



**NOTING** Rule 66 of the Rules of Procedure and Evidence of the Special Court (“Rules”);

**NOTING** the *Ruling on Disclosure Regarding Witness TF1-015* of the 28th of January, 2005;

**NOTING** that the Trial Chamber on the 1st of February, 2005 delivered an oral Ruling and that the Trial Chamber indicated at that time that a reasoned written Ruling on this matter would be delivered in due course;

**THE TRIAL CHAMBER HEREBY ISSUES ITS RULING:**

1. This is the unanimous ruling of the Chamber on the objection raised by the Defence to certain pertinent portions of the testimony of Witness TF1-195.
2. After the conclusion of the examination in chief of Witness TF1-195, the Defence raised the objection that certain portions of the evidence pertaining to two specific episodes, firstly the rape of Witness TF1-195 which allegedly took place about two miles from Gandorhun and, secondly an allegation of forced labour, were new. They also contended that they were already in possession of the Prosecution and had not been previously disclosed to the Defence.
3. Consequently, the Defence claimed that the Prosecution had breached its obligations to disclose pursuant to Rule 66 of the Rules and accordingly requested that the Chamber exclude these portions of the evidence from the examination in chief of Witness TF1-195.
4. The Chamber requested that the Defence explain why it had only raised its objection after the conclusion of the examination in chief of the witness rather than at each specific moment when the evidence in question was led by the Prosecution. The Defence submitted that it was not sure whether the evidence of the rape was new or rather whether it referred, with some modifications, to another episode of rape contained in the previously disclosed statement. It was also stated by the Defence that only when evidence on this second episode of rape was led by the Prosecution, at the very end of the examination-in-chief of Witness TF1-195, the Defence became sure of the novelty of the portion of evidence pertaining to the first rape. In addition, the Defence indicated that it deliberately decided not to raise any objection until the end of the examination-in-chief of Witness TF1-195 in order to avoid causing her undue distress during her testimony.
5. In its response to the objection, the Prosecution stated that it would not oppose an application to exclude or rule inadmissible evidence pertaining to the first episode of rape and to the forced labour. Asked by the Chamber whether it was in possession of the evidence of both the first episode of rape of Witness TF1-195 and the forced labour, the Prosecution responded that it had been in possession of this evidence for two days and admitted that it accordingly ought to have been disclosed to the Defence prior to testimony in court.
6. The Chamber is of the opinion that the aforesaid matters complained of clearly constitute a breach on the part of the Prosecution of their disclosure obligation pursuant to Rule 66 of Rules. The rationale of this rule, as expounded in our recent decisions on

the subject,[\[1\]](#) is that both parties must act in good faith at all times in respect of their disclosure obligations.

7. The Chamber acknowledges that, as a general rule, the judicially preferred remedy for a breach of disclosure obligations by the Prosecution is an extension of time to enable the Defence to adequately prepare their case. It is not exclusion of the evidence. However, in the particular circumstances at hand, this Chamber finds that the Prosecution has failed to promptly exercise due diligence that is required in discharging its duty to disclose to the Defence all of the information in its possession in accordance with Rule 66 of the Rules, and given the gravity of the allegations, is satisfied that this is a proper case in which to apply the remedy of exclusion.

8. The Chamber, therefore, **ORDERS** that the aforesaid portions of the testimony of Witness TF1-195 are to be excluded and will not be given any consideration by this Chamber as part of the Prosecution case.

Done in Freetown, Sierra Leone, this 4th day of February, 2005

Hon. Justice Pierre Boutet    Hon. Justice Benjamin Mutanga    Hon. Justice Bankole Thompson  
Itoe  
Presiding Judge  
Trial Chamber

[Seal of the Special Court]

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[\[1\]](#) See, for example: *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Ruling on Oral Application for the Exclusion of “Additional” Statement for Witness TF1-060, 23 July 2004; *Prosecutor v. Norman et al.*, Case No SCSL-04-14-T, Decision on Disclosure of Witness Statements and Cross-Examination, 16 July 2004; *Prosecutor v. Brima et al.*, Case No. SCSL-04-16-PT, Kanu – Decision on Motions for Exclusion of Prosecution Witness Statements and Stay of Filing of Prosecution Statements; *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Sesay - Decision on Defence Motion for Disclosure Pursuant to Rules 66 and 68 of the Rules, 9 July 2004; *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Ruling on the Oral Application of the Exclusion of Part of the Testimony of Witness TF1-199, 26 July 2004; and *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Ruling on Disclosure Regarding Witness TF1-015, 28 January 2005.

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