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SPECIAL COURT FOR SIERRA LEONE

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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 5 July, 2004

PROSECUTOR **Against** **Issa Hassan Sesay**
Morris Kallon
Augustine Gbao
(Case No.SCSL-04-15-T)

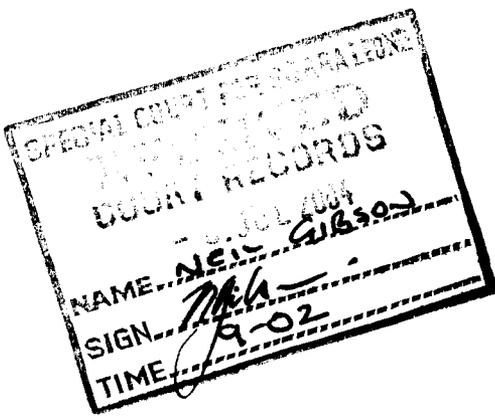
DECISION ON PROSECUTION MOTION FOR MODIFICATION OF PROTECTIVE MEASURES FOR WITNESSES

Office of the Prosecutor:
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Defence Counsel for Issa Hassan Sesay:
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THE TRIAL CHAMBER (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”), composed of Judge Benjamin Mutanga Itoe, Presiding Judge, Judge Bankole Thompson and Judge Pierre Boutet;

SEIZED of the Renewed Prosecution Motion for Protective Measures Pursuant to Order to the Prosecution for Renewed Motion for Protective Measures Dated 2 April 2004 (“Motion”) filed on 4 May 2004 by the Office of the Prosecutor (“Prosecution”);

NOTING the Order to the Prosecution for Renewed Motion for Protective Measures of 2 April 2004 (“Order”);

NOTING the Responses to the Motion filed by Defence Counsel for Issa Hassan Sesay¹ (“Sesay Response”) and by Defence Counsel for Morris Kallon² (“Kallon Response”), on 14 May 2004;

NOTING further that no Response was filed on behalf of the Accused Augustine Gbao;

NOTING the Order for Filing of a Consolidated Reply of 13 May 2004;

NOTING the Consolidated Reply to the Responses filed by the Prosecution on 18 May 2004 (“Consolidated Reply”);³

NOTING the Decisions for protective measures⁴ rendered in each individual case prior to being joined as “RUF-case” by an order of the Trial Chamber;⁵

CONSIDERING Articles 16 and 17 of the Statute of the Special Court (“Statute”) and Rules 53, 69 and 75 of the Rules of Procedure and Evidence (“Rules”);

¹ Defence Response to Prosecution Renewed Motion for Protective Measures, 14 May 2004.

² Kallon - Defence Response to Renewed Prosecution Motion for Protective Measures Pursuant to Order to the Prosecution for Renewed Motion for Protective Measures Dated 2 April 2004, 14 May 2004.

³ Prosecution Consolidated Reply to Defence Response to Prosecution Renewed Motion for Protective Measures for Witnesses.

⁴ *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; *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; *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 (“Protective Measures Decisions”).

⁵ Decision and Order on Prosecution Motions for Joinder, 27 January 2004, SCSL-2003-05-PT; SCSL-2003-07-PT; SCSL-2003-09-PT.

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MINDFUL of the need to guarantee the protection for the rights of the victims and witnesses, while ensuring the respect of the rights of the Accused to a fair and public hearing, and seeking to balance those rights with the competing interests of the public in the administration of justice;

I. THE SUBMISSIONS

A. The Motion

1. The Prosecution divides its witnesses into two groups, based on the witness list filed on 26 April 2004:

I. Witnesses of Fact

Categories within this group

- A. Witnesses who are victims of sexual assault and gender crimes
- B. Child witnesses
- C. Insider witnesses

II. Expert Witnesses and witnesses who have waived their right to protection⁶

2. The Prosecution seeks the following measures for witnesses in some of these categories:

- a) non-disclosure of the identity of witnesses of fact to the public;
- b) delayed disclosure of the identity of witnesses to the Defence until 42 days before they testify in court;
- c) the use of voice alteration device during the testimony of some witnesses and
- d) the use of closed circuit television through which some witnesses will give their testimony.⁷

3. The Prosecution submits that a balance has to be found between the security for prosecution witnesses and fairness to the Defence. It submits that pursuant to Article 17 of the Statute the right of the Accused to a fair and public hearing is subject to measures ordered by the Special Court for the protection of victims and witnesses.⁸

⁶ Motion, para. 3. Even though the wording and structure of the Motion gives the impression that Group I only consists of Sub-Categories A, B & C, this is obviously not the case, as the number of A, B & C witnesses amounts to 87, see Annex A of the Motion, there are only 7 expert witnesses, see Annex B of the motion, and no witness has so far waived his/her right. Counsel for Kallon properly pointed out this lack in clarity; see Kallon Response, para. 4.

⁷ *Id.*, para. 11.

⁸ *Id.*, para. 8.

4. The Prosecution states that the security in the country remains fragile and supports this assertion by affidavits.⁹
5. Specifically, it seeks some additional protective measures for all witnesses in Group I (witnesses of fact), namely allowing them to testify with use of a screening from the public and prohibiting photographing, video-recording, and sketching or in any other manner recording or reproducing images of any witness while he or she is in the precincts of the Special Court.¹⁰
6. Finally, the Prosecution asks for additional protective measures for certain categories of witnesses.
- a) Witnesses in category A (Victims of sexual assault and gender crimes) should testify with voice distortion, to avoid recognition by the public;¹¹
 - b) Witnesses in category B (Child witnesses) should be allowed to testify with closed-circuit television to avoid as far as possible serious emotional distress by facing the Accused;¹² and
 - c) Witnesses in Category C (Insider Witnesses) should be allowed to testify with voice distortion, as the fear of reprisals for these witnesses and their families is particularly strong.¹³
7. In summary, the Prosecution seeks for all witnesses comprised in Group 1 (witnesses of fact) that the order concerning the non-disclosure of these witnesses' identity to the public and delayed disclosure of the identity of witnesses to the Defence until 42 days before they testify in court to be kept in force,¹⁴ and more particularly that:
- a. "All witnesses shall be referred to by pseudonyms at all times during the course of proceedings whether during the hearing or in documents, including the transcript of the proceedings.
 - b. The names, addresses, whereabouts or and any other identifying information of witnesses shall be sealed and not included in any of the public records of the Special Court.
 - c. To the extent that the names, addresses, whereabouts or other identifying data concerning witnesses is contained in existing public documents of the Special Court, that information shall be expunged from those documents.

⁹ *Id.*, paras 16-18, Annexes C, D, E.

¹⁰ *Id.*, para. 11.

¹¹ *Id.*, para. 22.

¹² *Id.*, para. 24 & 28.

¹³ *Id.*, paras 30-32.

¹⁴ *Id.*, para. 20.

- d. Documents of the Special Court identifying witnesses shall not be disclosed to the public or media.
- e. All witnesses shall testify with the use of screening from the public.
- f. The public and the media shall not photograph, video-record, sketch or in any other manner record or reproduce images of any witness while he or she is in the precincts of the Special Court.
- g. Witnesses in Category A shall testify with the use of voice distortion.
- h. Witnesses in Category B shall testify with the aid of closed circuit television.
- i. Witnesses in Category C shall testify with the use of voice distortion.
- j. The Defence shall refrain 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;
- k. 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;
- l. The Defence shall provide to the Chamber and the Prosecution a designation of all persons working on the Defence team who, pursuant to paragraph 35(f) above, have access to any information referred to in paragraphs 35(a) through 35(d) above, and requiring the Defence to advise the Chamber and the Prosecution in writing of any changes in the composition of this Defence team;
- m. The Defence shall ensure that any member leaving the Defence team remits to the Defence team all disclosed non-public materials;
- n. 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;
- o. The Defence Counsel shall make a written request to the Trial Chamber or a Judge thereof, for permission to contact any Prosecution witness who is a protected witnesses [sic] 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.”¹⁵

B. Responses

8. In its Response Counsel for Sesay submits that pursuant to a decision of the International Criminal Tribunal for Yugoslavia (“ICTY”) in the case of *Brdanin*¹⁶ the Prosecution must show “exceptional circumstances” in relation to every witness. Therefore the Motion is flawed, as it lacks the details of specific objective threat and danger to the witnesses.¹⁷

9. Counsel for Sesay also submits that the orders sought in paragraph 35 (e), (g), (h), and (i) are effectively denying the public the opportunity to properly follow the trial.¹⁸

10. Regarding screening from the public, Counsel for Sesay states that it is unnecessary and “draconian” and should only be used if and when the Prosecution shows the objective fear for a particular witness. Counsel submits that the same applies to voice distortion and closed circuit television.¹⁹

11. Moreover, the Defence for Sesay submits that no witness protection should be afforded to insider witnesses as the credibility of these witnesses has to be judged in a public forum.²⁰

12. Counsel for Kallon opposes the orders sought in paragraph 35 (a)-(c) of the Motion for insider witnesses as the public interest in the conduct of the trial and the right of the Accused to a fair and public hearing together a testimony in open court by these insider witnesses. Regarding 35 (d) and (j), it is submitted that this would unduly hamper the Defence in the preparation of its case, thereby infringing the Accused’s right to a fair trial. Counsel submits that screening from the public (35 (e)) and the measures sought for the categories A-C (35 (g), (h) and (i)) are also not acceptable as they do not satisfy the proportionality test. The Defence however submits that the use of closed sessions would strike

¹⁵ *Id.*, para. 35.

¹⁶ *Prosecutor v Brdanin & Talic*, IT-99-36, Decision on Motion by Prosecution for Protective Measures, 3 July 2000.

¹⁷ Sesay Response, para. 9.

¹⁸ *Id.*, para. 13.

¹⁹ *Id.*, paras 16-18.

²⁰ *Id.*, para. 19.

the proper balance. The maintaining of a log (35 (k)) was held oppressive in decisions at the International Criminal Tribunal for Rwanda ("ICTR") and rejected. Finally, 35(n) is devoid of merits as these documents may be necessary for the purpose of appeal.²¹

C. Consolidated Reply

13. The Prosecution submits that there is sufficient evidentiary basis for the motion, as the evidence shows security threats for the witnesses. It also rebuts the assertions of the Defence regarding the disproportionality of the measures sought and states that delayed disclosure does not adversely infringe on the rights of the accused and submits that the use of voice distortion / closed-circuit television are not excessive.²²

II. DELIBERATION

A. Applicable Law

14. Pursuant to Article 16 of the Statute, the Special Court guarantees in its Rules the protection of victims and witnesses. To this end, Article 16 (4) provides that:

[Witnesses and Victims 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.

15. Article 17 of the Statute, paragraph (2), also provides 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.

16. According to the Rules, such protective measures shall include, without being limited to, the protection of a witness' identity. Rule 75 (A) and (B) of the Rules state in particular that:

²¹ Kallon Response, paras 28, 31 & 34 and Conclusion 1-5.

²² Consolidated Reply, paras 16-18.

(A) 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 Witnesses and Victims Section, 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.

(B) A Judge or a Chamber may hold an *in camera* proceeding to determine whether to order:

(i) Measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with him by such means as:

(a) Expunging names and identifying information from the Special Court's public records;

(b) Non-disclosure to the public of any records identifying the victim or witness;

(c) Giving of testimony through image- or voice- altering devices or closed circuit television, video link or other similar technologies; and

(d) Assignment of a pseudonym;

(ii) Closed sessions, in accordance with Rule 79;

(iii) Appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television.

17. Furthermore, Rule 53 of the Rules provides in paragraph (A) that:

In exceptional circumstances, a Judge designated pursuant to Rule 28 may, in the interests of justice, order the non-disclosure to the public of any documents or information until further order.

and in paragraph (C) that:

A Judge may, on the application of the Prosecutor, also order that there be no disclosure of an indictment, or part thereof, or of all or any part of any particular document or information, if satisfied that the making of such an order is required to give effect to a provision of the Rules, to protect confidential information obtained by the Prosecutor, or is otherwise in the interests of justice.

18. According to Rule 69 of the Rules:

(A) In 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 victim or witness who may be in danger or at risk, until the Judge or Chamber decides otherwise.

(B) In the determination of protective measures for victims and witnesses, the Judge or Trial Chamber may consult the Witnesses and Victims Section.

(C) Subject to Rule 75, the identity of the victim or witness shall be disclosed in sufficient time before a witness is to be called to allow adequate time for preparation of the prosecution and the defence.

B. Modifications of former Protective Measures

19. The Prosecution seeks for several protective measures to be granted to witnesses in Group I (witnesses of fact) which are essentially modifications, adaptations and adjustments to the trial stage of measures already ordered by this Chamber in the Protective Measures Decisions prior to the trial phase in each individual case, namely in *Prosecutor v Issa Hassan Sesay, Augustine Gbao and Morris Kallon*.

20. The following orders which the Prosecution has applied for fall in this category of modified protective measures:

- a. All witnesses shall be referred to by pseudonyms at all times during the course of proceedings whether during the hearing or in documents, including the transcript of the proceedings. (modified Order c²³)
- b. The names, addresses, whereabouts or and any other identifying information of witnesses shall be sealed and not included in any of the public records of the Special Court. (modified Order b²⁴)
- d. Documents of the Special Court identifying witnesses shall not be disclosed to the public or media. (modified Order e²⁵)

²³ Order (c) of the Protective Measures Decisions reads as follows:

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;

²⁴ Order (b) of the Protective Measures Decisions reads as follows:

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;

²⁵ Order (e) of the Protective Measures Decisions reads as follows:

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;

- j. The Defence shall refrain 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; (modified Order f²⁶)
- k. 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; (identical to Order g²⁷)
- l. The Defence shall provide to the Chamber and the Prosecution a designation of all persons working on the Defence team who, pursuant to paragraph 35(f) above, have access to any information referred to in paragraphs 35(a) through 35(d) above, and requiring the Defence to advise the Chamber and the Prosecution in writing of any changes in the composition of this Defence team; (modified Order h in the *Sesay* and *Kallon* decisions²⁸)
- m. The Defence shall ensure that any member leaving the Defence team remits to the Defence team all disclosed non-public materials; (modified Order i²⁹)
- n. 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; (modified Order j³⁰)
- o. The Defence Counsel shall make a written request to the Trial Chamber or a Judge thereof, for permission to contact any Prosecution witness who is a protected witness or any relative of

²⁶ Order (f) of the Protective Measures Decisions reads as follows:

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;

²⁷ Order (g) of the Protective Measures Decisions reads as follows:

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;

²⁸ Orders (h) of the Protective Measures Decisions in the cases of *Sesay* and *Kallon* read as follows:

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;

However, order (h) of the Protective Measures Decision in the case of *Gbao* reads as follows:

That the Defence provide to the Registrar and the Defence Office 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 Registrar and the Defence Office in writing of any changes in the composition of this Defence team;

²⁹ Order (i) of the Protective Measures Decisions reads as follows:

That the Defence ensure that any member leaving the Defence team remits to the Defence team all disclosed non-public materials;

³⁰ Order (j) of the Protective Measures Decisions reads as follows:

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. (modified Order k³¹)

It should be noted for the purpose of this decision that the sought Order c

“To the extent that the names, addresses, whereabouts or other identifying data concerning witnesses is contained in existing public documents of the Special Court, that information shall be expunged from those documents.”

did not form part of the protective measures that had previously been granted, but follows in our opinion implicitly from Order b, which is solicited.

21. From the convincing and uncontradicted statements, attached to the Prosecutions' Motion, the Chamber concludes that there exists no substantial change in the circumstances regarding the security of witnesses that would justify any modification to the protective measures decisions that were previously issued at the pre-trial phase save and except those changes required to make the necessary adjustments for the trial phase. Accordingly, the Chamber finds that there exist no requirement or circumstances that would justify reconsidering them.

22. However, regarding the content of Order (l) requested by the Prosecution in its Motion, it was held by learned Judge Boutet on this subject in his Decision on protective measures in the case of Gbao³² that

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;

³¹ Order (k) of the Protective Measures Decisions reads as follows:

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.

³² *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, para. 59.

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“...the Special Court does not consider it appropriate, nor justified, that the Defence be compelled to provide to the Trial Chamber and to the Prosecution a designation of such persons and to advise the Trial Chamber and the Prosecution in writing of any changes in the composition of the Defence team.”

The Trial Chamber deems it more appropriate and justifiable to only advise the Registrar and the Defence Office of such a designation. Therefore, sought Order (l) of the Motion shall be modified accordingly and is granted in the following form:

- l) The Defence shall provide to the Registrar and to the Defence Office a designation of all persons working on the Defence team who, pursuant to paragraph 35(f) above, have access to any information referred to in paragraphs 35(a) through 35(d) above, and requiring the Defence to advise the Registrar and the Defence Office in writing of any changes in the composition of this Defence team;

23. As to the delayed disclosure of the identity of witnesses, the Prosecution did not request any modification to the time period of 42 days. It is the considered opinion of this Chamber, having regard to the information provided in support of this application and due to the fragile security situation still existing in Sierra Leone as such is further described in the HQ UNAMSIL MILINFOSUM Report³³, that the rolling disclosure of unredacted statements 42 days prior to the testimony of these witnesses is to remain unchanged.

C. Additional Protective Measures during Testimony at Trial

Screen from Public and Prohibition of Photography

24. The Prosecution seeks additional measures for the protection of all witnesses in Group I. They request that all these witnesses be allowed to testify with the use of a screening device from the public that would shield his/her identity. Moreover, a related order sought is that the public and the media should not be allowed to photograph, video-record, sketch or in any other manner record or reproduce images of these witnesses while he or she is in the precincts of the Special Court.

25. Article 17(2) of the Statute guarantees the Accused a right “to a fair and public hearing, subject to measures ordered by the Special Court for the protection of victims and witnesses” (emphasis added).

³³ See e.g. HQ UNAMSIL MILINFOSUM for the Period 101600Z - 111559Z FEB 04.

26. A screen to protect the identity of the witness from the public might be considered to a certain extent to affect the public nature of the trial in that it impacts on the possibility of the public's ability to follow and observe all the proceedings, and consequently could be said to have within that context and to that extent an impact on the right of the Accused to a public hearing. Consistent with this line of reasoning, it is, however, established by jurisprudence of other international criminal tribunals and courts³⁴, which we accept persuasively, that, generally, preference should be given to a public hearing to avoid the impression of "in camera" justice for the Accused, as well as to give the public the possibility to follow the trial. It is also firmly established that "this preference has to be balanced with other mandated interests"³⁵, among them protective measures for victims and witnesses, as laid down in Article 17(2) of the Statute.

27. The location of the Special Court in the very country where the crimes were allegedly committed combined with the fragility of the security situation that still exists, is a paramount and compelling factor in considering the merits of this application. It increases considerably the risks to all witnesses called upon to give evidence at trials. Again based upon the information provided and the uncontradicted statements submitted, in particular the declaration of the Chief of the Victims and Witnesses Unit of the Special Court, Mr. Saleem Vahidy, the Prosecution has demonstrated, in the opinion of the Court, that there still exist legitimate and real fears on the part of the witnesses called to testify at trial, making it necessary to give considerable weight to security risks that could be encountered.

28. Based upon the foregoing, it is our considered opinion that the use of a screen to protect all witnesses in Group I in court, is a reasonable, appropriate and sensible way of a balancing the right of the Accused to a public hearing and the right of the public to be properly informed about the proceedings before the Special Court on the one side, with the security interests of the witnesses on the other.

29. The Defence did not raise any objection regarding the measure sought by the Prosecution to prohibit photographing, video-recording, sketching or in any other manner recording or reproducing images of any witness while he or she is in the precincts of the Special Court. We would nevertheless

³⁴ See *Prosecutor v. Tadic*, IT-94-1-T, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses, 10 August 1995 ("*Tadic* Decision"), para. 32.



like to observe that, as in the case of *Andre Rwamakuba*, where the ICTR found that such a measure was a “normal” protective measure which does “not affect the rights of the Accused,”³⁶ we also find that this measure would not affect the Accused’s rights.

Special Protective Measures for Categories A, B, C – Voice Distortion and Closed-Circuit Television

30. The Prosecution also seeks additional protective measures for certain categories of witnesses:

- (i) All witnesses in Category A and C, namely victims of sexual violence and insider witnesses be allowed to testify with the use of voice distortion for the public for; and
- (ii) Child witnesses of Category B be allowed to testify with the aid of closed-circuit television, which may be observed by the Defence and the Trial Chamber, but not the public.

31. Defence for Kallon submitted that it would rather agree to closed session for some witnesses than to the measures sought by the Prosecution for the categories of witnesses requiring special protection. Generally, having closed sessions seems to be a far stricter approach to witness protection than the measures sought by the Prosecution. It seems obvious that the Defence for Kallon misinterpreted the Motion in this respect. Prosecution is seeking that the new protective measures apply only with regards to the public. Thus, these measures will not preclude an accused from seeing and observing the demeanour of these witnesses and, therefore, will not infringe on the rights of the Accused to a fair and public trial as alleged by the Defence for Kallon.

32. The Chamber’s argument, demonstrating the necessity of balancing the right to a public hearing of the Accused with the requirement to guarantee the protection of victims and witnesses, also applies to these additional measures. Moreover, it is trite law that the need for special consideration to victims of sexual violence or children during their testimonials in court has been widely recognised in both domestic laws of states and in international courts.³⁷

33. Specifically, for Categories A and C (victims of sexual violence and insider witnesses), voice distortion for the public speakers were sought. Regarding Category A, victims of sexual violence, the Prosecution pointed out the risk for re-traumatisation and rejection by the victim’s family and

³⁵ *Id.* para. 33.

³⁶ *Prosecutor v Andre Rwamakuba*, ICTR-9844-T, Decision on the Prosecutor’s Motion for Protective Measures for Witnesses, 22 September 2000, para. 14.


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community and the possibility to recognise the voice of the witness.³⁸ For insider witnesses in Category C, the Prosecution underlined the particular vulnerability of members of this group and their families to acts of retaliation and potential harm, due to their important testimony implicating directly the Accused. In the opinion of the Trial Chamber, these submissions once more demonstrate convincingly the risks for the security and danger to which both categories of witnesses could be exposed if disclosed and the requirement to grant appropriate measures for their protection.

34. As regards Category B witnesses, child witnesses, the Prosecution seeks the possibility for testimony by way of closed-circuit television. While the witness testifies in a back room in the court building, this would allow the Accused and the Defence, as well as the Trial Chamber and the Prosecution, to see the witness on a television-screen and observe his/her demeanour while the image on the screen for the public at that time would be distorted. As stated by Psychologist An Michels³⁹, vulnerable witnesses such as children have a high risk of re-traumatisation and the possibility of stigmatisation and rejection is real and high. On this issue the U.S. Supreme Court, whose reasoning we find instructive and persuasive, held in *Maryland v. Craig* that the use of closed circuit television does not violate the constitutional right of an Accused to confrontation if it is necessary in the opinion of the Court to protect a child witness from psychological harm.⁴⁰

35. In the light of the above and of the evidence submitted, the Chamber finds that such risks as described would exist and therefore deems it necessary in the interest of justice, for children to be allowed to testify in the way in which the Prosecution has requested, in accordance with Rule 75(B)(i)(a) and to grant such a measure.

III. DISPOSITION

HEREBY grants the Motion and **ORDERS** for all witnesses in Group I (witnesses of fact) as follows:

- a. That all witnesses shall be referred to by pseudonyms at all times during the course of proceedings whether during the hearing or in documents, including the transcript of the proceedings;

³⁷ See *Tadic* Decision, supra note 34, para. 47.

³⁸ See also *Prosecutor v Delalic et al.*, IT-96-21-T, Judgement, para 495.

³⁹ Motion, Annex G.

⁴⁰ See *Maryland v Craig*, 497 U.S. 836 (1990).

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- b. That the names, addresses, whereabouts and any other identifying information of witnesses shall be sealed and not included in any of the public records of the Special Court;
- c. That to the extent that the names, addresses, whereabouts or other identifying data concerning witnesses are contained in existing public documents of the Special Court, that information shall be expunged from those documents;
- d. That documents of the Special Court identifying witnesses shall not be disclosed to the public or media;
- e. That all witnesses testify with the use of a screening device from the public;
- f. That photographing, video-recording, sketching and recording or reproducing in any other manner of images of any witness of Group I (witnesses of fact) are prohibited while he or she is in the precincts of the Special Court;

And FURTHER ORDERS

- g. That the voice of witnesses in Category A (victims of sexual violence) during their testimony in trial be distorted in the speakers for the public;
- h. That witnesses in Category B (children) testify with the use of a closed-circuit television; the image appearing on the public's monitors being distorted;
- i. That the voice of witnesses in Category C (insider witnesses) during their testimony in trial be distorted in the speakers for the public;
- j. The Defence shall refrain 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;
- k. 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;
- l. The Defence shall provide to the Registrar and to the Defence Office a designation of all persons working on the Defence team who, pursuant to paragraph 35(f) above, have access to any information referred to in paragraphs 35(a) through 35(d) above, and requiring the Defence to advise the Registrar and to the Defence Office in writing of any changes in the composition of this Defence team;

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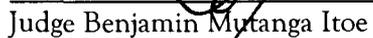
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- m. The Defence shall ensure that any member leaving the Defence team remits to the Defence team all disclosed non-public materials;
- n. The Defence shall return to the Registry, at the conclusion of the proceedings in this case, all disclosed materials and copies thereof, which have not become part of the public record;
- o. The Defence Counsel shall make a written request to the Trial Chamber or a Judge thereof, for permission to contact any Prosecution witness who is a 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 or her consent or the parent's or guardian's consent 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.
- p. That the unredacted witness statements are to be disclosed to the Defence 42 days prior to the testimony at trial of these witnesses.

Done at Freetown this 5th day of June 2004



Judge Pierre Boutet



Presiding Judge
Trial Chamber

