation in Makeni.
- b) DAG-089 is expected to testify about accusations of forced marriage in Makeni, the role of the Accused in the RUF, and the UNAMSIL abductions.
- c) DAG-099 is expected to testify about accusations of forced labour, child soldiers, and the killing of alleged Kamajors in Kailahun District.
- d) DAG-101 is expected to testify about violence against civilians, child soldiers, forced labour, and forced marriage in Kailahun District. The witness is also expected to testify about the reporting system in the RUF, and the role of the Accused within the RUF.
- e) DAG-103 is expected to testify about Kailahun District, and is expected to testify that the Accused was never an MP, and was insignificant in the RUF chain of command.
- f) DAG-104 is expected to testify about the killing of alleged Kamajors in Kailahun District, Sam Bockarie's rule in Kailahun, and arguments between the Accused and Bockarie.

**B. The Prosecution Response**

5. In its Response, the Prosecution submits that the Chamber should dismiss the Motion because it does not provide sufficient evidence to determine if the Defence acted with due diligence in attempting to locate the witnesses it seeks to add.<sup>13</sup> In particular, the Prosecution submits that since the Defence took a statement from DAG-084 on the 17<sup>th</sup> of February 2007, and the Chamber ordered witness lists to be filed on the 5<sup>th</sup> of March 2007, the Defence should have included DAG-084 in its original witness list.<sup>14</sup>

6. The Prosecution also asserts that the Defence's motion to add DAG-103 and DAG-104 to the witness list is premature, as neither witness has yet given a statement, and that the Defence has not

<sup>12</sup> Having regard to the principle requiring that criminal trials be conducted in public and consistent with the established jurisprudence of the Court, the Chamber deems it necessary that this Decision should now be filed publicly, and has omitted from the Decision any information contained in *ex parte* Annex B that could disclose the identity of protected witnesses. See for instance *Prosecutor v. Sesay, Kallon and Gbao*, SCSL04-15-T, Written Reasons for the Decision on Prosecution Request for Leave to Call Additional Witness TF1-371 and for Order for Protective Measures, 15 June 2006, para 15.

<sup>13</sup> Response, para 3.

<sup>14</sup> *Ibid.*, para 9.

spoken with DAG-104.<sup>15</sup> The Prosecution contends that in the absence of any statements, the Trial Chamber has no basis for assessing the relevance of the witnesses' testimony.<sup>16</sup> The Prosecution further submits that the evidence offered by the new witnesses was available at the time the witness list was filed, and that the Accused refused to seek out the evidence due to his rejection of the Court's authority.<sup>17</sup>

### C. The Defence Reply

7. In its Reply, the Defence submits that it exercised all due diligence in obtaining the cooperation of the witnesses, and that the six witnesses could not have been added to the Witness List in March 2007 because they were either unwilling to testify or could not be located.<sup>18</sup> The Defence states that while it knew of DAG-084 when it filed its Witness List, it had elected not to call him; subsequently, the Defence decided to call this witness based on its Defence strategy.<sup>19</sup> At that time, the investigator was unable to locate DAG-104.<sup>20</sup> The other four witnesses were at that time unwilling to testify or give a statement despite the efforts of the investigator.<sup>21</sup>

8. The Defence asserts that the difficulty in locating certain witnesses and the unwillingness of other witnesses to testify, constitute good cause for its failure to include those witnesses on the witness list.<sup>22</sup> The Defence states that on the 13<sup>th</sup> of July 2007, it took statements from DAG-103 and DAG-104, and includes summaries of those statements in Annex A of the Reply.<sup>23</sup>

9. The Defence reiterates that the Prosecution will have adequate time to prepare to cross-examine the additional witnesses, and that calling these witnesses would assist the Defence in further

<sup>15</sup> *Ibid.*, para 11.

<sup>16</sup> *Ibid.*, para 12.

<sup>17</sup> *Ibid.*, paras 16-18. The Prosecution asserts that the Accused had regularly attended the trial as of March 2006, and from that date had a full year to locate witnesses and add them to the witness list. In addition, he employed as an investigator a former senior RUF member, who was well-placed to identify and locate RUF insider witnesses. Furthermore, the Prosecution contends that the Accused has not acted with due diligence, and that none of the six witnesses should be added to the Witness List.

<sup>18</sup> Reply, paras 4-7. The Defence further submits that it began investigations prior to May 2006, despite the former lead counsel's refusal to appoint an investigator; Defence counsel conducted investigations in Makeni in 2004 and Kailahun in 2005. The Defence also contends that Defence counsel travelled to Kailahun and Makeni with investigators multiple times in 2006 and 2007.

<sup>19</sup> Reply, para 9.

<sup>20</sup> *Ibid.*, para 8.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*, para 12.

<sup>23</sup> *Ibid.*, para 14.

reducing the number of witnesses to testify.<sup>24</sup> The Defence asserts that due to its efforts to reduce its Witness List, the addition of the six witnesses will not have any adverse effects upon the proceedings. The Defence further contends that adding these witnesses to the list will assist in reducing the number of witnesses to be called in defence of the Accused. Finally, the Defence asserts that absence of a delay in the proceedings has been found to contribute to a finding of good cause.<sup>25</sup>

## II. APPLICABLE LAW

### A. Variation of the Witness List

10. Rule 73ter(E) sets out the criteria for modification of a Defence witness list during the Defence phase of the trial. The Rule provides that:

After the commencement of the defence case, the defence may, if it considers it to be in the interests of justice, move the Trial Chamber for leave to reinstate the list of witnesses or to vary its decision as to which witnesses are to be called.

This rule is substantively identical to Rule 73bis(E), which governs similar applications by the Prosecution for leave to modify its witness list.

11. The key principle upon which this Trial Chamber has granted the Prosecution leave to add witnesses to its witness list is that of showing that granting the motion would be in the interests of justice and is supported by good cause.<sup>26</sup> The Chamber did, in its Decision of the 29<sup>th</sup> of July 2004 spell out the principles governing applications to vary a party's witness list.<sup>27</sup> In that Decision, the Chamber stated 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 interests of justice, certain factors should be taken into consideration.<sup>28</sup> Quoting with approval from the jurisprudence of the ICTR, the Chamber 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

<sup>24</sup> Reply, paras 19-22. The Defence further contends that these witnesses are "of utmost importance for the Defence case" and that refusing to allow the witnesses to testify would be contrary to Article 17 of the Statute.

<sup>25</sup> *Ibid.*, para 21.

<sup>26</sup> See for instance *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasons for the Decision on Prosecution Request for Leave to Call Additional Witness TF1-371 and for Order for Protective Measures, 15 June 2006, paras 6-8; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements, 11 February 2005, paras 23-24.

<sup>27</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution Request for Leave to Call Additional Witnesses, 29 July 2004.

<sup>28</sup> *Ibid.*, paras 28-32

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.<sup>29</sup>

12. Further, this Chamber has also adopted and applied the standard set down by a Trial Chamber of the ICTR in *Bagosora*, namely:

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.<sup>30</sup>

**B. Protective Measures**

13. As regards protective measures, the Chamber opines that it has the discretion under Rule 75 to order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused. However, a condition precedent for exercising such a discretion is that the party seeking protective measures must “provide evidence from sources other than its witnesses indicating an objective basis for assessing whether a threat to the witnesses’ security exists.”<sup>31</sup>

**III. DELIBERATION**

**A. Variation of the Witness List**



14. Guided by the foregoing exposition of the applicable law, the Chamber recalls that the Defence must show that there is “good cause” to ground a case for variation of the Witness List, and that such variation is “in the interests of justice”.<sup>32</sup> Based on the precedents established by the Chamber and relying on jurisprudence of the ICTR, the submissions of the party seeking to modify

<sup>29</sup> *Ibid.*, para 29, quoting *Prosecutor v. Nahimana, Ngeze and Barayagwiza*, ICTR-99-52-I, 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, Ngeze and Barayagwiza*, ICTR-99-52-I, Decision on the Prosecutor’s Application to Add Witness X to its List of Witnesses and for Protective Measures, 14 September 2001, para 5.

<sup>30</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Request to Call Additional Witnesses and Disclose Additional Witness Statements, 11 February 2005, para 26, quoting *Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumwa*, ICTR-98-41-T, Decision on Prosecution Motion for Addition of Witnesses Pursuant to Rule 73bis(E), 26 June 2003, para 14.

<sup>31</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Gbao Motion for Immediate Protective Measures and Confidential Motion for Delayed Disclosure and Related Measures for Witnesses, 1 March 2007, para 31.

<sup>32</sup> *Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumwa*, ICTR-98-41-T, Decision on Bagosora Motion to Present Additional Witnesses and Vary its Witness List, 17 November 2006, para 2; *Prosecutor v. Nchamihigo*, ICTR-2001-63-T, Decision on Defence Motion for Modification of Defence Witness List, 15 August 2007, para 3.

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its Witness List should be examined in the light of such factors as, *inter alia*, the materiality of the testimony, the complexity of the case, the probative value of the proposed testimony in relation to existing witnesses and allegations in the indictments; the ability of the opposition to make an effective cross-examination of the proposed testimony, and the justification offered for the addition of the witness.

15. In this regard, we note that summaries of proposed testimony provided by the Defence in its Motion suggest that the witnesses would give relevant and material testimony as to the role of the Accused in relation to multiple counts of the indictment, particularly as to events occurring in Makeni and Kailahun.<sup>33</sup>

16. It is our considered view that the complexity of a trial may affect the ease with which material witnesses can be identified and their cooperation secured. In one of our previous Decisions, we observed, in response to a Prosecution motion to call additional witnesses, that “in trials of this magnitude and complexity, it would not be unusual for some key witnesses to manifest. . . a reluctance and lukewarmness to cooperate with investigators and the Prosecution in their attempt to get them to volunteer statements and . . . testify on matters relevant to the issues for determination.”<sup>34</sup> By parity of reasoning, such a holding must apply equally to both Prosecution and Defence. In our view, it is to be expected that the Defence, like the Prosecution, may have difficulty in securing the cooperation of potential witnesses.

17. The Defence states that each of the six proposed witnesses will offer “unique and distinctive” testimony which “is of high probative value regarding the individual criminal responsibility of the Accused.”<sup>35</sup> The Chamber further takes the view that the probative value of proposed witness testimony is also relevant in considering whether to grant the motion. In this regard, it is, likewise, our position that judicial flexibility must be the norm where the proposed testimony will likely provide the Accused with the opportunity to call valuable testimony in support of his case, such being consistent with his statutory rights.

18. Furthermore, it is the Chamber’s view that time is of the essence in the addition of witnesses to a witness list so that valuable time is not wasted, thereby frustrating the right of the Accused to an

<sup>33</sup> Motion, paras 28-30; Annex A; *ex parte* Annex B.

<sup>34</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL04-15-T, Decision on Prosecution Request to Call Additional Witnesses and Disclose Additional Witness Statements, 11 February 2005, para 36.

<sup>35</sup> Motion, paras 26-27.



expeditious trial. This Chamber notes that late addition of witnesses can potentially endanger cross-examination, and the right of the opposition to make an effective cross-examination of the proposed testimony must be borne in mind. In the instant situation, it is our view that sufficient time is available to allow the other parties to adequately prepare for cross-examination of the proposed witnesses. We so hold.

19. The Chamber holds that the Defence has exercised due diligence.<sup>36</sup> We find merit in the Defence submissions that each of the witnesses in question will present direct evidence as to the conduct of the accused or the RUF, and that allowing the witnesses to testify will allow the Defence to reduce the number of other witnesses it will call.<sup>37</sup> As such, allowing the witnesses to testify may aid the Chamber in meeting its obligations under Rule 90.<sup>38</sup>

## B. On Protective Measures

20. This Chamber is on record as recognizing the unique feature of the Special Court being located in Sierra Leone where the offences charged against all the Accused persons are alleged to have been committed and that this fact could have a substantial impact on the security considerations for victims and witnesses.<sup>39</sup> With particular reference to insider witnesses, we have also held that such witnesses and their families are particularly vulnerable to acts of retaliation and harm as well as threats to their security.<sup>40</sup>

<sup>36</sup> See for instance the details of the investigative efforts undertaken by the Prosecution with regard to the addition of TF1-371: *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasons for the Decision on Prosecution Request for Leave to Call Additional Witness TF1-371 and for Order for Protective Measures, 15 June 2006, paras 1-3. See also *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements, 11 February 2005.

<sup>37</sup> Reply, paras 19-21.

<sup>38</sup> Rule 90 grants the Chamber the ability to exercise control over the mode and order of interrogating witnesses and presenting evidence in such a way as to avoid wasting time. See, for example, *Prosecutor v. Nsabimana*, ICTR-97-29A-T, Decision on Sylvain Nsabimana's Extremely Urgent Motion to Drop and Add Witnesses, 14 July 2006, para 5.

<sup>39</sup> See for instance *Prosecutor v. Sesay, Kallon and 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, paras 21-25; see also *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-2004-14-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 8 June 2004, para. 29; see also *Prosecutor v. Norman, Fofana and 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. While this consideration was primarily directed to witnesses testifying for the Prosecution, similar dangers apply to witnesses willing to testify on behalf of the Accused.

<sup>40</sup> See for instance *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T, Decision on Prosecution Motion to Amend Protective Measures for Witnesses TF1-168 and TF1-041, 9 May 2006.

21. We have, likewise, found that the security situation in Sierra Leone and West Africa warrants the grant of protective measures to witnesses residing within West Africa.<sup>41</sup> Accordingly, the Chamber has ordered blanket protective measures for all such Defence witnesses.<sup>42</sup> Since all six proposed witnesses fall within this category, since there is no evidence that the security situation has changed so as to make protective measures unnecessary, and since the Prosecution has not objected to the grant of protective measures, the Chamber sees no reason to refuse such measures for the proposed witnesses.

### C. Conclusion

22. Based on the foregoing considerations, the Chamber is satisfied that the Defence has shown good cause for its request to add all six witnesses to its Witness List. In our view, the Prosecution has provided no evidence that the Defence's decision to call DAG-084, whom it earlier decided not to call, is based on anything other than good faith. In respect of the other five witnesses, the Defence has proved that it faced difficulties in finding them or convincing them to testify, assertions which, based on this Chamber's prior jurisprudence, are sufficient to show good cause. Since it is not expected that the Defence will begin presenting its case until the end of 2007 or early 2008, it is unlikely that any other party would be prejudiced by the addition of the proposed witnesses.

23. Furthermore, it is our view that each of the six proposed witnesses may offer original and direct information about the criminal responsibility of the Accused; consequently, the addition of these witnesses, and the admission of their testimony as factual evidence before the Court would be in the interests of justice. The Chamber is therefore of the opinion that the addition of the six proposed new witnesses would facilitate future reductions to the Defence Witness List.<sup>43</sup> It is also our position that the other parties will have sufficient time to prepare for cross-examination of these witnesses. Consequently, we hold that the addition of the six witnesses is unlikely to delay or impede the conduct of the trial, and that including them on the witness list is in the interests of justice.

<sup>41</sup> Gbao Decision on Protective Measures, para 32.

<sup>42</sup> *Ibid*, para 43.

<sup>43</sup> We note the ICTR has held that the addition of witnesses which allows the withdrawal of a larger number of witnesses thereby expedites the trial and enhances judicial economy: see for instance *Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumva*, ICTR-98-41-T, Decision on Defence Motions to Amend the Defence Witness List, 17 February 2006, para 11; *Prosecutor v. Nteziryayo*, ICTR-97-29A-T, Decision on Alphonse Nteziryayo's Motion to Modify his Witness List, 14 July 2006, para 26; *Prosecutor v. Nsabimana*, ICTR-97-29A-T, Decision on Sylvain Nsabimana's Extremely Urgent Motion to Drop and Add Witnesses, 14 July 2006, para 5.

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24. This Chamber also finds that the extension of existing protective measures particularized in the Gbao Decision on Protective Measures to the witnesses in question is appropriate in all the circumstances of the case.

#### IV. DISPOSITION

FOR THESE REASONS, THE CHAMBER

GRANTS the Motion requesting leave to call additional witnesses DAG-084, DAG-089, DAG-099, DAG-101, DAG-103 and DAG-104; and

CONSEQUENTIALLY ORDERS

- 1) that the existing protective measures ordered in this case for the Defence witnesses be extended to the aforementioned witnesses; and
- 2) that within 15 days of the present Decision the Defence file with the Court, with redactions as necessary and within five days of the present decision, a “core” and a “back-up”<sup>44</sup> Updated Witness List of all the witnesses that it intends to call, including:
  - (a) the pseudonym of each witness;
  - (b) a detailed summary of each witness’ testimony. The summary should, subject to any protective measures that have been ordered by the Chamber, be sufficiently descriptive to allow the Prosecution and the Chamber to fully appreciate and understand the nature and content of the proposed testimony;<sup>45</sup>

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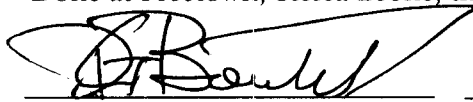
<sup>44</sup> See *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order to Prosecution to Produce Witness List and Witness Summaries, 7 July 2004. See, in particular, page 3, where it is stated that “back-up” witnesses “are meant to be used only as ‘back-up’ witnesses if some of the “core” witnesses are not available to testify”. See also *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision Regarding the Prosecution’s Further Renewed Witness List, 5 April 2005; *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on the First Accused’s Urgent Motion for Leave to File Additional Witnesses and Exhibit List, 6 April 2006.

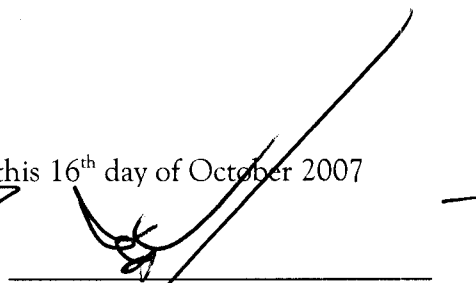
<sup>45</sup> For reference, see *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Order to the First Accused to Re-File Summaries of Witness Testimonies, 2 March 2006. In particular, Order No. 2 reads as follows: “[the] summaries shall include detailed summaries of the incidents and/or events which a witness is called to testify upon, exact location and date (if available) of these alleged incidents and/or events, position and/or role of a witness in relation to the crimes charged in the Indictment, nexus between the Accused and the proposed testimony of a witness and other details as Counsel deems necessary and would clearly demonstrate the essence of that testimony.” The production of this material

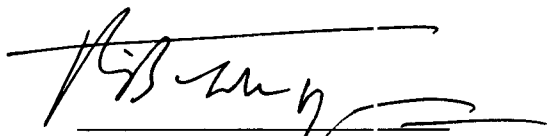
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- (c) the points of the Indictment about which each witness will testify, including the exact paragraph/s and the specific count/s;
- (d) the estimated length of time for each witness to testify and the language in which the testimony is expected to be given; and
- (e) an indication of whether the witness will testify in person or pursuant to Rule 92bis, 92ter or 92 quater of the Rules.

Done at Freetown, Sierra Leone, this 16<sup>th</sup> day of October 2007

  
 Hon. Justice Pierre Boutet

  
 Hon. Justice Benjamin Mutanga Itoe  
 Presiding Judge  
 Trial Chamber I

  
 Hon. Justice Bankole Thompson



by the Defence has previously been ordered in this case; see *Prosecutor v. Sesay, Kallon and Gbao*, SCSL04-15-T, Scheduling Order Concerning the Preparation and the Commencement of the Defence Case, 30 October 2006; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL04-15-T, Consequential Orders Concerning the Preparation and the Commencement of the Defence Case, 28 March 2007. For further guidance, see *Prosecutor v. Bagosora, Kabiligi, Ntabakuze and Nsengiyumva*, ICTR-98-41-T, Decision on Sufficiency of Defence Witness Summaries, 5 July 2005; *Prosecutor v. Nahimana, Ngeze and Barayagwiza*, ICTR-99-52-T, Decision on the Prosecution's Motion to Compel the Defence's Compliance with Rules 73ter, 67(C) and 69(C), 3 October 2002.