

RECALLING This Chamber’s Scheduling Order Concerning the Preparation and the Commencement of the Defence Case, issued on the 30th of October 2006, ordering each Defence Team to file, no later than the 16th of February 2007, various materials in preparation for the commencement of the Defence case (“Materials”);

MINDFUL of This Chamber’s subsequent Decision and Order on Defence Application for an Adjournment of 16th of February Deadline for Filing of Defence Material, issued on the 7th of February 2007, granting to all Defence teams applications by Counsel for the First and Second Accused an extension of time to file the said Materials on the 5th of March 2007;

HAVING RECEIVED the Gbao – Filing of Defence Materials, filed publicly by Court Appointed Counsel for the Third Accused, Augustine Gbao (“*Gbao* Defence”) on the 5th of March, 2007 (“*Gbao* Defence Materials”);

NOTING that some parts of the *Gbao* Defence Materials disclose the identity of protected Prosecution witnesses;

HAVING RECEIVED the Kallon Defence Filing in Compliance with Scheduling Order Concerning the Preparation and the Commencement of the Defence Case, filed confidentially by Defence Counsel for the Second Accused, Morris Kallon (“*Kallon* Defence”) on the 5th of March 2007 (“*Kallon* Defence Materials”);

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^[1] and, in particular, the Decision on Prosecution Motion for Modification of Protective Measures for Witnesses filed on the 5th of July 2004;^[2]

CONSIDERING, therefore, that in order to safeguard the privacy and security of witnesses and victims and to preserve the integrity of the proceedings, the *Gbao* Defence Materials shall be re-classified as confidential;

CONSIDERING, however, that Article 17(2) of the Statute of the Special Court (“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”;

CONSIDERING that this Chamber has held that in certain circumstances where witness protection issues arise, it may be necessary that a confidential and a public version of a particular document be prepared;^[3]

CONSIDERING that in order to safeguard the privacy and security of witnesses and victims and to preserve the integrity of the proceedings and out of an abundance of caution, the Chamber deems it necessary that the *Kallon* Defence Materials and the *Gbao* Defence Materials be reviewed with the assistance of an independent organ of the Court to ensure full compliance with the above mentioned Chamber’s Orders and Decisions and thereafter to prepare a public version of the said Materials;

MINDFUL of the fact that the Witnesses and Victims Section of the Special Court (“WVS”) is, under the provisions of the Statute and the Rules of Procedure and Evidence (“Rules”), competent, *inter alia*, to provide:

“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”[\[4\]](#)

CONSIDERING that the WVS, by virtue of its functions and objectives, is in the best position to assist in determining if the filing of the Materials has revealed the identity of a protected witness or victim or contains information conveyed in closed session which could lead to the identification of a protected witness or a victim such as those which have been referred to in the *Gbao* Defence Materials;[\[5\]](#)

REITERATING that all Parties must exercise the utmost diligence when dealing with confidential issues and, in particular, any information that could lead to the identification of a protected or potential witnesses or victim;[\[6\]](#)

PURSUANT to Articles 16 and 17 of the Statute and Rules *26bis*, 34, 53, 54, 69 and 75 of the Rules;

HEREBY ORDERS as follows:

1. That the Court Management Section shall immediately re-classify the *Gbao* Defence Materials as confidential;
2. That the Court Management Section shall immediately serve the *Kallon* Defence Materials and the *Gbao* Defence Materials on the Chief of Witnesses and Victims Section;
3. That the Witnesses and Victims Section shall, with the *Kallon* Defence and the *Gbao* Defence, review the said Materials in order to determine if the identify of protected witnesses or victims has been disclosed or if information which was conveyed in closed session and which could lead to the identification of protected witnesses or victims has been referred to in any of these documents and to prepare a public version thereof, with redactions and the use of witness pseudonyms as necessary;
4. That this information to be filed on or before Monday, the 19th of March 2007.

Done at Freetown, Sierra Leone, this 7th day of March 2007.

Hon. Justice Benjamin Mutanga
Itoe

Hon. Justice Bankole
Thompson
Presiding Judge
Trial Chamber I

Hon. Justice Pierre Boutet

[1] *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.

[2] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004. Also, protective measures were recently granted to certain Defence witnesses.

[3] See, for instance, *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T-739, Order to the Prosecution to Re-File Final Trial Brief, 23 November 2006.

[4] Article 16(4) of the Statute. See also Rule 34(ii) of the Rules, which mandates the WVS to “provide [witnesses and victims] with adequate protective measures and security arrangements and develop long- and short-term plans for their protection and support.

[5] See also *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-PT, Decision Regarding Prosecution and Kondewa Final Trial Briefs, 15 December 2006.

[6] See *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Written Reasons for the Decision on Prosecution Request for Leave to Call Additional Witness TF1-371 and for Order for Protective Measures, 15 June 2006, paras. 10-11. For further reference, see also *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T, Order Regarding the Disclosure of the Identity of a Protected Witness TF1-081, 8 March 2005.
