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SCSL - 2003 - 13 - PT  
(1329 - 1342)



**SPECIAL COURT FOR SIERRA LEONE**

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**THE TRIAL CHAMBER**

Before: His Lordship, the Rt. Hon. Judge Benjamin Mutanga Itoe,  
(Designated Judge)

Registry: Robin Vincent

Decision of: 24<sup>th</sup> day of November 2003

The Prosecutor against

Santigie Borbor Kanu  
(Case No. SCSL-2003-13-PT)

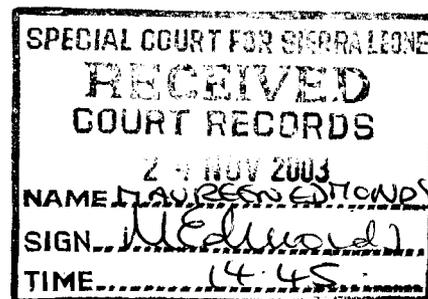
**DECISION ON THE PROSECUTION MOTION FOR IMMEDIATE  
PROTECTIVE MEASURES FOR WITNESSES AND VICTIMS**

**Office of the Prosecutor:**

Luc Côté, Chief of Prosecutions  
Robert Petit, Senior Trial Counsel  
Boi-Tia Stevens, Assistant Trial Counsel

**Defence Counsel:**

Geert-Jan Knoops, Defence  
Counsel



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

**WITH** Judge Benjamin Mutanga Itoe, sitting as the Designated Judge pursuant to Rule 28 of the Rules of Procedure and Evidence (“the Rules”);

**SEIZED** of 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 (“the Motion”), filed on the 30<sup>th</sup> day of September 2003;

**CONSIDERING** the Response thereto (“the Response”), filed on the 8<sup>th</sup> day of October 2003 by the Defence Counsel on behalf of the Accused **Santigie Borbor Kanu** (“the Accused”);

**CONSIDERING** the Prosecution’s Reply thereto (“the Reply”), filed on the 16<sup>th</sup> day of October 2003;

**CONSIDERING FURTHER** the Decision on the Urgent Request for Interim Measures until Appropriate Protective Measures are in Place, rendered by Judge Pierre Boutet on the 15<sup>th</sup> day of October, 2003;

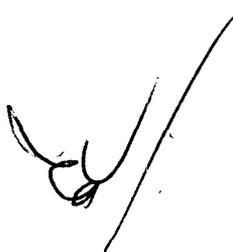
**CONSIDERING** the Statute of the Special Court, in particular Articles 16 and 17 thereof, and Rules 7, 53, 54, 66, 68, 69 and 75 of the Rules.

**NOTING THE SUBMISSIONS OF THE PARTIES;**

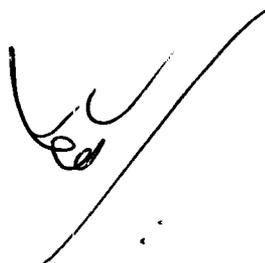
**AFTER HAVING REVIEWED AND CONSIDERED ALL THE ARGUMENTS;**

**DECIDES AS FOLLOWS:**

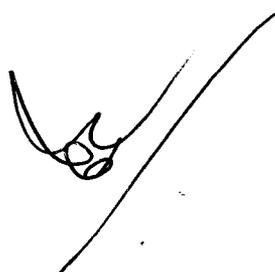
1. This Application by the Prosecution/Applicant for the Granting of Immediate Protective Measures for the Witnesses and Victims and for Non-Disclosure, filed in the Registry on the 30<sup>th</sup> day of September, 2003, is before me for adjudication as a Designated Judge of the Trial Chamber under the provisions of Rule 28 of the Rules of Procedure and Evidence of the Special Court.
2. In reply to the Application, the Respondent filed a Response on the 8<sup>th</sup> day of October, 2003, and the Applicant followed up by filing a reply to the submissions of the Respondent on the 16<sup>th</sup> day of October, 2003.
3. In this Motion, the Applicant is seeking an Order for immediate measures to protect the identity of witnesses and the confidentiality of all non-public materials disclosed to the Defence. The Prosecution contends that an Order to this effect is necessary so as to take adequate measures to safeguard the security and privacy of witnesses and victims and the integrity of the evidence as well as that of the instant proceedings.

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4. The Applicant submits that providing redacted material consisting of the blackening of any information in witnesses' statements and interview reports which could reveal the identity of witnesses and victims is an appropriate measure for ensuring the privacy and protection of victims and witnesses which, according to them, is consistent with the rights of the Accused.
5. The circumstances that have led to this application are that the Respondent, SANTIGIE BORBOR KANU, in a 17 count Indictment preferred against him by the Prosecutor of the Special Court for Sierra Leone, is alleged to have, in the territory of the Republic of Sierra Leone since the 30<sup>th</sup> of November, 1996, committed various offences against international humanitarian law as defined in the Geneva Convention of 12<sup>th</sup> August, 1949, and enshrined in Article 1 of the Agreement dated the 16<sup>th</sup> day of January, 2002, between the United Nations and the Government of Sierra Leone on the establishment of the Special Court, as well as under Articles 1, 2, 3, 4 and 5 of the Statute of the said Court which is annexed to and forms part and parcel of the aforementioned Agreement.
6. In an accusatorial system of criminal justice that is currently practised in International Criminal Tribunals, the Statute, as does that of the Special Court, provides for adequate protection and safeguards for both the Prosecution on one hand, and the Defence on the other, in the conduct of their cases at all stages of the proceedings.
7. In this regard, Article 17(2) of this Statute stipulates that the Accused shall be entitled to a fair and public hearing subject to measures ordered by the Special Court for the protection of victims and witnesses. In addition, the Accused, under Article 17(4) (b) of the Statute has the right to adequate time and facilities to prepare for his defence and under Article 17(4)(e), he reserves the right to examine or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.
8. As regards the Prosecution and the witnesses or victims whose testimony serves to prove their case, Article 17(2) acknowledges the inherent jurisdiction of the Special Court to ordain measures aimed at protecting these victims and witnesses. Indeed, Article 16(4) of the Statute authorises the Registrar to create a Witnesses and Victims Unit which, in consultation with the Prosecutor, shall provide protective measures and security arrangements and other appropriate assistance for witnesses and victims who appear before the Court and others who are at risk on account of testimony given by such witnesses.
9. Still on the protection of witnesses, Rule 69(A)(B) (C) of the Rules, as a follow up and indeed, as a reinforcement of the protection principle provided for in Article 16(4) of the Statute, lays down conditions which protect both the rights of the Prosecution witnesses and victims on one hand, and those of the Accused on the other in relation to what extent and duration these protective measures can be accorded so as not to prejudice the right of the defence to prepare for the trial.

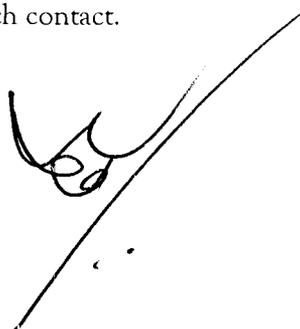
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10. On the jurisdiction and competence of the Special Court, Rule 75(A) provides that a Judge or a Chamber may, on its own motion or at the request of either Party or of the victim or witness concerned, or of the Victims and Witnesses Unit, order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the Accused.
11. It is in the light of the foregoing institutional legal framework that the Prosecution/Applicant is seeking an Order for the protection of the following group of witnesses who fall under three categories:
- (i) Witnesses who presently reside in Sierra Leone and who have not affirmatively waived their right to protective measures;
  - (ii) Witnesses who presently reside outside Sierra Leone but who have relatives in Sierra Leone, and who have not affirmatively waived their rights to protective measures and;
  - (iii) Witnesses residing outside West Africa who have requested protective measures.
12. To effectively attain this objective, the Applicant is urging the Court to issue the following Orders:
- (i) An Order allowing the Prosecution to withhold identifying data of the persons the Prosecution is seeking protection for as set forth in paragraph 16 or any other information which could lead to the identity of such person to the Defence until twenty-one (21) days before the witness is to testify at a 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 a trial, unless otherwise ordered;
  - (ii) 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;
  - (iii) An Order permitting the Prosecution to designate a pseudonym for each 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 witnesses or encourage or otherwise aid any person to attempt to determine the identity of any such person;
  - (iv) An Order that the names and any other identifying information concerning all witnesses described in paragraph 23(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;

- (v) 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;
- (vi) 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 person or entity other than the Defence;
- (vii) 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-disclosure;
- (viii) 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 paragraphs 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;
- (ix) An Order requiring the Defence to ensure that any member leaving the Defence team remits to the Defence team all disclosed non-public materials;
- (x) 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;
- (xi) 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 witness or any relative of such person, and such request shall be timely served on the Prosecution. At the direction of the Trial Chamber or a Judge thereof, the Prosecution shall contact the protected person and ask for his 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.

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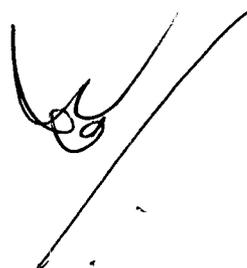
13. In seeking these Orders, the Applicant advances the following arguments:

“That the provisions of Rules 69 and 75 of the Rules of the Special Court are similar to those of Rules 69 and 75 of the Rules of the ICTR and of the ICTY and that the jurisprudence of the ICTR and of the ICTY in those matters are convincing precedents for the Special Court to come to the same conclusions.”

14. In this regard, the Applicant argues that the said jurisprudence of the ICTR and of the ICTY is settled on the fact that the party seeking protective measures must show the existence of a real fear for the safety of a witness or the witness' family and an objective basis for the fear. It is argued that under Rule 69, there is a need to show the existence of exceptional circumstances and as was decided by the ICTY in the *Tadic* case, the existence of a real fear need not be shown by the witness himself or herself but may be shown by others.

15. The Applicant to justify the application and particularly, the element of “exceptional circumstances” in Rule 69, has submitted the following documentary evidence:

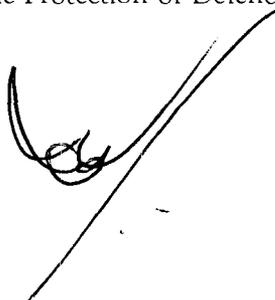
- (i) A confidential Declaration by Mr. Lahun, an Investigator dated 19<sup>th</sup> September, 2003, in which he affirms that the civilian population which may be called upon to appear as witnesses before the Special Court have expressed concern about their safety if it becomes known that they are cooperating with the Court, particularly if their identities are revealed to the general public;
- (ii) A Declaration by Dr. White, Chief of Investigations, in which he affirms that the security situation in most of Sierra Leone and its neighbouring countries is volatile. He states that the population live very closely and these include victims, witnesses and sympathisers of the indictees and that there have been instances involving interference with, and intimidation of, the Prosecutor's witnesses, some of who have experienced actual threats and attempts on their lives. He concludes that there is a general state of fear and apprehension amongst the witnesses;
- (iii) A Declaration dated 25<sup>th</sup> April 2003 of Mr. Alan Quee, Director of Post Conflict Reintegration Initiative for Development (PRIDE) an NGO which deals with ex-combatants affirming that Ex-combatants are worried about being called to testify in the Special Court because they fear being killed by their former Commanders. He concludes by saying that “[t]he threat of violence towards those who are seen as being with the Special Court is very real.”
- (iv) A Declaration dated 27<sup>th</sup> September 2003 of Saleem Vahidy, Chief of the Witnesses and Victims Unit of the Special Court affirming



that specific threats have been issued against some of the witnesses to the extent that active efforts are being made by members of interested factions to determine their exact locations probably with a view to carrying out reprisals;

- (v) A Declaration dated 29<sup>th</sup> April, 2003 of Keith Biddle, the former Inspector General of Police, affirming that security conditions in Sierra Leone, despite the presence of UNAMSIL, remain volatile. He affirms that this situation poses a real threat to the security of victims and potential witnesses. In his view, the Police system does not have the capacity to guarantee the safety of witnesses or prevent them from injury or intimidation;
- (vi) A Declaration dated 19<sup>th</sup> September, 2003 of Brima Acha Kamara, Inspector General of Sierra Leone Police confirms the entire declaration of his predecessor, Keith Biddle.

16. The Prosecution bases its application for protection of the witnesses and victims and non-disclosure in the case against the Respondent on the well-founded fears and apprehensions expressed in the aforementioned Declarations for the safety of potential witnesses.
17. The Applicant further argues that “the future of this and other cases before the Special Court for Sierra Leone depends on the ability and willingness of witnesses to give testimony and provide the necessary evidence (which for the most part, is geared towards incriminating indictees like the Respondent in this case). Threats, harassment, violence, bribery and other intimidation, interference and obstruction of justice, the Applicant argues, are serious problems for both the individual witnesses and the Court’s ability to accomplish its mandate. The protective measures requested by the Prosecution would protect witnesses and victims against this kind of misconduct and are designed to ensure their safety as well as that of their families.”
18. In reply, the Respondent observes that the protection sought is for all the witnesses in the case without distinction and that this is not in compliance with the provisions of Article 17(4) of the Statute. It is submitted by the Respondent that the protection, if extended to all the witnesses, will be seriously detrimental to the rights of the Accused under Article 17(4)(b) of the Statute.
19. The Respondent submits that the use of the words “a witness” in Rule 69(A) underscores the point that the drafters of the Rules intended that ‘non-disclosure of identity is to be assessed on an individual case-by-case basis’ and not, as the Applicant contend, to be used as a tool for the systematic protection of all material witnesses or several categories of them from disclosure of identity before hand.
20. The Respondent further argues and adopts Michael Scharf’s commentary on the ICTR decisions on Motions for the Protection of Defence Witnesses in the



case of the *Prosecutor v Kayishema and Ruzindana*, where he said that the principle of conducting criminal trial proceedings which are often open to the public and press, should be respected and as the Respondent adds as a buttressing argument, “in the absence of clear and overwhelming particularised grounds for closing the proceedings with respect to ‘each witness’”.

21. The Respondent concedes that there are categories of individuals, at least two, in his opinion, who may require protection under Rule 69(A) but argues that notwithstanding this categorisation, they must be particularised on the basis of concrete elements with respect to each individual witness.
22. Replying to the Respondent’s insistence on the legal implication of the words “a witness” in Rule 69(A), the Applicant relies on the definition section of the Rules where Rule 2(B) states as follows:

*‘In these Rules, the masculine shall include the feminine and the singular, the plural and vice versa’.*

23. The Applicant argues that it would be a wasteful use of the Court’s time and resources for the Prosecutor to bring individual witnesses at this stage of the pre-trial process.
24. Having so far considered the submissions of both parties, I would like to refer to and to recognise the extent of the application of the provisions of Article 20(3) of the Statute of the Special Court which stipulates as follows:

*‘the Judges of the Appeals Chamber of the Special Court shall be guided by decisions of the Appeals Chamber of the International Tribunals for the former Yugoslavia and for Rwanda’*

and to observe that although not expressly stated, this provision, by a necessary intendment, is also ordinarily applicable to the Trial Chamber of the Special Court where the Judges, without of course losing sight of some legal and factual variables and the environmental realities of Sierra Leone as against or in contrast to the situations in Rwanda and Yugoslavia and their realities, have been inspired by those decisions.

25. In fact, the fast emerging principle of protection of witnesses and victims which today is deeply rooted in the core dynamics of the International Criminal Justice system and procedures, is founded on the understanding that those “protégés” whose testimony is vital in establishing the case for the Prosecution and to some extent, that of the Defence, deserve a cloud of anonymity around them, at least for some time pending their appearance and testimony in Court.
26. This position is even the more so justified because given the gruesomeness of the nature of crimes for which they might be called upon to the feature as victims and/or witnesses, the circumstances surrounding these offences, and the personality of the perpetrators, coupled with the fear of recriminations on them

or on members of their families, this temporary camouflage on their identity, even though it impugns, albeit temporarily, on the rights of the Accused and the proper conduct of his defence, appears plausible after all because it is quite in harmony with the revered objective we are committed to upholding, that is, to safeguard the integrity of the proceedings where some element of secrecy and in-camera procedures form an integral part; this, on the understanding of course, that the veil that would so far have shielded them from the Accused, is lowered at the crucial stage of the trial and in time to permit the Accused to enjoy and fully exercise, amongst others, his statutory right to a fair and public hearing guaranteed to him under Article 17 of the Statute of the Special Court.

27. In the determination therefore of applications on issues relating to the granting of protective measures to victims and witnesses, I think three factors, all of which I consider of public interest, should be borne in mind:

- (i) Firstly, acknowledging that the rights of the Accused as defined by the Statute and the Rules must be respected, and this, subject to measures, if any, ordered by the Court for the Protection of victims and witnesses;
- (ii) Secondly, taking cognisance of the rights and entitlements of victims and witnesses to some shielding and protection during the pre-trial phase and shortly before the trial commences, given the circumstances surrounding the commission of these offences; and
- (iii) Thirdly, recognising, as was observed in the case of *Kayishema v Ruzindana*, 'the need to maintain a perfect balance between, on the one hand, the rights of the Accused to a fair trial, and on the other hand, the right of victims and witnesses as well as the interest of the International Community that justice is done in the most diligent manner possible.'

28. In this regard and in the case of the *Prosecution v Allieu Kondewa*, Case No. SCSL-2003012-PD of 10<sup>th</sup> October, 2003, also based on an application for Protective Measures for Victims and Witnesses, I had this to say on a related issue and I quote:

*"This balance is very difficult to strike as the very thin line of demarcation separating the fundamental interests of the Accused to protect his entrenched legal and constitutional entitlements to a fair trial as against the statutorily evolving right of a witness or a victim to protection and non disclosure which is an emanation of International Statutes and Rules of practice in ad hoc and exceptional International Criminal jurisdictions, is too slim, or rather, too faint to ensure the equilibrium of the said balance without violating in one way or the other, one's or the other's legal rights"*.

29. What, however, appears certain in my mind is that the doctrine of anonymity and non-disclosure, even though it might appear contradictory to, is not

necessarily inconsistent with the principles of a fair trial that are guaranteed to the Accused under Article 17(2) of the Statute because the lifting of the veil of anonymity before the calling of these shielded witnesses balances the legal claim to a status of and prerogative to protection and anonymity that they might have enjoyed all along with the leave of the Court.

30. Indeed, as Justice Brooking of the Supreme Court of Victoria stated in the case *Jarvie and Another v. The Magistrate's Court of Victoria at Brunswick and Others* [1994] V.R. 84,88, and I quote:

*"The balancing exercise now so familiar in this and other fields of the law must be undertaken. On the other hand, there is public interest that the Defendant should be able to elicit (directly or indirectly) and to establish facts and matters, including those going to the credit, as may assist in securing a favourable outcome to the proceedings. There is also a public interest in the conduct by the Courts of their proceedings in public."*

31. What further appears to be palpably certain is that the protection given to these Victims and Witnesses is justified because of the role they are expected to, and are in fact called upon to play in the administration of international criminal justice which is in conformity with what I stated, in the Ruling in the case of the *Prosecutor v. Allieu Kondewa*, cited earlier, and I quote:

*"... One of the goals targeted by the International community is to track down and bring before justice, those who bear the greatest responsibility for a breach of International Humanitarian Law by committing heinous crimes against humanity. In view of the particularly bloody, hostile, and vicious environment in which these gruesome offences were cruelly perpetrated and the necessity to fulfil the procedural imperatives of an adversarial system of justice governing the Courts by providing witnesses to sustain the charges, a mechanism had to be worked out to achieve the targeted objectives. One of this is certainly to create incentives geared towards encouraging victims and witnesses of those crimes to testify, albeit, against those front-line perpetrators and one of these measures is to put in place, a protective wall between the victim or witness and the Accused so that neither the latter nor his sympathisers would identify the former for possible recriminations and eventual eliminations. It is only this strategy that International Criminal Justice owes its exceptional survival, for, in the absence of these protected witnesses and victims, there will be no trials and consequently, no end to the criminal impunity that the International Community is endeavouring to contain and combat through the International Criminal Courts..."*

32. The issue which the Trial Chamber of the Special Court has addressed all along is that the Applicant in cases of this nature, must show that the disclosure to the Accused and his defence team of the identity to the public of a victim or a witness at this stage would put them in danger or at risk. In fact, there must be some objective foundation for the fear that the witness may be in danger or at

risk: Archbold's *International Criminal Courts: Practice, Procedure and Evidence* (2003) at Paragraph 8-64c.

33. The Applicant has, through the Declarations of some personalities who are actively involved in the investigations and post-war management structures and activities, shown that the risk and danger to the witnesses and the probability of their being tampered with is real if a Protection and a Non-Disclosure Order were not made to shield their identities pending the commencement of the trial during which time the rights of the Accused to a fair trial would be fully guaranteed.
34. The Respondent has raised objections to this application in so far as it seeks to globally protect all the witnesses and argues that this should rather be done on a case-by-case examination and appreciation so as to determine whether the measures are necessary for all the witnesses.
35. The Respondent has also raised and sustained the argument all along that the provisions of Rule 69(A) of the Rules of Procedure and Evidence talk of "a witness" and not "witnesses" and that this provision was not supposed to be used to shield all witnesses without a justification being furnished by the Prosecution as to why they are seeking protection for all the witnesses they intend to use for purposes of establishing their case.
36. In a situation where the Trial Chamber, as at now, is estranged from the scenery and secrecy of the investigations, I cannot in advance, at least not before the commencement of the Pre-Trial Conferences, say, nor do I know, how many witnesses either the Prosecution or the Defence would call to make their cases. It is a question which at this moment, is entirely and only exclusively within the competence of the Prosecutor, and to some extent, the Defence, to provide a response.
37. This said however, I find that the argument based on the mention of "a witness" to exclude other witnesses who are, or may equally be entitled to the measures stipulated under Rule 69(A), cannot stand in view of the provisions of Rule 2(B) of the Rules. Besides, Rule 69 is made pursuant to the provisions of the Statute which is the enabling instrument. In this regard, Article 16(4) of the Statute provides as follows:

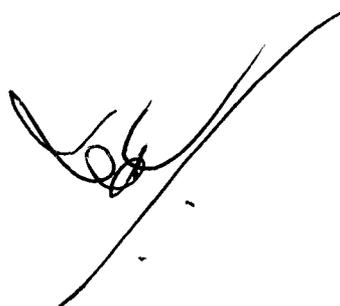
*"The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide in consultation with the office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses..."*

38. Besides, Rule 69(B) of the Rules of stipulates that in the determination of protective measures for victims and witnesses, the Judge or the Trial Chamber may consult the Victims and Witnesses Unit. If the Respondent as he has done, raises the issue of singularity as far as the interpretation of the words 'a witness'

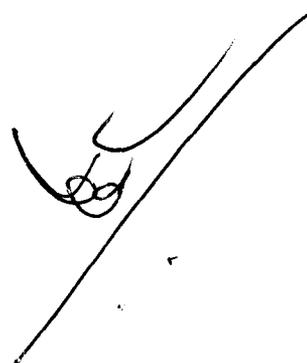
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in Rule 69(A) is concerned, Rule 69(B) is in plural terms. In any event, Article 16(4) of the Statute talks of Victims and Witnesses (in plural terms) and therefore, impliedly renders, only to the extent of the words 'or witness' in the regulatory text, if it could ever be construed in singular terms, null and void, because the Regulatory Authority (The Plenary), which drafted the Rules of Procedure and Evidence, was not supposed to, and could not of course have allowed itself to act *ultra vires* since it had neither the powers nor the mandate to modify or to limit the scope of the application of Article 16(4) of the Statute, an integral part of the Enabling Act, that is the Agreement dated 16<sup>th</sup> January , 2002, on the Establishment of the Special Court for Sierra Leone, signed by Two High Contracting Parties, namely, the United Nations Organisation and the Government of Sierra Leone.

39. In order to attempt to get out of the dilemma of a case-by-case examination so strongly canvassed by the Respondent at this stage of the proceedings, it would be interesting to find answers to the following questions. How many witnesses is the Prosecution holding for this trial? How many will they call to prove their case? Which of these witnesses is entitled to protection on a case-by-case basis as argued by the Respondent?
40. I find it difficult to answer any of these questions at the moment without prematurely delving into the trial process of examining the witnesses and their statements even before the trial begins. I indeed decline to encourage such an exercise which to my mind is complex, time consuming, and capable of unnecessarily protracting and complicating the proceedings and the process, in addition to the premature disclosure of even those witnesses who deserve the protection much more than others. I accordingly have no hesitation therefore in dismissing this argument for want of any remedial merit of fostering the interest of a fair and expeditious trial.
41. From the foregoing, I find that unless exceptional cause to the contrary is shown by a Respondent in cases of this nature to warrant creating an exception, the option of globally protecting witnesses and victims, if chosen, instead of justifying such measures on a case-by-case basis, is legally well-founded and should be the rule, particularly so because as has been pointed out by the Trial Chamber in applications of this nature, it would be unrealistic to expect the Prosecution to carry the undue burden of having each witness narrate in specific terms in a document, the nature of his or her fears as to the actual or anticipated threats or intimidation before the Chamber rules on the substantive application.
42. In the present case, I find as a matter of fact that the Sierra Leonean society is still volatile and fragile as all indications are that it has not quite recovered from the memories, the ravages and the damage done by the devastating civil war. As a result, the witnesses, victims and their families are very vulnerable and should they fail to benefit from protective measures, they would be exposed to all forms of risks and recriminations from the indictees or their sympathisers.



43. In this regard, I accord a lot of credence to the solemn, convincing, and uncontradicted individual Declarations by the core group of responsible Officials. I find that their revelations and other issues which are highlighted in the submissions of the Applicant, coupled with the overall circumstances surrounding the case of this Respondent and that of other indictees of the same category, rise up to the standards required to sufficiently demonstrate, *inter alia*, the prerequisite of “exceptional circumstances” enshrined in Rule 69(A) as an element to be demonstrated or shown in other to justify the granting of the measures envisaged under this Rule following the principle in the *Tadic* case.
44. I accordingly grant the Application and do make the following Orders:
- (a) The Prosecution should withhold identifying data of the persons the Prosecution is seeking protection for as set forth in paragraph 16 or any other information which could lead to the identity of such person to the Defence until twenty-one (21) days before the witness is to testify at a 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 a trial, unless otherwise ordered;
  - (b) The names and any other identifying information concerning all witnesses, shall be sealed by the Registry and not included in any existing or future records of the Court;
  - (c) The Prosecution shall designate a pseudonym for each 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 witnesses or encourage or otherwise aide any person to attempt to determine the identity of any such person;
  - (d) The names and any other identifying information concerning all witnesses described in paragraph 23(a), shall 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) 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, is prohibited and this order shall remain in effect after the termination of the proceedings in this case;
  - (f) The Defence is prohibited from sharing, discussing or revealing, directly or indirectly, any disclosed non-public materials of any sort, or any information contained in any such documents, to any person or entity other than the Defence;



- (g) The Defence shall maintain a log indicating the name, address and position of each person or entity which receives a copy of, or information from, a witness statement, interview report or summary of expected testimony, or any other non-public material, as well as the date of disclosure; and that the Defence shall ensure that the person to whom such information was disclosed follows the order of non-disclosure;
- (h) The Defence shall 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 paragraphs 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) The Defence shall ensure that any member leaving the Defence team remits to the Defence team all disclosed non-public materials;
- (j) The Defence shall return to the Registry, at the conclusion of the proceedings in this case, all disclosed materials and copies thereof, which have not become part of the public record;
- (k) The Defence Counsel shall make a written request to the Trial Chamber or a Judge thereof, for permission to contact any protected witness or any relative of such person, and such request shall be timely served on the Prosecution. At the direction of the Trial Chamber or a Judge thereof, the Prosecution shall contact the protected person and ask for his 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.

45. THAT THESE ORDERS BE CARRIED OUT.

Done in Freetown, this 24<sup>th</sup> day of November 2003

Judge Benjamin Mutanga Itoe



Seal of the Special Court