



from the Defence, and delay the disclosure of these witnesses' identities until 42 days before the witnesses testify, for three categories of witnesses:

(a) witnesses presently in Sierra Leone who have not affirmatively waived their right to protective measures;

(b) witnesses who reside outside Sierra Leone but in West Africa who have not affirmatively waived their right to protective measures; and

(c) witnesses outside of West Africa who have requested protective measures;

**RECALLING** the submissions of the Prosecution at the Status Conference that in accordance with the Decisions for protective measures, it has disclosed redacted witness statements or witness summaries in lieu of witness statements, and that it has not disclosed the identity of any witnesses, save one, to the Accused or the Defence;

**RECALLING FURTHER** the submissions from the Prosecution that certain categories of witnesses, including victim-witnesses or “insider” witnesses, may require greater levels or forms of protection than other categories of witnesses;

**RECALLING** the submissions of the Defence<sup>[2]</sup> at the Status Conference on the impact of the protective measures granted in this case on their trial preparation;

**CONSIDERING** that the Statute of the Special Court specifically provides for the protection of victims and witnesses in Article 16(4), which prescribes that:

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. The Unit personnel shall include experts in trauma, including trauma related to crimes of sexual violence and violence against children.

And that as Article 17(2) of the Statute provides that “[t]he 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*”;<sup>[3]</sup>

**CONSIDERING** Rules 69 and 75 of the Rules, which implement Articles 16(4) and 17(2) of the Statute;

**CONSIDERING** Article 17 (“Rights of the Accused”) of the Statute, which prescribes certain minimum guarantees that must be afforded to each accused, including the right to have adequate time and facilities for the preparation of his defence;

**CONSIDERING** the distinction to be drawn between granting protective measures vis-à-vis the public versus granting protective measures that amount to non-disclosure or delayed disclosure to the Accused and the Defence;

**CONSIDERING** that the Decisions for protective measures specified that the protective measures granted were applicable at that stage of the proceedings, namely at the start of the pre-trial phase;[\[4\]](#)

**FINDING** that at this advanced stage of the pre-trial proceedings, it would be in the interests of justice to review the protective measures required in this case, and make any necessary and appropriate variations consistent with the pre-eminent need to balance the interest of the Prosecution and those of the Defence;

**PURSUANT TO** Article 17 of the Statute and Rules 69 and 75 of the Rules;

**HEREBY ORDERS** that:

(1) The Prosecution file a renewed motion for protective measures by 3 May 2004, pursuant to Rules 69 and 75 of the Rules, for each witness who appears on the Prosecution Witness List, which will be filed on 26 April 2004 in accordance with “Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial,” of 1 April 2004. The motion shall specify the form of protection being sought for each witness including delayed disclosure, pseudonym, face distortion or closed session, to the extent that the Prosecution can provide such specification. This motion shall further provide an overview of the reasons for the protective measures sought for witnesses whose names appear on the witness list. In this regard, the Trial Chamber finds that the Prosecution’s reference to specific categories of witnesses may facilitate the Prosecution’s task; and

(2) The protective measures granted in this case[\[5\]](#) shall remain in force until further notice.

Done at Freetown this 2nd day of April 2004

Judge Bankole Thompson  
Presiding Judge,  
Trial Chamber

[Seal of the Special Court for Sierra Leone]

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[\[1\]](#) *Prosecutor v. Issa Hassan Sesay*, SCSL-2003-05-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003 (“*Sesay Decision*”); *Prosecutor v. Morris Kallon*, SCSL-2003-07-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003 (“*Kallon Decision*”); *Prosecutor v. Augustine Gbao*, SCSL-2003-09-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 10 October 2003 (“*Gbao Decision*”).

[2] Morris Kallon was represented by Duty Counsel from the Defence Office of the Special Court at the Status Conference. Shekou Touray was provisionally assigned as counsel for Mr. Kallon on 17 March 2004.

[3] Emphasis added.

[4] See *Sesay* Decision, para 9 (“at the pre-trial stage”), *Kallon* Decision, para 12 (“Concerning the need for the protection of witnesses’ identities, at *the pre-trial* phase as distinct from the *trial* phase”); *Gbao* Decision, paras 53 and 54 (“a reasonable case has been made ... at the preliminary stage a measure of anonymity” and “at this stage of the proceedings pre-trial proceedings ... it would be inappropriate and unrealistic for the “Special Court” to decide otherwise”).

[5] See, footnote 1.