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SCSL-2003-10-PT
(650 - 664)

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SPECIAL COURT FOR SIERRA LEONE
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THE TRIAL CHAMBER

Before: Judge Bankole Thompson
Presiding Judge, Trial Chamber
Designated Judge Pursuant to Rule 28 of the Rules

Registrar: Robin Vincent

Date: 23rd day of October, 2003

The Prosecutor Against:

Brima Bazzy Kamara
(Case No. SCSL-2003-10-PT)

DECISION ON THE PROSECUTOR'S MOTION FOR IMMEDIATE PROTECTIVE MEASURES FOR WITNESSES AND VICTIMS AND FOR NON-PUBLIC DISCLOSURE

Office of the Prosecutor:
Luc Côté, Chief of Prosecution
James C. Johnson, Senior Trial Counsel
Sharan Parmar, Assistant Trial Counsel

Defence Office:
Ken Fleming QC

THE SPECIAL COURT FOR SIERRA LEONE ("the Court")

BEFORE JUDGE BANKOLE THOMPSON, sitting as a Designated Judge pursuant to Rule 28 of the Rules of Procedure and Evidence ("the Rules") on behalf of the Trial Chamber;

BEING SEIZED of the Motion by the Office of the Prosecutor for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure ("the Motion") and of the "Briefs" (Written Submissions) with attachments in support of the said Motion, filed on the 11th day of July, 2003;

CONSIDERING also the Response filed by the Defence Office on behalf of the Accused on 22nd day of July, 2003, to the aforementioned Prosecution Motion ("the Response");

CONSIDERING the Prosecutor's Reply filed on 24th day of July, 2003 to the aforesaid Defence Response ("the Reply");

WHEREAS acting on the Chamber's Instruction, the Court Management Section advised the parties on the 20th day of October, 2003 that the merits of the Motion, the Response, and the Reply would be determined on the basis of the "Briefs" (Written Submissions) of the parties **ONLY** pursuant to Rule 73 of the Rules;

COGNISANT OF the Statute of the Court ("the Statute"), particularly Articles 16 and 17 thereof, and specifically Rules 53, 54, 73, and 75 of the Rules;

NOTING THE SUBMISSIONS OF THE PARTIES

The Prosecution Motion

1. By the aforementioned Motion, the Prosecutor seeks orders for protective measures for persons who fall into three categories (paragraph 18 of the Motion):

(a) Witnesses who presently reside in Sierra Leone and who have not affirmatively waived their rights to protective measures;

(b) Witnesses who presently reside outside Sierra Leone but in other countries in West Africa or who have relatives in Sierra Leone, and who have not affirmatively waived their rights to protective measures;

(c) Witnesses residing outside West Africa who have requested protective measures.

2. By the said Motion, the Prosecutor also requests that the Defence be prohibited from disclosing to the public or media any non-public materials which are provided to them as part of the disclosure process.

3. Further, the Prosecutor requests that the persons categorised in paragraph 18 of the Motion and the prohibition as to non-public disclosure sought in paragraph 20 of the Motion be provided protection and effected respectively by the Orders sought as set out below (Paragraph 24 of Motion):

(a) An Order allowing the Prosecution to withhold identifying data of the persons the Prosecution is seeking protection for as set out in paragraph 18 or any other information which could lead to the identity of such a person to the Defence until twenty-one days before the witness is to testify at trial; and consequently allowing the Prosecution to disclose any materials provided to the Defence in redacted form until twenty-one (21) days before the witness is to testify at the trial, unless otherwise ordered;

(b) An Order requiring 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;

(c) An Order permitting the Prosecution to designate a pseudonym for each witness, which was and will be used for pre-trial disclosure and whenever referring to such witness in the 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 determine the identity of any such person;

(d) An Order that the names and any other identifying information concerning all witnesses described in paragraph 24, be communicated only to the Victims and Witnesses Unit personnel by the Registry or the Prosecution in accordance with the established procedure and only in order to implement protection measures for these individuals;

(e) An Order prohibiting the disclosure to the public or the media of 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, and this order shall remain in effect after the termination of the proceedings in this case;

(f) An Order prohibiting the Defence 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 persons or entity other than the Defence;

(g) An Order 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

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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;

(h) An Order requiring the Defence to provide to the Chamber and the Prosecution a designation of all persons working on the Defence team who, pursuant to paragraph 24 (a) above, have access to any information referred to in paragraph 24 (a) through 24 (e) above, and requiring the Defence to advise the Chamber and the Prosecution in writing of any changes in the composition of this Defence team;

(i) An Order requiring the Defence to ensure that any member leaving the Defence team remits to the Defence team all disclosed non-public materials;

(j) An Order requiring the Defence to 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;

(k) An Order that the Defence Counsel shall 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.

The Defence Response

4. On behalf of the Accused, the Defence submits that the Prosecution's Motion must fail. The contentions in support are set out in detail below:

(i) that the Rules provide for the protection of witnesses and victims, "but not as alleged by the Prosecution material";

(ii) that the Rules require that there must be "exceptional circumstances" to justify non-disclosure of the identity of a victim or a victim or a witness who may be in danger or at risk and that the material presented by the Prosecution does not show "exceptional circumstance";

(iii) that Rule 75 authorises the granting of protective measures "consistent with the rights of the accused";

(iv) that "the fundamental error in the application of the Prosecution is to ignore the specific, and concentrate on the general", there is not "a single mention of the Accused in this matter in any of the material...";

(v) that the assertion about "threats, harassment, violence, bribery and other intimidations, interference and obstruction of justice" being "serious problems in paragraph 12 of the Prosecution's Motion is "baseless, presumptuous and offensive";

(vi) that there is no evidence that the Accused in this case has ever indulged in such behaviour or is likely to indulge in such behaviour";

(vi) that the Orders sought by the Prosecution are unworkable, "impractical", "impossible" and "futile"

The Prosecution Reply

5. The Prosecution, in its Reply, filed on the 24th day of April, 2003 to the Response of the Defence in respect of Brima Bazzy Kamara, submits in summary as follows:

> The arguments raised in the Response of Defence Counsel should be rejected as they are either incorrect or are not supported by the jurisprudence of the international tribunals. The assertions fail to realise that it has been accepted by the International Criminal Tribunals for Yugoslavia and Rwanda and the Special Court that the rights of the Accused must be balanced with the need for protective measures for witnesses and victims. Finally the Defence Response is clearly in violation of prescribed time limit for filing of documents which cannot be corrected by bringing an application for extension within the said Response.

ORDER GRANTING LEAVE

6. I take full cognisance of the merit of the Prosecution's submission that the Defence is in clear violation of the prescribed time limit for filing documents. In upholding the Prosecution's submission, I strongly reprimand the Defence for the said procedural irregularity, and caution them against future infringements. It is, however, my considered opinion that no prejudice is caused to the Prosecution by the said infringement. Accordingly, in the interest of justice, leave is hereby granted retroactively to the Defence to file the said Response out of time.

AND HAVING DELIBERATED AS FOLLOWS

7. Pursuant to Article 16 of the Statute, the Court is authorized to provide in its Rules for the protection of victims and witnesses. Such protective measures shall include, without being limited to, the protection of a witness's identity. Rule 75 provides, *inter alia*, that a Judge or a Chamber may, on its own Motion, or at the request of either party, or of the victims or witnesses concerned, or of the Victims and Witnesses Unit, 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.

8. According to Rule 69 of the Rules, under 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 witness who may be in danger or at risk until the Judge or Chamber otherwise decides.

9. Article 17 of the Statute of the Court sets out the Rights of the Accused including *inter alia*, the right "to have adequate time and facilities for the preparation of his or her defence and the right to examine, or have examined the witnesses against him or her". As designated Judge, I also take cognisance of Rule 69 (C) of the Rules whereby the identity of a witness shall be disclosed in sufficient time before a witness is called to allow adequate time for preparation of the Defence.

10. Pre-eminently mindful of the need to guarantee the utmost protection and respect for the rights of the victims and witnesses, and seeking to balance those rights with the competing interests of the public in the administration of justice, of the international community in ensuring that persons accused of violations of humanitarian law be brought to trial on the one hand, and the paramount due process right of the Accused to a fair trial, on the other, I am enjoined to order any appropriate measures for the protection of the victims and witnesses at *the pre-trial stage* that will ensure a fair determination of the matter before me, deciding the issue on a case-by-case basis consistent with internationally recognised standards of due process. Such orders are to take effect once the particulars and locations of the witnesses have been forwarded to the Victims and Witnesses Support Unit.

11. In determining the appropriateness of the protective measures sought, I have evaluated the security situation affecting concerned witnesses in the light of the available information presented by the Prosecution in support of the Motion, specifically the Affidavit of Thomas Lahun dated the 10th day of June, 2003, the Declaration of Dr. Alan White dated the 10th day of June, 2003, the Declaration of Alan Quee dated the 25th day of April, 2003, and the Declaration of Saleem Vahidy dated the 28th day of April, 2003. In putting the entire situation in its proper context, the Affidavit of Officer Lahun and Mr. Vahidy are pre-eminent and illuminating. I have therefore taken the liberty of highlighting, for the sake of emphasis, certain relevant passages from the aforesaid documents so as to evaluate the merits of the key submissions of the Defence. The Defence submitted (a) that instead of showing "exceptional circumstances" the Prosecution had relied upon material prepared "in a general and vague manner"; (b) that not a single mention is made of the Accused in the Prosecution's papers; and (c) that the Motion is "baseless", "presumptuous" and "offensive".

12. In paragraph 4 of his affidavit, Officer Lahun firsts attests to his area of expertise as an investigator with the rank of Superintendent, and proceeds to depose thus:

> "Since 14th August, 2002, I have been working in the Office of the Prosecutor, Special Court for Sierra Leone, where my duties include investigating crimes against international humanitarian law committed within the territory of Sierra Leone from 30th November 1996, during the period of armed conflict in Sierra Leone. My *investigative duties include conducting interviews of persons who may appear*

as witnesses before the Special Court, and reviewing investigative notes and statements of such persons taken by other investigators in the Office of the Prosecutor" (emphasis added).

13. It is further deposed to at paragraphs 6, 8 and 9 that:

> 6. *"Members of the civilian population of Sierra Leone 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 that they are co-operating with the Special Court, especially if the identities are revealed to the general public, or to the suspect or accused, before appropriate protective measures can be put in place."*
>
> 8. *"Potential witnesses have expressed fear of reprisals not only from those who are associated with the Accused, and from those who support the causes or factions that the Accused represents."*
>
> 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."*

In addition, paragraphs 7 and 10 of the aforesaid affidavit do reinforce the evidence of fear, threats, intimidation, risk and danger to witnesses and potential witnesses.

14. Officer Gbekie's affidavit evidence is corroborated, in material particulars, by paragraphs 5 and 6 of the Declaration of Saleem Vahidy, Chief of the Witness and Victims Unit of the Court. At paragraph 6, Mr. Vahidy states:

> "In my opinion in Sierra Leone the issue of protection of witnesses is a far more serious and difficult matter even than in Rwanda. The trials are being carried out in a country where the crimes took place, and the witnesses feel particularly vulnerable..."

It is further deposed to in paragraph 6 that:

> *"At present the Unit is already looking after numerous witnesses, ad several threat assessments have been carried out. Without going into details, it is a fact that specific threats have been issued against some of the witnesses, to the extent that active efforts are being made by members of interested faction to determine their exact locations, probably with a view to carrying out reprisals."*

15. Consistent with the Court's previous Decisions[1] on the issue of protective measures for prosecution witnesses, I find that the combined effect of the affidavit evidence of Officer Lahun and the declarations of Dr. Alan White, Alan Quee and

[1] Decisions on the Prosecutor's Motion for Immediate Protective Measures For Witnesses and Victims and for Non- Public Disclosure, dated 23 May 2003 in *Prosecution Against Issa Hassan Sesay*, SCSL-2003-05-PT, *Alex Tamba Brima*, SCSL-2003-06-PT, *Morris Kallon*, SCSL-2003-07-PT, *Samuel Hinga Norman*, SCSL-2003-08-PT and after 13th October 2003, in *Prosecutor Against Moinina Fofana*, SCSL-2003-11-PD.

Saleem Vahidy is to demonstrate, within the bounds of reasonable foreseeability and not absolute certainty, the delicate and complex nature of the security situation in the country and the level of threat from several quarters of the ex-combatant population that participated in the conflict to witnesses and potential witnesses. It would not be judicially prudent to treat such affidavit evidence lightly, as to its probative value, especially in the absence of an affidavit in rebuttal. The irresistible inference, therefore, is that such threats may well pose serious problems to such witnesses and the effectiveness of the Court in the discharge of its international mandate. To the same effect is the finding of the Court *per* Judge Boutet in a recent *Decision On the Prosecution Motion For Immediate Protective Measures For Witnesses And Victims And For Non-Public Disclosure*[2], to wit:

> " "The Special Court", therefore, based upon its examination of the documentation produced, and in particular, of the foregoing, concludes that there exists at this particular time in Sierra Leone, a very exceptional situation causing a serious threat the security of potential witnesses and victims and accepts the affirmation that, according to Mr. Vahidy 'in Sierra Leone the protection of witnesses is a far more serious and difficult matter even than in Rwanda'"

16. Concerning the need for the protection of witnesses' identities at *the pre-trial* phase as distinct from *the trial phase*, I have sufficiently advised myself on the applicable body of jurisprudence. Without meaning to detract from the precedential or persuasive utility of decisions of the ICTR and the ICTY and to diminish the general thrust of the Prosecution's submissions on this point at paragraphs 17 and 19 of the Motion it must be emphasized that the use of the formula "shall be guided by" in Article 20 of the Statute does not mandate a slavish and uncritical emulation, either precedentially or persuasively, of the principles and doctrines enunciated by our sister tribunals. Such an approach would inhibit the evolutionary jurisprudential growth of the Special Court consistent with its own distinctive origins and features. On the contrary, the Special Court is empowered to develop its own jurisprudence having regard to some of the unique and different socio-cultural and juridical dynamics prevailing in the *locus* of the Court. *This is not to contend that sound and logically correct principles of the law enunciated by ICTR and ICTY cannot, with necessary adaptations and modifications, be applied to similar factual situations that come before the Special Court in the course of adjudication so as to maintain logical consistency and uniformity in judicial rulings on interpretation and application of the procedural and evidentiary rules of the international criminal tribunals.*

17. Instructive though, from a general jurisprudential viewpoint, some of the decisions of ICTR and ICTY relied upon by both Prosecution and Defence Office on the subject of delayed disclosure and confidentiality of witnesses and victims may be in terms of the principles therein enunciated, the issue is really one of contextual socio-legal perspective. Predicated upon such a perspective, one can reach various equally valid conclusions applying a comparative methodology on: (a) whether the security situation in Sierra Leone can, at this point in time, in relation to Rwanda, be objectively characterized as really more or less or equally volatile; (b) whether the

[2] *Prosecutor v. Augustine Gbao*, SCSL-2003-09-PT dated 10th October 2003 para. 25.

security situation in Rwanda during the grant or denial of the protective measures sought in those cases, was more or less or equally volatile as the present security situation in Sierra Leone; or (c) whether there is any logical basis for comparison at all, a position rightly taken by the Defence. Evidently, it takes no stretch of the legal imagination to discover that in such matters speculation can be endless and quite fruitless. It depends on one's analytical or methodological approach. They are not matters that can be determined with any mathematical exactitude.

18. Which principle, then, is applicable in determining the merits of the instant Motion? The answer is that it is the ***general principle*** propounded by the ICTY, in the case of *The Prosecutor v. Blaskic*, IT-95-14, Decision on the Application of the Prosecution dated 17th October 1996 Requesting of Protective Measures for Victims and Witnesses, 5th November 1996. It states that:

> The philosophy which imbues the Statute and Rules of the Tribunal appears clear: the Victims and Witnesses merit protection, even from the Accused, *during the preliminary proceedings and continuing until a reasonable time before the start of the trial itself*; from that time forth, however, the right of the Accused to an equitable trial must take precedence and require that the veil of anonymity be lifted in his favour, even if the veil must continue to obstruct the view of the public and the media.

Applying this ***general principle*** to the totality of the affidavit evidence before me, it is my considered view that a reasonable case has been made for the prosecution witnesses herein to be granted at *this preliminary stage* a measure of anonymity and confidentiality. In addition, in matters of such delicacy and sensitivity, it would be unrealistic to expect the Prosecution, at *the pre-trial phase,* to carry the undue burden of proving, as implied by the Defence, in respect of each accused whether he has, directly or indirectly, threatened or intimidated or caused to be threatened or intimidated any or all of the witnesses or potential witnesses for whom protective measures are sought. Such an approach would frustrate, if not, (using a familiar legal metaphor) drive a horse and coach through the entire machinery created by the Founding Instruments of the Court and its Rules for Protection of witnesses and victims.

19. Further, as designated Judge under Rule 28 of the Rules, my judicial evaluation of the measures requested by the Prosecution pursuant to Articles 16 and 17 of the Statute and Rules 53, 54, and 75 of the Rules, is also predicated upon the reasoning that even though the Court must, in such matters, seek to balance the right of the Accused to a fair and public trial with the interest of the witnesses in being given protection, such a right is subject to derogating exceptional circumstances (Article 17 (2) of the Statute) and that the existing context of the security situation in Sierra Leone does justify, at this point in time, delaying the disclosure of the identities of witnesses during *the pre-trial phase.*

20. As regards the 21 (twenty-one) day time limit prayed for by the Prosecution in Order (a), *despite the existence of some instructive ICTY and ICTR decisions supporting the 21 day rule limitation for disclosure, it is my considered view that there is no legal logic or norm compelling an inflexible adherence to this rule.* In the context of the security situation in

Sierra Leone and in the interest of justice, one judicial option available to me, at this stage, in trying to balance the interest of the victims and witnesses for protection by a grant of anonymity and confidentiality with the pre-eminent interest of effectively protecting the Accused's right to a fair and public trial is to enlarge the time frame for disclosure beyond 21 (twenty-one) days to 42 (forty-two) days, the Prosecution's submission notwithstanding, in line with the Court's recent decision on the same issue in *Prosecutor v. Augustine Gbao*[3] where Judge Boutet ruled thus:

> "Therefore , "the Special Court" rules that no disclosure shall be made within forty-two (42) days of the date of the testimony of the witness, instead of twenty - one (21) days such disclosure achieving a fair balance between "*full respect*" for the rights of the Accused and "*due respect*" for the protection of witnesses and victims."

And I so order.

AND BASED ON THE FOREGOING DELIBERATION,

I HEREBY GRANT THE PROSECUTION'S MOTION AND IN PARTICULAR THE ORDERS SOUGHT IN (a) TO (k) as specified and particularised therein with the necessary modification to Order (a) in respect of the time frame for disclosure prior to testimony at trial, which said **ORDERS**, for the sake of completeness, are set out *in extenso* in the annexure hereto.

Done at Freetown

23rd day of October, 2003

Judge Bankole Thompson
Presiding Judge, Trial Chamber
Designated Judge Pursuant to Rule 28 of the Rules

Seal Of The Special Court

[3] Id. Supra 2; see also Court's earlier decisions referred to already.

SPECIAL COURT FOR SIERRA LEONE
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THE TRIAL CHAMBER

Before: Judge Bankole Thompson
Presiding Judge, Trial Chamber
Designated Judge Pursuant to Rule 28 of the Rules

Registrar: Robin Vincent

Date: 23rd day of October, 2003

The Prosecutor Against: **Brima Bazzy Kamara**
(Case No. SCSL-2003-10-PT)

ANNEXURE TO THE DECISION ON THE PROSECUTOR'S MOTION FOR IMMEDIATE PROTECTIVE MEASURES FOR WITNESSES AND VICTIMS AND FOR NON-PUBLIC DISCLOSURE:

ORDERS FOR IMMEDIATE PROTECTIVE MEASURES FOR WITNESSES AND VICTIMS AND FOR NON PUBLIC DISCLOSURE

Office of the Prosecutor:
Luc Côté, Chief of Prosecution
Sharan ParmarAssistant Trial Counsel

Defence Office:
Ken Fleming QC

THE SPECIAL COURT FOR SIERRA LEONE (the "Special Court")

PRESIDED OVER by Judge Bankole Thompson designated in accordance with provisions of Rule 28 of the Rules of Procedure and Evidence ("the Rules");

BEING SEIZED of the Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure filed by the Prosecutor on the 11th day of June, 2003 ("the Motion") for an order requesting various protective measures to safeguard the security and privacy of victims, witnesses and to safeguard the integrity of the prosecution's evidence and of these proceedings;

CONSIDERING that non-public material is disclosed to the Accused primarily for the purpose of allowing him to prepare to meet the charges against him and for no other purpose;

CONSIDERING FURTHER that the Designated Judge takes very seriously the interests and concerns of victims and witnesses, is genuinely concerned for their safety, protection and welfare, is authorised to take all appropriate measures to ensure their protection and privacy, and is judicially obliged to safeguard non-public materials provided to the Accused in order to enable him to prepare for trial, where the interests of justice so demand;

CONSIDERING ALSO that it is of paramount importance to protect the right of the Accused to a fair and public trial and that only in exceptional circumstances should such a right be derogated from;

HAVING METICULOUSLY EXAMINED the merits of the submissions by the Defence in response to the said Prosecution Motion and sought to balance the interests of the victims and witnesses for protection and privacy with the right of the Accused to fair trial in the context of the specific measures requested;

CONVINCED that despite the Defence submissions, in the specific context of this case, there is clear and convincing evidence submitted by the Prosecution for protective measures for witnesses and victims and for non-public disclosure of the material in this case at the pre-trial stage;

NOTING that Articles 17 (2) and 16 (4) of the Statute of the Special Court for Sierra Leone ("the Statute") envisage that the Trial Chamber shall, where expedient in the interests of justice, issue appropriate orders for the protection of victims and witnesses;

COGNISANT of the provisions of Rules 69 and 75 of the Rules concerning the protection of witnesses;

ACTING IN ACCORDANCE WITH Articles 16 and 17 of the Statute and pursuant to Rules 53, 54, 56, 69, and 75 of the Rules;

I HEREBY GRANT THE PROSECUTION MOTION AND ORDER as follows:

(a) The Prosecution may withhold identifying data of the persons the Prosecution is seeking protection as set forth in paragraph 18 of the Motion and any other information which could lead to the identity of such a person to the Defence, until 42 (forty-two) days before the witness is to testify at trial; and may not disclose any materials provided to the Defence in a redacted form until 42 (forty-two) days before the witness is to testify at trial, unless otherwise ordered;

(b) 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;

(c) 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 person;

(d) That the names and any other identifying information concerning all witnesses described in order (a) be communicated only to the Victims and Witnesses Unit personnel by the Registry or the Prosecution in accordance with established procedure and only in order to implement protection measures for these individuals;

(e) 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;

(f) 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;

(g) 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;

(h) 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;

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

(j) 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;

(k) 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.

HEREBY FURTHER ORDER that consistent with Order (a) above, the Prosecutor shall disclose the names and unredacted statements of the witnesses to the Defence in at least 42 (forty-two) days before the witness is to testify at trial to allow the Defence sufficient and reasonable time to prepare effectively for trial, having regard to the gravity of the charges against the Accused person and the magnitude of the Prosecutor's allegations against him.

For the purpose of this Order:

(a) "the Prosecution" means and includes the Prosecutor of the Special Court for Sierra Leone (the Court) and his staff;

(b) "the Defence" means and includes the Accused, the Defence counsel and their immediate legal assistants and staff, and others specifically assigned by the court to the Accused's trial Defence team in conformity with Rule 44;

(c) "witnesses" means and includes witnesses and potential witnesses of the Prosecution;

(d) "protected witnesses" means and includes the witnesses in the categories as set forth in paragraph 18 of the Motion;

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(e) "victims" means and includes victims of sexual violence, torture, as well as all persons who were under the age of 15 at the time of the alleged commission of the crime;

(f) "the public" means and includes all persons, governments ,organisations, entities, clients, associations, and groups, other than the Judges of the Court and the staff of the Registry ,the Prosecution, the Defence, as defined above. "The public" specifically includes, without limitation, family, friends and associates of the Accused, and the Defence in other cases or proceedings before the court;

(g) "the media" means and includes all video, audio, print media personnel, including journalists, authors, television, and radio personnel, their agents and representatives.

Done at Freetown,

23rd day of October, 2003

Judge Bankole Thompson
Presiding Judge, Trial Chamber
Designated Judge Pursuant to Rule 28 of the Rules

Seal Of The Special Court