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SPECIAL COURT FOR SIERRA LEONE

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TRIAL CHAMBER I

**Before:** Hon. Justice Bankole Thompson, Presiding Judge  
Hon. Justice Pierre Boutet  
Hon. Justice Benjamin Mutanga Itoe

**Registrar:** Mr. Lovemore G. Munlo SC

**Date:** 30<sup>th</sup> of November 2006

**PROSECUTOR** Against **ISSA HASSAN SESAY**  
**MORRIS KALLON**  
**AUGUSTINE GBAO**  
(Case No. SCSL-04-15-T)

Public Document

DECISION ON SESAY DEFENCE MOTION FOR IMMEDIATE PROTECTIVE MEASURES  
FOR WITNESSES AND VICTIMS AND FOR NON-PUBLIC DISCLOSURE

Office of the Prosecutor:

James C. Johnson  
Peter Harrison

Defence Counsel for Issa Hassan Sesay:

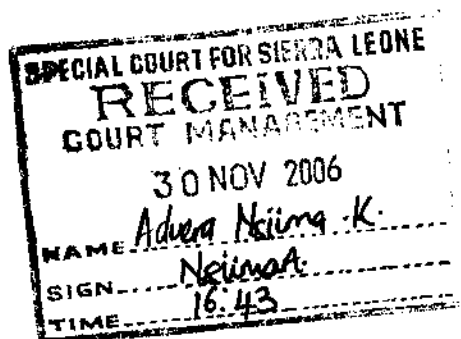
Wayne Jordash  
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Defence Counsel for Morris Kallon:

Shekou Touray  
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Melron Nicol-Wilson

Court Appointed Counsel for Augustine Gbao:

Andreas O'Shea  
John Cammegh



**TRIAL CHAMBER I** ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Hon. Justice Bankole Thompson, Presiding Judge, Hon. Justice Pierre Boutet, and Hon. Justice Benjamin Mutanga Itoe;

**SEIZED** of the *Sesay Defence Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure* filed publicly by Defence Counsel for the First Accused, Issa Hassan Sesay, ("Defence") on the 25<sup>th</sup> of July 2006 ("Motion");

**NOTING** the Response filed by the Office of the Prosecutor ("Prosecution") on the 28<sup>th</sup> of July 2006 ("Response") and the Reply thereto filed by the Defence on the 2<sup>nd</sup> of August 2006 ("Reply");

**MINDFUL** of this Chamber's oral *Decision on Defence Motions for Judgement of Acquittal*, rendered on the 25<sup>th</sup> of November 2006;

**MINDFUL** of the *Scheduling Order Concerning the Preparation and the Commencement of the Defence Case* filed on the 30<sup>th</sup> of October 2006;

**MINDFUL** of the Decisions and Orders of this Trial Chamber concerning protective measures for prosecution witnesses, 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<sup>1</sup> and, in particular, the *Decision on Prosecution Motion for Modification of Protective Measures for Witnesses* filed on the 5<sup>th</sup> of July 2004;<sup>2</sup>

**PURSUANT** to Articles 16 and 17 of the Statute of the Special Court ("Statute") and Rules 26bis, 34, 53, 54, 69 and 75 of the Rules of Procedure and Evidence ("Rules");

**THE TRIAL CHAMBER ISSUES THE FOLLOWING DECISION:**

<sup>1</sup> *Prosecutor v. Sesay*, 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*, 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*, 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.

<sup>2</sup> *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004.

I. SUBMISSIONS OF THE PARTIES

25526

A. *The Motion*

1. Pursuant to Rules 69 and 75 of the Rules, the Defence seeks protection for potential defence witnesses and those defence witnesses who have already indicated their willingness to testify, and who have not affirmatively waived their right to protective measures and who fall into one of the following three categories:

- (a) Witnesses who reside in Sierra Leone;
- (b) Witnesses who reside outside Sierra Leone either in other countries in West Africa or who have relatives in Sierra Leone;
- (c) Witnesses residing outside West Africa.<sup>3</sup>

2. In addition, the Defence seeks an order prohibiting the Prosecution from disclosing to the public or media any non-public materials provided to them as part of the Defence case at trial or appeal.<sup>4</sup>

3. In support of the Motion, the Defence avers that potential defence witnesses for its case and those who have already indicated their willingness to testify fear the social and economic consequences of testifying for the Defence, including reprisals from ex-combatants seeking to sabotage the Defence case, as well as public condemnation for associating with the RUF.<sup>5</sup> The Defence further declares that potential witnesses living in areas where there is substantial anti-RUF sentiment also fear condemnation, social exclusion, and physical violence if others learn of their intention to testify on behalf of the Defence.<sup>6</sup> The Defence supports these assertions with a statement from one of its investigators, that one defence witness was threatened with dismissal from employment for speaking with the Defence, and subsequently refused to meet again with members of the Defence team.<sup>7</sup>

4. Thereupon, the Defence seeks from the Trial Chamber an order providing the following protective measures for its witnesses:

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<sup>3</sup> Motion, para. 20.

<sup>4</sup> *Id.*, para. 21.

<sup>5</sup> *Id.*, paras 9-11.

<sup>6</sup> *Id.*, para. 12

<sup>7</sup> *Id.*, paras 8-14. See also Annex A.



25527

- a) All witnesses should be screened from the public when testifying;
- b) There should be no photographing, audio or video recording, or sketching of witnesses without leave of the Trial Chamber;
- c) The Witnesses and Victims Section of the Special Court ("WVS") should afford Defence witnesses the same level of protection under the same circumstances as Prosecution witnesses have previously received;
- d) The Defence should be allowed to withhold identifying data of witnesses from the Prosecution until 21 days before trial;
- e) The Registry should seal the names or any other identifying data of all witnesses, and this information should not be included in any existing or future records of the Special Court;
- f) The Defence should designate a pseudonym for each witness, to be used during pre-defence case disclosure of witness summaries and during trial proceedings. The Prosecution, as well as the Defence Teams for the Second and the Third Accused, should not independently determine the identities of protected witnesses or aid any person attempting to do so;
- g) The names or any other identifying data of all witnesses should be communicated to the WVS and the Prosecution no more than 21 days before the witness testifies, and only for the purpose of implementing protection measures;
- h) The names or any other identifying data of all witnesses should only be communicated to the Prosecution after the WVS has taken all protective measures determined to be necessary;
- i) The names or any other identifying data of witnesses should not be disclosed to the public or media, and this order should remain in effect after the conclusion of the trial proceedings;
- j) The Prosecution, as well as the Defence Teams for the Second and the Third Accused, should not share or reveal any disclosed non-public materials to any entity other than the Defence;
- k) The Prosecution should maintain a log indicating the name, address, and position of anyone who receives a witness statement, interview report, summary of expected testimony, or any non-public material, as well as the date of disclosure; the Prosecution shall ensure that individuals to whom information is disclosed adheres to the non-disclosure order;
- l) The Prosecution, as well as the Defence Teams for the Second and the Third Accused, should, at the conclusion of the proceedings, return to the registry all disclosed materials which have not become part of the public record; and, finally
- m) The Prosecution, as well as the Defence Teams for the Second and the Third Accused, should make a written request to the Trial Chamber or Judge for permission to contact any protected witness or relative thereof, and this request shall then be served on the Defence. The Defence shall then contact



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the protected person and ask for his or her consent, or the consent of his or her parents or guardian if the protected person is under the age of 19, to be interviewed by the Prosecution, as well as by the Defence Teams for the Second and the Third Accused.<sup>8</sup>

**B. The Prosecution Response**

5. In its Response, the Prosecution submits that in order to meet the Rule 69 test of "exceptional circumstances," the Defence must establish both facts supporting the subjective fears of the witness and evidence indicating an objective basis for those fears.<sup>9</sup> The Prosecution further submits that the Motion filed by the Defence fails to provide sufficient evidence that the witnesses referred to by the Defence have an objective basis for their subjective fears.

6. On the issue of the specific protective measures sought by the Defence, the Prosecution submits that the Trial Chamber should reject proposed measures (a), (b), (e), (f), and (j). The Prosecution indicates that it has no objection to an order granting the Defence leave to re-file a motion for these particular protective measures if they are tailored to withhold the identity of witnesses from the public, though not from the Prosecution, provided that the Defence adduces sufficient evidence of an objective threat to the witnesses. The Prosecution also indicates that it will not oppose an interim order implementing the aforementioned proposed measures until the Trial Chamber can rule on a re-filed Defence Motion.<sup>10</sup>

7. It is further submitted by the Prosecution that because the protection and assistance provided by the WVS varies with each witness's circumstances, proposed measure (c) is meaningless, and should be rejected.<sup>11</sup> The Prosecution further submits that proposed measure (h) should not be granted, as the decision whether to grant protective measure is a matter for the Court, and not the WVS.<sup>12</sup>

8. The Prosecution also submits that the Defence has failed to provide evidence that disclosing witness information to the Prosecution will create a threat to witnesses, and the Court should therefore deny proposed measure (f).<sup>13</sup> The Prosecution, again, submits that if the Court does grant

<sup>8</sup> *Id.*, para. 23.

<sup>9</sup> Response, para. 3.

<sup>10</sup> *Id.*, para. 27-28.

<sup>11</sup> *Id.*, para. 24.

<sup>12</sup> *Id.*, para. 8.

<sup>13</sup> *Id.*, para. 4. However, the Prosecution does concede that it must not encourage or aid any third parties in identifying a witness. See *id.*, para. 14.

protective measures, it should extend the requested disclosure period from 21 days to 42 days, as this was the disclosure period imposed on the Prosecution.<sup>14</sup>

9. It is the Prosecution's further submission that proposed measure (g) would hinder the WVS's ability to ensure that witnesses are available to testify in a timely manner, and that there is no principled reason to withhold witness information from the WVS.

10. The Prosecution also argues that proposed measure (j) is too broad, and could prevent the Prosecution from conducting appropriate inquiries which would not risk revealing the identity of any witness.<sup>15</sup>

11. The Prosecution maintains there is no evidence which would justify the implementation of proposed measures (k) and (l), and suggests that an Order that the Prosecution do not reveal identifying information to third parties would be more appropriate.

12. Finally, the Prosecution submits that there is no evidence that proposed measure (m) would protect witnesses from the threats alleged in the Motion, and that protective measures should extend only to protected witnesses, not their relatives. The Prosecution takes the position that even if such measures were implemented, the WVS should be responsible for contacting the witnesses, not the Defence.<sup>16</sup>

*C. Defence Reply*

13. In its Reply, the Defence relies upon the Declarations of Mr. Morie Longor and Dr. Alan White, attached to the Prosecution's original Motion for Protective Measures of the 7<sup>th</sup> of April 2003, describing the security situation in Sierra Leone as volatile. The Defence submits that these declarations suffice to constitute evidence that there is an objective basis for the Defence witnesses' subjective fear.<sup>17</sup>

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<sup>14</sup> *Id.*, para. 6.

<sup>15</sup> *Id.*, para. 9.

<sup>16</sup> *Id.*, para. 11.

<sup>17</sup> See Reply, paras 6-11. The Defence suggests that Dr. White's assertion that individuals loyal to the belligerent parties remain employed by the Sierra Leone Police, in conjunction with the Prosecutor's employment of current and former police officers, constitute evidence that disclosure of identifying information to the Prosecutor could create risks for Defence witnesses.

14. In addition, the Defence cites the recent change of venue of the Taylor trial as evidence that the regional security situation remains unstable.<sup>18</sup> The Defence further cites several UN Security Council Resolutions relating to the security situation in West Africa.<sup>19</sup>

II. APPLICABLE LAW

15. This Chamber has stated in its prior decisions that the issue of victims and witnesses protection in the jurisdiction of the Special Court is governed by Article 16 of the Court's Statute. Accordingly, Article 16 provides, *inter alia*, thus:

4. 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.

16. Furthermore, Rule 26bis of the Rules empowers the Trial Chamber and the Appeals Chamber to "ensure that a trial is fair and expeditious and that proceedings before the Special Court are conducted in accordance with the Agreement, the Statute and the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses."

17. In one of our previous Decisions based on Articles 16(4) and 17(2) of the Statute and specifically on Rules 75(A) and (B), 53(A), 69, and 26bis, we applied 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 within the context of a fair trial."<sup>20</sup>

<sup>18</sup> *Id.*, para. 13.  
<sup>19</sup> *Id.*, para. 15. See also Annex A. In particular, Resolution 1688 (2006) states that "the trial of former President Taylor cannot be conducted within the subregion due to the security implications if he is held in Freetown at the Special Court", Security Council Resolutions 1657 (2006) and 1682 (2006) state that the situation in Ivory Coast poses "a threat to international peace and security in the region," while SC Resolution 1683 (2006) makes an identical determination regarding the situation in Liberia. In addition, the Defence also refers to the latest Report of the United Nations Integrated Office in Sierra Leone as detailing the fragility of Sierra Leone's reconstruction process as well as the overall lack of stability within the region. See *id.*, Annex B.

<sup>20</sup> *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Order on Protective Measures for Additional Witnesses, 24 November 2004, p. 3. See also *id.*, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004; *id.*,

18. In a Decision prior to that one, the Chamber held that the unique feature of the Special Court being located in Sierra Leone, the *locus* of the alleged offences is a key factor in weighing the need for granting protective measures to victims and witnesses.<sup>21</sup>

19. Specifically, in *Prosecutor v. Kondewa*, the Chamber held as follows:

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 [resumption] of hostilities against potential witnesses and victims and their families if they are identified by the indictees or their sympathisers as those whose testimony would incriminate them, or in due course and more still, the indictees who they support out there;<sup>22</sup>

20. It is also noteworthy that the Prosecution, in response to a recent request from the Trial Chamber, did find that there were no significant changes in the security situation in the country that could warrant a variation of the protective measures regime.<sup>23</sup>

21. Guided by the foregoing principles, the Chamber now proceeds to examine the merits of the Defence Motion.

### III. DELIBERATION

21. The Chamber notes that, in essence, the Defence is herein seeking for its witnesses protective measures that are substantially similar to those granted to the Prosecution, and using essentially the

Decision on Prosecution Motion to Vary Protective Measures for Group I Witnesses TF1-042 and TF1-044, 23 May 2006. See also *Prosecutor v. Musema*, Case No. ICTR-96-13-A, Judgement (AC), 16 November 2001, paras. 68-69.

<sup>21</sup> *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.

<sup>22</sup> *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. In addition, more specifically referring to RUF insiders, this Court held that "insider witnesses as well as their families are particularly vulnerable to acts of retaliation and potential harm if their identities were to be known to the public". See, for instance *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Decision on Prosecution Motion to Amend Protective Measures for Witnesses TF1-168 and TF1-041, 9 May 2006. While these considerations were primarily directed to witnesses testifying for the Prosecution, they might apply, *mutatis mutandis*, to witnesses willing to testify on behalf of the Accused.

<sup>23</sup> *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Decision on Prosecution Motion to Vary Protective Measures for Group I Witnesses TF1-042 and TF1-044, 29 May 2006. Similar finding was more recently made also by Trial Chamber II. See *Prosecutor v. Brima et al.*, Case No. SCSL-04-16-T, Decision on Joint Defence Application for Protective Measures for Defence Witnesses Appearing From 4 September 2006 Onwards, 13 September 2006, page 2.

*[Handwritten signatures and initials: a large stylized 'L', 'KIST', and a 'B']*



same evidentiary material.<sup>24</sup> The Chamber opines that the main issue for determination is whether the Defence has established a *prima facie* showing for protective measures for its witnesses. In this regard, the Defence argues that many of its witnesses do feel subjective fear of reprisal, either from ex-RUF combatants or individuals with anti-RUF sentiments. In support of this argument, the Defence relies upon Trial Chamber II's *Decision on Joint Defence Application for Protective Measures for Defence Witnesses* of the 9<sup>th</sup> of May 2006, establishing that the current situation in Sierra Leone forms a basis for blanket protective measures.<sup>25</sup>

22. The Chamber further observes that the Defence relies heavily upon the Declaration of Mr. Morie Lengor, a Special Court Investigator, dated the 5<sup>th</sup> of March 2003 and that of Dr. Alan White, the former Chief of Investigations, dated the 7<sup>th</sup> of April 2003, both of which Declarations were relied upon by the Prosecution in support of its Motions for Immediate Protective Measures for Witnesses and Non-Public Disclosure filed on the 7<sup>th</sup> of April 2003 and upon which evidentiary material this Trial Chamber's Decisions granting the said Prosecution's Motions were largely based. The Defence specifically draws attention to these paragraphs from Mr. Lengor's Declaration:

6. Members of the civilian population who may be called upon to appear as witnesses before the Special Court have expressed concern regarding their safety and security if it becomes known they are co-operating with the Special Court, especially if their identities are revealed to the general public, or to a suspect of accused, before protective measures can be put in place.

7. These potential witnesses point out that the Government of Sierra Leone is not actively prosecuting those who actually carried out such crimes such as those alleged in the Indictments presented for confirmation. As a result, these potential witnesses live among these perpetrators, and fear retaliation from them if the potential witness's identity becomes known to the public. This fear is heightened by the fact that many of the perpetrators now serve as members of the Armed Forces of Sierra Leone.

8. Potential witnesses have expressed fear of reprisals not only from those who actually carried out the crimes, but also from relatives and friends of the Accused, from those who are associated with the Accused and from those who support the causes or factions the Accused represent.

<sup>24</sup> See *Prosecutor v. Sesay et al.*, Case No. SCSL-04-15-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004.

<sup>25</sup> *Prosecutor v. Brima et al.*, SCSL-04-16-T, Decision on Joint Defence Application for Protective Measures for Defence Witnesses, 9 May 2006,

9. The fears expressed are genuine and in my opinion, are well founded, especially considering that many of the potential witnesses live in remote areas without any police presence or other semblance of security.

10. I believe that it is essential for the safety and security of these potential witnesses, their family members and for the work of the Special Court that the identifying data regarding these persons be withheld from the public and not be disclosed to any suspect of accused until such time as appropriate protective measures are in place.<sup>26</sup>

23. The Defence also highlights these paragraphs from Dr. White's Declaration:

The security situation in most of Sierra Leone and the neighbouring countries is volatile. The perpetrators, the victims and the witnesses are not separated. They are co-habitants of the same communities. They live and work in a closely-knit setting. In the past weeks there have been increasing instances involving interference with and intimidation of Prosecutor's witnesses. The situation ranges from witnesses having their lives threatened either individually or by a group, to witnesses' general fear and apprehension that they or their families will be harmed or harassed or otherwise suffer if their testify or co-operate with the Court. This is due to the existence throughout West Africa of large numbers of members of the armed factions involved in the conflict that happened in Sierra Leone, including the Revolutionary United Front (RUF), the Civil Defence Forces (CDF) and the Armed Forces Revolutionary Council (AFRC) and other people who collaborated with such factions. Additionally, there are numerous members with the Republic of Sierra Leone Army and Sierra Leone Police who are sympathisers and supporters of Johnny Paul Koroma, an indicted war criminal. Further, I have first hand information that supporters of Samuel Hinga Norman, former Chief of the CDF, are actively attempting to identify and intimidate witnesses to the Special Court. Therefore, witnesses living in Sierra Leone, and also those living in other countries in West Africa, are directly affected by this situation and feel threatened.<sup>27</sup>

24. Based on the aforementioned general legal principles, the Prosecution's finding referred to in paragraph 20 above, the relevant United Nations Security Council Resolutions on the security situation in Sierra Leone,<sup>28</sup> which justify the change of venue for the trial of Charles Taylor, the two citations from the Declarations of Mr. Morie and Dr. White (essentially affidavit evidence), the Chamber, also taking into consideration the present stage of the trial proceedings and in particular the preparation for the commencement of the Defence case, finds significantly as to the merits of the present application as follows:

<sup>26</sup> See Reply, para. 7

(i) That the Defence has established a *prima facie* case for the issuing of proposed protective measures (a), (b), (i), (j), (k), (l) and the first part of (f) as acceptable and minimally intrusive methods of protecting the safety and privacy of witnesses resident in Sierra Leone and other parts of West Africa, and those living outside West Africa who have indicated their willingness to testify.

(ii) That no *prima facie* showing has been made by the Defence for the issuing of protective measures in respect of potential witnesses resident outside West Africa.<sup>29</sup>

(iii) That proposed protective measure (c) is not necessary on the grounds that it is already a statutory obligation of the WVS to “provide [witnesses] with adequate protective measures and security arrangements” and to “develop long- and short-term plans for their protection and support.”

(iv) That a deviation from the 42 days “rolling disclosure” requirement as requested in proposed protective measures (d) and (g) in respect of withholding of identifying data of witnesses from the Prosecution is unwarranted in the circumstances, the same norm having been made applicable and actually applying to protected Prosecution witnesses.<sup>30</sup>

(v) That there has been no *prima facie* Defence showing for the issue of proposed protective measure (e), to wit, that names and other identifying data of all witnesses should “not be included in any existing or future records of the Special Court” in that this proposed measures is, in the circumstances, too restrictive in scope.

(vi) That the granting of proposed protective measure (h) will amount to an encroachment upon the statutory implementing authority of the WVS.

(vii) That the second part of the proposed protective measure envisaged by (f) is too restrictive in scope and is not justified in the circumstances.

(viii) That in respect of proposed protective measure (m) the WVS, rather than the Defence or the Prosecution, is in the best position to determine how to contact a protected witness,

<sup>27</sup> *Id.*

<sup>28</sup> See supra, note 19.

<sup>29</sup> For further reference, see *Prosecutor v. Rukundo*, Case No. ICTR-2001-70-T, Decision on Prosecutor’s Motion for Protective Measures CCF, CCJ, BLC, BLS and BLJ, 29 November 2006, paras 4-7.

who may otherwise feel intimidated, to explain to a witness his or her right to refuse to be interviewed and to make sure that a proper consent for an interview was obtained from the witness.<sup>31</sup>

#### IV. DISPOSITION

25. In light of the foregoing considerations, the Chamber **GRANTS** the Defence Motion in part and consequently, with regard to the relevant witnesses of the Defence for the First Accused, Issa Sesay, **ORDERS** as follows:

- a. All witnesses for the Defence for the First Accused, Issa Sesay, shall testify with the use of a screening device from the public, unless otherwise directed by the Court;
- b. There shall be no photographing, audio or video recording, sketching or reproducing in any other manner of images of such witnesses without prior leave of the Trial Chamber;
- c. The Defence for the First Accused, Issa Sesay, shall be allowed to withhold the names or any other identifying data of its witnesses until 42 days prior to their testimony at trial;
- d. The Registry shall seal the names or any other identifying data of all these witnesses, and this information shall not be included in any of the public records of the Special Court;
- e. The Defence for the First Accused, Issa Sesay, shall designate a pseudonym for each of its witnesses, to be used during pre-defence case disclosure of witness summaries and other materials<sup>32</sup> and during trial proceedings;
- f. The names or any other identifying data of these witnesses shall not be disclosed to the public or the media, and this order shall remain in effect after the conclusion of proceedings;

<sup>30</sup> See *Prosecutor v. Sesay et al.*, Case No. SCSL04-15-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004, Order (p).

<sup>31</sup> *Prosecutor v. Norman et al.*, Case No. SCSL04-14-T, Decision on Joint Defence Motion Regarding the Propriety of Contacting Defence Witnesses, 20 June 2006. For further reference, see also *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Reconsideration of Protective Measures for Prosecution Witnesses, 30 October 2006; *Prosecutor v. Mrksic*, Case No. IT-95/13-I-AR73, Decision on Defence Interlocutory Appeal on Communication with Potential Witnesses of the Opposite Party, 30 July 2003.

<sup>32</sup> See, for instance, *Prosecutor v. Sesay et al.*, Case No. SCSL04-15-T, Scheduling Order Concerning the Preparation and the Commencement of the Defence Case, 30 October 2006.

g. The Prosecution,<sup>33</sup> the Defence for the Second Accused, Morris Kallon, and the Defence for the Third Accused, Augustine Gbao, respectively, shall not share or reveal any disclosed witness-related non-public materials to any entity other than the Defence for the First Accused, Issa Sesay;

h. The Prosecution shall maintain a log indicating the name, address, and position of anyone who receives a Defence witness statement, interview report, summary of expected testimony, or any non-public material, as well as the date of disclosure; the Prosecution shall ensure that individuals to whom information is disclosed adheres to the non-disclosure order;

i. The Prosecution, the Defence for the Second Accused, Morris Kallon, and the Defence for the Third Accused, Augustine Gbao, respectively, shall, at the conclusion of proceedings, return to the Registry all disclosed witness-related materials which have not become part of the public record;

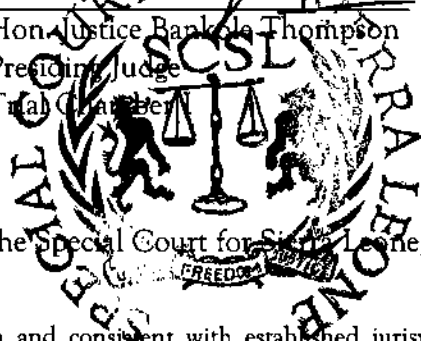
j. Upon disclosure of the witnesses' names or any other identifying data by the Defence pursuant to order (c) above, the Prosecution, the Defence for the Second Accused, Morris Kallon, and the Defence for the Third Accused, Augustine Gbao, respectively, shall inform the Witnesses and Victims Section of their intention, if any, to interview a witness listed as a witness for the Defence for the First Accused, Issa Sesay. The Witnesses and Victims Section, upon being informed beforehand of the location of the witness, shall contact the witness and inform him or her of any party's intention to interview him or her and of his or her right not to consent or give the interview. Should the witness consent to the interview, the Witnesses and Victims Section shall inform the relevant party as to the location for the interview. Except under exceptional circumstances, any such interview shall not take place at the outset of the witness' testimony in court.

Done at Freetown, Sierra Leone, this 30<sup>th</sup> day of November 2006

Hon. Justice Benjamin Mutanga Itoe

Hon. Justice Bankole Thompson  
Presiding Judge  
Trial Chamber

Hon. Justice Pierre Boutet



[Seal of the Special Court for Sierra Leone]

<sup>33</sup> For the purposes of the present Decision and consistent with established jurisprudence from other international criminal tribunals, any reference herein to the Prosecution's obligations concerning disclosure and, in particular, protective measures for witnesses, should not be construed as limited to specific teams within the Office of the Prosecution but rather extends to such Office as an undivided unit. See, for instance, *Prosecutor v. Bagosora et al.*, Case No. ICTR-98-41-AR73 & ICTR-98-41-AR73(B), Decision on Interlocutory Appeals of Decision on Witness Protection Orders (AC), 6 October 2005.