

039

SCSL - 2003-11-PT  
(1005 - 1018)

1005



**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

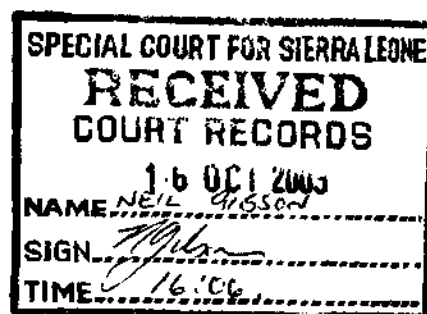
FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

**THE TRIAL CHAMBER**

**Before:** Judge Bankole Thompson  
Presiding Judge, Trial Chamber  
Designated Judge Pursuant to Rule 28 of the Rules

**Registrar:** Robin Vincent

**Date:** 16<sup>th</sup> day of October, 2003



**The Prosecutor Against:** Moinina Fofana  
(Case No. SCSL-2003-11-PD)

**DECISION ON THE PROSECUTOR'S MOTION FOR IMMEDIATE PROTECTIVE MEASURES FOR WITNESSES AND VICTIMS AND FOR NON-PUBLIC DISCLOSURE**

**Office of the Prosecutor:**  
Luc Côté, Chief of Prosecution  
James C. Johnson, Senior Trial Counsel  
Sharan Parmar, Assistant Trial Counsel

**Defence Office:**  
Mr. Sylvain Roy, Acting Chief of Defence Office  
Claire Carlton-Hanciles, Defence Associate  
Ibrahim Yillah, Defence Associate  
Haddijatu Kah-Jallow, Defence Associate  
Sam Scratch, Defence Intern

**Defence Counsel:**  
James Oury  
Steven Powels

**THE SPECIAL COURT FOR SIERRA LEONE (“the Court”)**

**BEFORE JUDGE BANKOLE THOMPSON**, sitting as a single Judge designated Pursuant to Rule 28 of the Rules of Procedure and Evidence (“the Rules”) on behalf of the Trial Chamber;

**BEING SEIZED** of the Motion by the Office of the Prosecutor for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure (“the Motion”) and of the “Briefs” (Written Submissions) with attachments in support of the said Motion, filed on the 3<sup>rd</sup> day of July, 2003;

**CONSIDERING** also the Response filed by the Defence Office on behalf of the Accused on the 18<sup>th</sup> day of July 2003, to the aforementioned Prosecution Motion (“the Response”);

**CONSIDERING** also the Prosecutor’s Reply filed on the 21<sup>st</sup> day of July, 2003 to the aforesaid Defence Response (“the Reply”);

**WHEREAS** acting on the Chamber’s Instruction, the Court Management Section advised the parties on the 9<sup>th</sup> day of October, 2003 that the Motion, the Response, and the Reply would be considered and determined on the “Briefs” (Written Submissions) of the parties **ONLY** pursuant to Rule 73 of the Rules;

**COGNISANT OF** the Statute of the Court (“the Statute”), particularly Articles 16 and 17 thereof, and specifically Rules 53, 54, 73, and 75 of the Rules;

**NOTING THE SUBMISSIONS OF THE PARTIES***The Prosecution Motion*

1. By the aforementioned Motion, the Prosecutor seeks orders for protective measures for persons who fall into three categories (paragraph 19 of the Motion):
  - (a) Witnesses who presently reside in Sierra Leone and who have not affirmatively waived their rights to protective measures;
  - (b) Witnesses who presently reside outside Sierra Leone but in other countries in West Africa or who have relatives in Sierra Leone, and who have not affirmatively waived their rights to protective measures;
  - (c) Witnesses residing outside West Africa who have requested protective measures.
2. By the said Motion, the Prosecutor also requests that the Defence be prohibited from disclosing to the public or media any non-public materials which are provided to them as part of the disclosure process.
3. Further, the Prosecutor requests that the persons categorised in paragraph 19 of the Motion and the prohibition as to non-public disclosure sought in paragraph 21 of the Motion be provided

protection and effected respectively by the Orders prayed for as set out below (Paragraph 25 of Motion):

- (a) An Order allowing the Prosecution to withhold identifying data of the persons the Prosecution is seeking protection for as set out in paragraph 19 or any other information which could lead to the identity of such a person to the Defence until twenty-one days before the witness is to testify at trial and consequently allowing the Prosecution to disclose any materials provided to the Defence in a redacted form until twenty-one (21) days before the witness is to testify at trial, unless otherwise ordered;
- (b) An Order requiring that the names and any other identifying information concerning all witnesses, be sealed by the Registry and not included in any existing or future records of the Court;
- (c) An Order permitting the Prosecution to designate a pseudonym for each witness, which was and will be used for pre-trial disclosure and whenever referring to such witness in Court proceedings, communications and discussions between the parties to the trial, and the public; it is understood that the Defence shall not make an independent determination of the identity of any protected witness or encourage or otherwise aide any person determine the identity of any such person;
- (d) An Order that the names and any other identifying information concerning all witnesses described in paragraph 25(a), be communicated only to the Victims and Witnesses Unit personnel by the Registry or the Prosecution in accordance with the established procedure and only in order to implement protection measures for these individuals;
- (e) An Order prohibiting the disclosure to the public or the media of the names and any other identifying data or information on file with the Registry, or any other information which could reveal the identity of witnesses and victims, and this order shall remain in effect after the termination of the proceedings in this case;
- (f) An Order prohibiting the Defence 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 persons or entity other than the Defence;
- (g) An Order that 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-public disclosure;
- (h) An Order requiring the Defence to provide to the Chamber and the Prosecution a designation of all persons working on the Defence team who, pursuant to paragraph 23 (f) above, have access to any information referred to in paragraph 23 (a) through 23 (e) above, and requiring the Defence to advise the Chamber and the Prosecution in writing of any changes in the composition of this Defence team;

- (i) An Order requiring the Defence to ensure that any member leaving the Defence team remits to the Defence team all disclosed non-public materials;
- (j) An Order requiring the Defence to 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;
- (k) An Order that the Defence Counsel shall make a written request to the Trial Chamber or a Judge thereof, for permission to contact any protected witnesses 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 parents or guardian of that person 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.

### *The Defence Response*

4. On behalf of the said Accused, the Response of the Defence Office may be summed up as follows:

- (i) that the Prosecution has failed to show exceptional circumstances justifying the grant of the protective measures sought;
- (ii) that the Prosecution has failed to demonstrate the elements of risk and danger to the witnesses for whom the protective measures are sought;
- (iii) that as regards Order (a), revealing the identity of protected witnesses 21 days before the trial would seriously affect the ability of the Defence to investigate and challenge the reliability of the witnesses and their statements;
- (iv) that Order (b) is contrary to the basic right to a public trial guaranteed every accused person;
- (v) that Order (c) should be dismissed in that it makes no distinction between a witness who requires special protection and one who does not;
- (vi) that Order (d) should not be granted for the same reason as in (iv) above;
- (vii) that Order (e) should not be granted because victims can only be given protective measures if it is intended to call them as witnesses;
- (viii) that as far as Order (f) is concerned, the concept of non-public materials is confusing and there is no indication as to which materials are being referred to as "non-public";
- (ix) that the Defence is opposed to the idea of maintaining a log as requested in (g) as infringing confidentiality;

- (x) that the Defence is opposed to (h) because it complements (g);
- (xi) that Order (i) lacks clarity;
- (xii) that Order (j) lacks clarity;
- (xiii) that Order (k) is not being opposed provided, if the Trial Chamber grants the protective measures, this order shall apply equally to the Prosecution.

### *The Prosecution Reply*

5. The Prosecution's position, in its Reply, filed on the 21<sup>st</sup> day of July 2003 to the Defence Response may be summed up as follows:

The arguments raised in the Response of Defence Counsel should be rejected as they are either incorrect or are not supported by the jurisprudence of the identical ad hoc tribunals. The assertions fail to realize that it has been accepted by the International Criminal Tribunals for Yugoslavia and Rwanda and the Special Court that the rights of the Accused must be balanced with the need for protective measures for witnesses and victims. The Defence objections to the specific orders sought by the Prosecution fail to address the intended object and purpose of such means and overlooks that they are routinely implemented by the International Tribunals.

### **AND HAVING DELIBERATED AS FOLLOWS**

6. Pursuant to Article 16 of the Statute, the Court is authorized to provide in its Rules for the protection of victims and witnesses. Such protective measures shall include, without being limited to, the protection of a witness's identity. Rule 75 provides, *inter alia*, that a Judge or a Chamber may, on its own Motion, or at the request of either party, or of the victims or witnesses concerned, or of the Victims and Witnesses Unit, 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.

7. According to Rule 69 of the Rules, under exceptional circumstances, either of the parties may apply to a Judge of the Trial Chamber or the Trial Chamber to order the non-disclosure of the identity of a witness who may be in danger or at risk until the Judge or Chamber otherwise decides.

8. Article 17 of the Statute of the Court sets out the Rights of the Accused including *inter alia*, the right "to have adequate time and facilities for the preparation of his or her defence and the right to examine, or have examined the witnesses against him or her" As Designated Judge, I also take cognisance of Rule 69 (C) of the Rules whereby the identity of a witness shall be disclosed in sufficient time before a witness is called to allow adequate time for preparation of the Defence.

9. Pre-eminently mindful of the need to guarantee the utmost protection and respect for the rights of the victims and witnesses, and seeking to balance those rights with the competing interests of the public in the administration of justice, of the international community in ensuring that persons accused of violations of humanitarian law be brought to trial on the one hand, and the

paramount due process right of the Accused to a fair trial, on the other, I am enjoined to order any appropriate measures for the protection of the victims and witnesses at the pre-trial stage that will ensure a fair determination of the matter before me, deciding the issue on a case-by-case basis consistent with internationally recognised standards of due process. Such orders are to take effect once the particulars and locations of the witnesses have been forwarded to the Victims and Witnesses Support Unit.

10. In determining the appropriateness of the protective measures sought, I have evaluated the security situation affecting concerned witnesses in the context of the available information attached to the Prosecutor's "Briefs" (Written Submissions), more particularly the affidavit of Tamba Pujeh Gbekie dated 30<sup>th</sup> day of June, 2003, that of Alan Quee dated 23<sup>rd</sup> day of April, 2003 and that of Brima Acha Kamara, Inspector General of Police dated the 10<sup>th</sup> day of June, 2003. To put the entire situation in its proper context, I have taken the liberty of highlighting, for the sake of emphasis, certain relevant passages from the the affidavit of Tamba Pujeh Gbekie especially in the light of the two major Defence submissions, to wit, (1) that the Prosecution has failed to show exceptional circumstances justifying the granting of the protective measures, and (2) that the Prosecution has failed to demonstrate the elements of risk and danger to the witnesses for whom the protective measures are sought.

11. It is of interest to note that at paragraph 6 of his affidavit, Officer Gbekie, after attesting to his years of experience and expertise as an investigator and his rank as Assistant Commissioner, deposes as follows:

"As a result of my investigations, I have found that members of the civilian population who may be called upon to appear as witnesses before the Special Court have expressed significant concern to me regarding their safety and security if it became known that they are co-operating with the Special Court, especially if their identities are revealed to the general public, or to a suspect or accused."

It is again deposed to at paragraph 7 that:

"Protected witnesses have also expressed fear of reprisals from relatives and friends of the accused, associates of the accused, and those who support the causes or faction the accused represents."

In addition, paragraphs 8-17 reinforce the evidence of threats, intimidation and danger to witnesses and potential witnesses. The Defence contends, first, that such evidence does not constitute exceptional circumstances, and second, that it does not demonstrate the elements of risk and danger to potential witnesses.

12. Consistent with the Court's previous Decisions<sup>1</sup> on the issue of protective measures for prosecution witnesses, I find that the combined effect of the affidavit evidence of Officer Gbekie, the declarations of Dr. Alan White, Alan Quee and Brima Acha Kamara (the Inspector General of Police) is to demonstrate, within the bounds of reasonable foreseeability and not absolute certainty, the delicate nature of the security situation in the country and the level of threat from several quarters of the ex-combatant population that participated in the conflicts to witnesses and potential

<sup>1</sup> Decisions on the Prosecutor's Motion For Immediate Protective Measures For Witnesses and Victims and for Non-Public Disclosure", dated 23 May 2003 in *Prosecutor Against Issa Hassan Sesay*, SCSL-2003-05-PT, *Alex Tamba Brima*, SCSL-2003-06-PT, *Morris Kallon*, SCSL-2003-07-PT, and *Samuel Hinga Norman*, SCSL-2003-08-PT.

witnesses. It would not be judicially prudent to treat such affidavit evidence lightly, in terms of its probative value, especially in the absence of an affidavit in opposition. The irresistible inference, therefore, is that such threats may well pose serious problems to such witnesses and the effectiveness of the Court in the faithful discharge of its international mandate. To the same effect is the finding of the Court *per* Judge Boutet in the recent *Decision On The Prosecution Motion for Immediate Protective Measures For Witnesses And Victims And For Non-Public Disclosure*, to wit:<sup>2</sup>

“The Special Court, therefore, based upon its examination of the documentation produced, and in particular of the foregoing, concludes that there exists, at this particular time in Sierra Leone, a very exceptional situation causing a serious threat to the security of potential witnesses and to victims, and accepts the affirmation that according to the words of Mr. Vahidy ‘ in Sierra Leone the protection of witnesses is far more serious and difficult matter even than in Rwanda.’ ”

13. Concerning the need for the protection of witnesses’ identities, *at the pre-trial phase*, as distinct from *the trial phase*, I have sufficiently advised myself on the applicable body of jurisprudence. Without meaning to detract from the precedential or persuasive utility of decisions of the ICTR and the ICTY and to diminish the general thrust of the Prosecution’s submissions on this point at paragraphs 17 and 18 of its Reply, it must be emphasized that the use of the formula “shall be guided by” in Article 20 of the Statute does not mandate a slavish and uncritical emulation, either precedentially or persuasively, of the principles and doctrines enunciated by our sister tribunals. Such an approach would inhibit the evolutionary jurisprudential growth of the Special Court consistent with its own distinctive origins and features. On the contrary, the Special Court is empowered to develop its own jurisprudence having regard to some of the unique and different socio-cultural and juridical dynamics prevailing in the *locus* of the Court. *This is not to contend that sound and logically correct principles of law enunciated by ICTR and ICTY cannot, with necessary adaptations and modifications, be applied to similar factual situations that come before the Special Court in the course of adjudication so as to maintain logical consistency and uniformity in judicial rulings on interpretation and application of procedural and evidentiary rules of international criminal tribunals.*

14. Instructive though, from a general jurisprudential viewpoint, some of the decisions of ICTR and ICTY relied upon both Prosecution and Defence Office on the subject of delayed disclosure and confidentiality of witnesses and victims may be in terms of the principles therein enunciated, the issue is really one of contextual socio-legal perspective. Predicated upon such a perspective, one can reach various equally valid conclusions applying a comparative methodology on: (a) whether the security situation in Sierra Leone can, at this point in time, in relation to Rwanda be objectively characterized as really more or less or equally volatile; (b) whether the security situation in Rwanda during the grant or denial of the protective measures sought in those cases, was more or less than or equally volatile as the present security situation in Sierra Leone; or (c) whether there is any logical basis for comparison at all. Evidently, it takes no stretch of the legal imagination to discover that in such matters speculation can be endless and quite fruitless. It depends on one’s analytical or methodological approach. They are not matters that can be determined with any mathematical exactitude.

15. Which principle, then, is applicable here? The answer is that it is the *general principle* propounded by the ICTY in the case of *The Prosecutor v. Blaskic*, IT-95-14, Decision on the

<sup>2</sup> *Prosecutor v Augustine Gbao* SCSL-2003-09-PT dated the 10<sup>th</sup> day of October 2003, para. 25.

Application of the Prosecution dated 17<sup>th</sup> October 1996 Requesting of Protective Measures for Victims and Witnesses, 5<sup>th</sup> November 1996. It states that:

The philosophy which imbues the Statute and Rules of the Tribunal appears clear: the Victims and Witnesses merit protection, even from the Accused, during the preliminary proceedings and continuing until a reasonable time before the start of the trial itself; from that time forth, however, the right of the Accused to an equitable trial must take precedence and require that the veil of anonymity be lifted in his favour, even if the veil must continue to obstruct the view of the public and the media.

Applying this general principle to the totality of the affidavit evidence before me, it is my considered view that a reasonable case has been made for the prosecution witnesses herein to be granted *at this preliminary stage* a measure of anonymity and confidentiality. In addition, in matters of such delicacy and sensitivity, it would be unrealistic to expect either the Prosecution or the Defence, *at the pre-trial phase*, to carry the undue burden of having each witness narrate in specific terms or document the nature of his or her fears as to the actual or anticipated threats or intimidation. Such an approach would frustrate, if not, (using a familiar legal metaphor) drive a horse and coach through the entire machinery created by the Founding Instruments of the Court and its Rules for protection of witnesses and victims.

16. Further, as Designated Judge under Rule 28 of the Rules, my judicial evaluation of the measures requested by the Prosecution pursuant to Articles 16 and 17 of the Statute and Rules 53, 54, and 75 of the Rules, is also predicated upon the reasoning that even though the Court must, in such matters, seek to balance the right of the Accused to a fair and public trial with the interest of the witnesses in being given protection, such a right is subject to derogating exceptional circumstances (Article 17 (2) of the Statute) and that the existing context of the security situation in Sierra Leone does justify, at this point in time, delaying the disclosure of the identities of witnesses *during the pre-trial phase*.

17. As regards the 21 (twenty-one) day time limit prayed for by the Prosecution in Order (a), despite the existence of some instructive ICTY and ICTR decisions supporting the 21- day rule limitation for disclosure, it is my considered view that there is no legal logic or norm compelling an inflexible adherence to this rule. In the context of the security situation in Sierra Leone and in the interest of justice, one judicial option available to me, at this stage, in trying to balance the interest of the victims and witnesses for protection by a grant of anonymity and confidentiality with the pre-eminent interest of effectively protecting the Accused's right to a fair and public trial is to enlarge the time frame for disclosure beyond 21 (twenty-one) days to 42 (forty-two) days. And I so order, consistent with the same order in the Court's recent decisions on the same issue, the Prosecution's insistence notwithstanding.<sup>3</sup> I further rule that the Defence is at liberty to apply for Order (k) if it so desires.

<sup>3</sup> See also Judge Boutet in *Prosecutor v. Augustine Gbao*, referred to supra 2, where he noted as follows:

"Therefore, 'The Special Court' notes that disclosure shall be made within forty-two (42) days of the date of the testimony of the witnesses instead of twenty-one (21) days, such disclosure achieving a fair balance between 'full respect' for the rights of the Accused and 'the regard' for the protection of victims and witnesses"

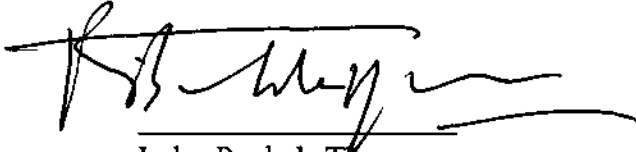


AND BASED ON THE FOREGOING DELIBERATION,

I HEREBY GRANT THE PROSECUTION'S MOTION AND IN PARTICULAR THE ORDERS SOUGHT IN (a) TO (k) as specified and particularised therein with the necessary modification to Order (a) in respect of the time frame for disclosure prior testimony at trial, which said ORDERS, for the sake of completeness, are set out in *extenso* in the annexure hereto.

Done at Freetown

16<sup>th</sup> day of October 2003



Judge Bankole Thompson  
Presiding Judge, Trial Chamber  
Designated Judge Pursuant to Rule 28 of the Rules





**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**

**Before:** Judge Bankole Thompson  
Presiding Judge, Trial Chamber  
Designated Judge Pursuant to Rule 28 of the Rules

**Registrar:** Robin Vincent

**Date:** 16<sup>th</sup> day of October, 2003

**The Prosecutor Against:** Moinina Fofana  
(Case No. SCSL-2003-11-PD)

**ANNEXURE TO THE DECISION ON THE PROSECUTOR'S MOTION FOR IMMEDIATE PROTECTIVE MEASURES FOR WITNESSES AND VICTIMS AND FOR NON-PUBLIC DISCLOSURE:**

**ORDERS FOR IMMEDIATE PROTECTIVE MEASURES FOR WITNESSES AND VICTIMS AND FOR NON PUBLIC DISCLOSURE**

**Office of the Prosecutor:**  
Luc Côté, Chief of Prosecution  
James C. Johnson, Senior Trial Counsel  
Sharan Parmar, Assistant Trial Counsel

**Defence Office:**  
Mr Sylvain Roy, Acting Chief of Defence Office  
Claire Carlton-Hanciles, Defence Associate  
Ibrahim Yillah, Defence Associate  
Haddijatu Kah-Jallow, Defence Associate  
Sam Scratch, Defence Intern

**THE SPECIAL COURT FOR SIERRA LEONE** (the "Special Court")

**PRESIDED OVER** by Judge Bankole Thompson designated in accordance with provisions of Rule 28 of the Rules of Procedure and Evidence ("the Rules");

**BEING SEIZED** of the Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure filed by the Prosecutor on 3<sup>rd</sup> day of July, 2003 ("the Motion") for an order requesting various protective measures to safeguard the security and privacy of victims, witnesses and to safeguard the integrity of the prosecution's evidence and of these proceedings;

**CONSIDERING** that non-public material is disclosed to the Accused primarily for the purpose of allowing him to prepare to meet the charges against him and for no other purpose;

**CONSIDERING FURTHER** that the Designated Judge takes very seriously the interests and concerns of victims and witnesses, is genuinely concerned for their safety, protection and welfare, is authorised to take all appropriate measures to ensure their protection and privacy, and is judicially obliged to safeguard non-public materials provided to the Accused in order to enable him to prepare for trial, where the interests of justice so demand;

**CONSIDERING ALSO** that it is of paramount importance to protect the right of the Accused to a fair and public trial and that only in exceptional circumstances should such a right be derogated from;

**HAVING METICULOUSLY EXAMINED** the merits of the submissions by the Defence in response to the said Prosecution Motion and sought to balance the interests of the victims and witnesses for protection and privacy with the right of the Accused to a fair trial in the context of the specific measures requested;

**CONVINCED** that despite the Defence submissions, in the specific context of this case, there is clear and convincing evidence submitted by the Prosecution for protective measures for witnesses and victims and for non-public disclosure of the material in this case *at the pre-trial stage*;

**NOTING** that Articles 17 (2) and 16 (4) of the Statute of the Special Court for Sierra Leone ("the Statute") envisage that the Trial Chamber shall, where expedient in the interests of justice, issue appropriate orders for the protection of victims and witnesses;

**COGNISANT** of the provisions of Rules 69 and 75 of the Rules concerning the protection of witnesses;

**ACTING IN ACCORDANCE WITH** Articles 16 and 17 of the Statute and pursuant to Rules 53, 54, 56, 69, and 75 of the Rules;

**HEREBY GRANTS THE PROSECUTION MOTION AND ORDERS** as follows:

- (a) The Prosecution may withhold identifying data of the persons the Prosecution is seeking protection as set forth in paragraph 25 of the Motion and any other information which could lead to the identity of such a person to the Defence, until 42 (forty-two) days before the witness is to testify at trial; and may not disclose any materials provided to the Defence in a redacted form until 42 (forty-two) days before the witness is to testify at trial, unless otherwise ordered.
- (b) That the names and any other identifying information concerning all witnesses be sealed by the Registry and not included in any existing or future records of the Court;
- (c) The Prosecution may designate a pseudonym for each witness, which was and will be used for pre-trial disclosure and whenever referring to such witness in Court proceedings, communications and discussions between the parties to the trial, and the public; it is understood that the Defence shall not make an independent determination of the identity of any protected witness or encourage or otherwise aid any person to attempt to determine the identity of any such persons;
- (d) That the names and any other identifying information concerning all witnesses described in order (a) be communicated only to the Victims and Witnesses Unit personnel by the Registry or the Prosecution in accordance with established procedure and only in order to implement protection measures for these individuals;
- (e) That the names and any other identifying data or information on file with the Registry, or any other information which could reveal the identity of Witnesses and Victims, shall not be disclosed to the public or the media and this order shall remain in effect after the termination of the proceedings in this case;
- (f) That the Defence shall not share, discuss or reveal, 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;
- (g) That 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-public disclosure;
- (h) That the Defence provide to the Chamber and the Prosecution a designation of all persons working on the Defence team who, pursuant to order (f) above, have access to any information referred to in order (a) through (e) above (reference herein being made to the Motion), and requiring the Defence to advise the Chamber and the Prosecution in writing of any changes in the composition of this Defence team;

- (i) That the Defence ensure that any member leaving the Defence team remits to the Defence team all disclosed non-public materials;
- (j) That the Defence 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;
- (k) That the Defence Counsel make a written request to the Trial Chamber or a Judge thereof, for permission to contact any protected witnesses 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 parents or guardian of that person 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.

**HEREBY FURTHER ORDERS** that consistent with Order (a) above, the Prosecutor shall disclose the names and unredacted statements of the witnesses to the Defence in at least 42 (forty-two) days before the witness is to testify at trial to allow the Defence sufficient and reasonable time to prepare effectively for trial, having regard to the gravity of the charges against the Accused persons and the magnitude of the Prosecutor's allegations against them; and that the Defence is at liberty to apply for Order (k) if it so desires.

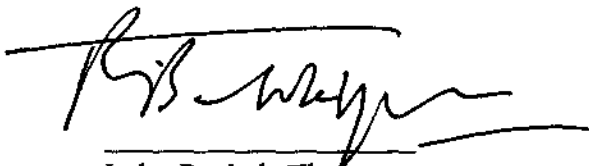
For the purpose of this Order:

- (a) "the Prosecution" means and includes the Prosecutor of the Special Court for Sierra Leone (the Court) and his staff;
- (b) "the Defence" means and includes the Accused, the Defence counsel and their immediate legal assistants and staff, and others specifically assigned by the court to the Accused's trial Defence team in conformity with Rule 44;
- (c) "witnesses" means and includes witnesses and potential witnesses of the Prosecution;
- (d) "protected witnesses" means and includes the witnesses in the categories as set forth in paragraph 19 of the Motion;
- (e) "victims" means and includes victims of sexual violence, torture, as well as all persons who were under the age of 15 at the time of the alleged commission of the crime;
- (f) "the public" means and includes all persons, governments, organisations, entities, clients, associations, and groups, other than the Judges of the Court and the staff of the Registry, the Prosecution, the Defence, as defined above. "The public" specifically includes, without limitation, family, friends and associates of the Accused, and the Defence in other cases or proceedings before the court;

- (g) "the media" means and includes all video, audio, print media personnel, including journalists, authors, television, and radio personnel, their agents and representatives.

Done at Freetown,

16<sup>th</sup> day of October, 2003



Judge Bankole Thompson  
Presiding Judge, Trial Chamber  
Designated Judge Pursuant to Rule 28 of the Rules

Seal of the Special Court