

MINDFUL of the Decisions and Orders of this Trial Chamber concerning protective measures, including the “Decisions on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure” for each individual accused in the RUF trial^[1] and, in particular, the “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses” filed on the 5th of July 2004;^[2]

MINDFUL of the “Order to the Prosecution for Renewed Motion for Protective Measures” filed on the 2nd of April, 2004;

NOTING the current “Prosecution Updated Witnesses List”, filed on the 20th of February, 2006;

NOTING the oral submissions made by the Prosecution on the 28th of March, 2006 concerning changes to applicable protective measures with reference to one of its witnesses residing outside Sierra Leone and the submissions in response made by the Defence;^[3]

REITERATING that the Prosecution is under an obligation to seek leave of the Chamber for the specific variation of the current protective measures previously granted to any of its witnesses;^[4]

RECALLING the Trial Chamber’s Decision of the 5th of July, 2004, granting the following protective measures to all witnesses in Group I (Witnesses of fact, including witnesses who are victims of sexual assault and gender crimes (Category A); child witnesses (Category B) and insider witnesses (Category C)):

- 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;
- 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;
- 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;
- 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; and
- p. That the unredacted witness statements are to be disclosed to the Defence 42 days prior to the testimony at trial of these witnesses.

MINDFUL of the principle that a decision on protective measures requires a balance to be struck between full respect for the rights of the Accused and the protection needs of victims and witnesses, within the legal framework of the Statute and Rules and within the context of a fair trial;[\[5\]](#)

MINDFUL that in its Decision of the 5th of July, 2004 the Trial Chamber noted that insider witnesses and their families were particularly vulnerable to acts of retaliation and potential harm if their identities were to be known to the public and that vulnerable witnesses such as children have a high risk of re-traumatisation and the possibility of stigmatisation and rejection is real and high;[\[6\]](#)

MINDFUL that, in the Kondewa Decision,[\[7\]](#) it was observed that:

“The Republic of Sierra Leone is a relatively small community where people are bound to and in fact know and identify themselves very easily thereby increasing the danger of risk of a recruitment of hostilities against potential witnesses and victims and their families if they are identified by the indictees of their sympathisers as those whose testimony would incriminate them, or in due course and more still, the indictees who they support out there;”

RECOGNIZING the unique feature of the Special Court being located in Sierra Leone where the offences charged against all the Accused persons are alleged to have been committed and that this fact could have a substantial impact on the security considerations for victims and witnesses;[\[8\]](#)

RECOGNIZING that, however, there might have been a substantial change in the particular circumstances which previously warranted the granting of the currently applicable protective measures;

CONSIDERING that, at this advanced stage of the trial proceedings, it would be in the interest of justice for the Prosecution to review the protective measures currently applicable for its witnesses, and make any necessary and appropriate variation thereof consistent with the need to balance the respect of the rights of the Accused and the protection of victims and witnesses;

CONSIDERING that in accordance with Article 17.2 of the Statute of the Special Court (“Statute”) any Accused person is entitled to “a fair and public hearing, subject to measures ordered by the Special Court for the protection of victims and witnesses”;

PURSUANT TO Articles 17 of the Statute and Rules 26*bis*, 54, 69 and 75 of the Rules of Procedure and Evidence;

THE TRIAL CHAMBER, further to its Oral Ruling rendered on the 28th of March, 2006,

ORDERS the Prosecution to review its Updated Witness List with a view to determine the necessity for the continuous application of all the protective measures that have been previously granted to its Group I witnesses, and in particular to witnesses within this Group currently

residing outside the jurisdiction of the Special Court and, should they not be further required, to promptly apply to the Chamber for the variation of any such protective measures.

Done at Freetown, Sierra Leone, this 29th day of March, 2006

Hon. Justice Benjamin Mutanga
Itoe

Hon. Justice Pierre Boutet

Presiding Judge
Trial Chamber I

Hon. Justice Bankole
Thompson

[Seal of the Special Court for Sierra Leone]

[1] *Prosecutor v. Sesay*, Case No. SCSL-03-05-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. Kallon*, Case No. SCSL-03-07-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003, and *Prosecutor v. Gbao*, Case No. SCSL-03-09-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 10 October 2003.

[2] *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004 (“Decision of the 5th of July, 2004”).

[3] Transcripts, 28 March 2006, p. 110-124.

[4] *Id.* See also, for instance, *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, Ruling on Motion for Modification of Protective Measures for Witnesses, 18 November 2004, para. 43; *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Ruling on Oral Application of the Prosecution to Vary the Protective Measures of Witness TF1-141, 6 April 2005.

[5] *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Order on Protective Measures for Additional Witnesses, 24 November 2004, p. 3. See also Decision of the 5th of July, 2004.

[6] Decision of the 5th July, 2004, paras. 33-34. See also *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Order on Protective Measures for Additional Witnesses, 24 November 2004.

[7] *Prosecutor v. Kondewa*, SCSL-03-12-PT, Ruling on 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, 10 October 2003, para. 30.

[8] See for example *Prosecutor v. Gbao*, Case No. SCSL-2003-09-PT, Decision on the Prosecution Motion for Immediate Protective Measures for Victims and Witnesses and for Non-Public Disclosure, 10 October 2003, paras. 21-25; see also *Prosecutor v. Norman et al.*, Case No.

SCSL-2004-14-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 8 June 2004, para. 29.
