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SCSL-04-16-PT
 (6189-6238)
 SPECIAL COURT FOR SIERRA LEONE
 OFFICE OF THE PROSECUTOR
 FREETOWN – SIERRA LEONE

Before: Judge Teresa Doherty, Presiding
 Judge Richard Lussick
 Judge Julia Sebutinde

Registrar: Mr. Robin Vincent

Date filed: 17 February 2005

THE PROSECUTOR

Against

**ALEX TAMBA BRIMA
 BRIMA BAZZY KAMARA
 SANTIGIE BORBOR KANU**

CASE NO. SCSL – 2004 – 16 – PT

**PROSECUTION COMBINED RESPONSE TO DEFENCE REQUEST FOR
 AN ORDER NOT TO DISCLOSE PHOTOGRAPHY, VIDEO AND AUDIO
 RECORDING OF THE TRIAL TO THE PUBLIC AND/OR THIRD PARTIES**

Office of the Prosecutor:
 Luc Coté
 Lesley Taylor
 Boi-Tia Stevens
 Millicent Stronge
 Jennifer Beckley

Defence Counsel for Brima:
 Kevin Metzger
 Glenna Thompson

Defence Counsel for Kamara:
 Wilbert Harris
 Pa Momoh Fofana

Defence Counsel for Kanu:
 Geert-Jan Alexander Knoops
 Carry J. Knoops
 A.E. Manley-Spain

Neil Gibson
 15:31

SPECIAL COURT FOR SIERRA LEONE
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AN ORDER NOT TO DISCLOSE PHOTOGRAPHY, VIDEO AND AUDIO
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THIRD PARTIES**

I. BACKGROUND

1. On 11 February 2005, the Defence for the accused, Santigie Kanu, filed “Kanu – Request for an Order not to Disclose Photography, Video and Audio Recording of the Trial to the Public and/or Third Parties”.
2. On the same day, 11 February 2005, the Defence for the accused, Tamba Brima, filed “Brima - Request for an Order not to Disclose Photography, Video and Audio Recording of the Trial to the Public and/or Third Parties”.
3. On 16 February 2005, the Defence for the accused, Brima Bazy Kamara filed “Kamara - Request for an Order not to Disclose Photography, Video and Audio Recording of the Trial to the Public and/or Third Parties”.

4. The motion filed by the three accused are similar in nature. In the motion filed by Brima the Defence expressed support for Kanu's application and the application by Kamara equally expressed support for the applications filed by Kanu and Brima.
5. The Prosecution now files this combined response to the applications brought by Kanu, Brima and Kamara.

II. ARGUMENT

A. **The Defence will suffer no undue prejudice from the taking and disclosure of photographs, video and audio recordings of the accused**

6. The Defence contention that the disclosure of images of the accused would seriously jeopardize the truth finding process and endanger the principle of a fair trial - which is the underlying reason for the orders sought - is not persuasive in the instant case. Whilst the pre-trial publication of images of an accused raises great concerns for a fair trial in national jurisdictions where there are jury trials, the trial in the instant case as with trials at the ad hoc tribunals are before professional judges who are "able to ponder independently without prejudice to each and every case which will be brought before them". *See The Prosecutor Against Augustine Gbao*, SCSL-2003-09-I, Order on the Urgent Request for Direction on the Time to Respond to and/or an Extension on Time for the Filing of a Response to the Prosecution Motions, 16 May 2003, page 2. *See generally, The Prosecutor Against Sesay, Kallon and Gbao*, SCSL-2004-15-T, Transcripts of 5 July 2004, page 32, lines 28-31; page 35, lines 21-26. The concerns in national jurisdictions are simply not the same as at the international level.
7. With regard to the impact of publicity of the image of an accused on the identification of the accused by witnesses in court, the jurisprudence in international criminal law indicates that little weight is given to mere dock identification. *See The Prosecutor Against Tadic*, IT-94-1, Judgment, 7 May 1997, para. 546. The circumstances attendant upon such identification in the international setting, with the accused seated between

guards in the court room, require the Trial Chamber to assess the credibility of each witness independent of that identification. *See Id.* Therefore, in relation to in-court identification of the accused persons by Prosecution witnesses in the instant case, the publication or disclosure of an image of the accused will have no undue prejudicial effect on the case for the Defence.

8. The Prosecution is surprised by the timing of the filing of the applications, i.e. almost a year after the arrest of the accused persons and after many court appearances. The timing of the applications, notwithstanding change of counsel in the respective Defence teams, underscores the Prosecution's position about the lack of undue or material prejudice to the Defence.
9. It is submitted that concerns about the reliability of the identification of the accused by any witness can be addressed by less restrictive means than the orders being sought by the Defence. For instance, the credibility of such identification witness can be tested during cross-examination, which is an important tenet of a fair trial. But such concerns do not warrant an abridgment of the public's right to information on or about the proceedings.
10. The Prosecution finds support for its position by the ICTY case of *The Prosecutor v. Mejakic*, IT-02-65-PT, Decision on Dusko Knezevic's Request Pursuant to Rule 81(D), 28 July 2004. In that case, photographs of the accused were published on the ICTY website and the Defence requested orders identical to the orders which the Defence in the instant case have requested. The Chamber dismissed the motion, finding that there was insufficient prejudice to warrant the orders sought. The Chamber also stated that although the potential impact of pre-trial media coverage is a factor to be taken into account in assessing the credibility of witnesses, it was a matter for determination by the Chamber at trial.
11. The analogy to protective measures for Prosecution witnesses drawn in paragraph 4 of the application made by the accused, Kamara, is untenable. The considerations behind a

request for witness protection are by far different than the considerations which the Defence have been given for protection of the identity of the accused. In the case of the former, the security and privacy of witnesses are at stake and this translates into the availability of witnesses for trial and thus the availability of evidence. In the case of the protection of the identity of the accused, however, it is not the availability of evidence that is at stake, rather it is the credibility of evidence that is the issue, and as already stated in paragraph 9 above, there are other remedies that are more appropriately tailored to deal with such issue.

B. The Defence request infringes on the right to a public trial

12. The Defence request for a blanket order prohibiting the Registry from publishing or disclosing photographs and audio or video recordings of the accused infringes on the principle of a public trial and is inconsistent with the provisions of the Statute for the Special Court and the Rules of Evidence and Procedure for the Special Court. The principle of a public hearing is enshrined in the Statute and the Rules. *See* Article 17 of the Statute. *See also* Rule 78; Rule 88(A). The right to a public hearing is not only the right of the accused. It is a right which also belongs to the public. *See generally, The Prosecutor Against Hinga Norman et al.*, SCSL-2004-14-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 8 June 2004, paragraphs 39 and 41. Indeed the world community has a right to be informed of the proceedings before this Court, and this includes access to images of the accused in court.
13. Further, the Rules envisage situations where members of the public will request to take photographs or make audio or video recording of the trial. *See* Rule 81(D).
14. The Prosecution acknowledges that the preference for a public hearing can be balanced against other mandated interest such as the duty to protect victims and witnesses. However, the Prosecution submits that in the instant case, the Defence interest in ensuring that Prosecution witnesses are not unduly influenced by publicity of the image of the accused is not one that justifies an abrogation of the right to public hearing, for the reasons stated above in paragraphs 6-11.

The Defence request is broad

15. The Prosecution presumes that the reference to third parties or third persons in the Defence request for an order to prohibit photography and audio and video recordings of the accused during trial does not include the staff of the Registry. This interpretation indeed makes sense in terms of the objectives of the applications. The Prosecution notes, however, that the term “third parties” or “third persons” technically include the Registrar.¹ To the extent that it is intended for the order to apply to the staff of the Registry, the Prosecution makes the following additional submissions.
16. The Registrar has a mandatory duty under the Rules to maintain an accurate record of the proceedings, using such means as audio and video recordings, for instance. *See* Rule 81(A). It is submitted that this obligation is no less compelling if the accused is present in court or if he addresses the Court. It is further submitted that recording images of the accused or the voice of the accused during court proceedings is part of maintaining an accurate record of the proceedings. Thus an order seeking to prohibit the staff of the Registry from recording the voice or image of the accused is inconsistent with Rule 81(A).
17. The Prosecution acknowledges that the use of transcripts is one means available for maintaining an accurate record of the proceedings. The Prosecution has been made to understand however, that the technology used in producing transcripts involves audio recording of voices.

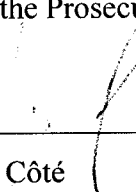
III. CONCLUSION

18. For the foregoing reasons, the Prosecution requests that the respective motions filed on behalf of the accused, Kanu, Brima and Kamara, be dismissed in their entirety.


¹ Rule 2 of the Rules of Procedure and Evidence of the Special Court defines “party” as the Prosecutor or the Defence.

Freetown, 17 January 2005.

For the Prosecution,



Luc Côté
Chief of Prosecutions



Boi-Tia Stevens
Associate Trial Counsel

PROSECUTION BOOK OF AUTHORITIES

PROSECUTION INDEX OF AUTHORITIES

1. *The Prosecutor Against Augustine Gbao*, SCSL-2003-09-I, Order on the Urgent Request for Direction on the Time to Respond to and/or an Extension on Time for the Filing of a Response to the Prosecution Motions, 16 May 2003.
2. *The Prosecutor Against Sesay, Kallon and Gbao*, SCSL-2004-15-T, Transcripts of 5 July 2004, pages 32-37.
3. *The Prosecutor Against Tadic*, IT-94-1, Judgment, 7 May 1997, paragraphs 542-552.
4. *The Prosecutor v. Mejakic*, IT-02-65-PT, Decision on Dusko Knezevic's Request Pursuant to Rule 81(D), 28 July 2004.
5. *The Prosecutor Against Hinga Norman et al.*, SCSL-2004-14-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 8 June 2004.

PROSECUTION AUTHORITIES

1. *The Prosecutor Against Augustine Gbao*, SCSL-2003-09-I, Order on the Urgent Request for Direction on the Time to Respond to and/or an Extension on Time for the Filing of a Response to the Prosecution Motions, 16 May 2003.



SPECIAL COURT FOR SIERRA LEONE

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Before: Judge Bankole Thompson
Registry: Mr. Robin Vincent
Decision of: 16th May 2003

THE PROSECUTOR

Against

AUGUSTINE GBAO also known as AUGUSTINE BAO

CASE NO. SCSL-2003-09-I

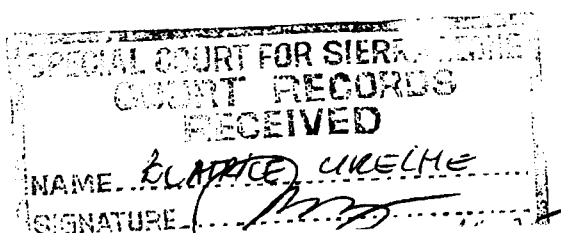
**Order on the Urgent Request for Direction on the Time to Respond to and/ or an
Extension on Time for the Filing of a Response to the Prosecution Motions**

And

**The Suspension of any Ruling on the Issue of Protective Measures that may be
Pending before other Proceedings before the Special Court as a Result of Similar
Motions Filed to those that have been Filed by the Prosecution in this Case**

The Office of the Prosecutor:
Mrs. Brenda Hollis

The Counsel for the Accused:
Mr. Andreas G. O'Shea
Mr. Ben Olden



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

SITTING AS Judge Bankole Thompson, designated by the President of the Special Court according to Rule 28 of the Rules of Procedure and Evidence ("the Rules");

HAVING RECEIVED the Urgent Request for Direction on the Time to Respond to and/or an Extension on Time for the Filing of a Response to the Prosecution Motions and the Suspension of any Ruling on the Issue of Protective Measures that may be Pending before other Proceedings before the Special Court as a Result of Similar Motions Filed to those that have been Filed by the Prosecution in this Case of the 12th May 2003 ("the Defence Request");

NOTING the Prosecution's Response to the Urgent Request for Direction on the Time to Respond to and/or an Extension on Time for the Filing of a Response to the Prosecution Motions and the Suspension of any Ruling on the Issue of Protective Measures that may be Pending before other Proceedings before the Special Court as a Result of Similar Motions Filed to those that have been Filed by the Prosecution in this Case of the 14th May 2003;

CONSIDERING that the Defence Request avers, *inter alia*, that the Counsel for the Accused has not been served with both the Urgent Prosecution Motion to allow Disclosure to the Registry and to Keep Disclosed Material under Seal until Appropriate Protective Measures are in Place of the 7th May 2003 and the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure of the 7th May 2003 ("the Prosecution Motions");

CONSIDERING FURTHER that the Defence Request seeks that the Accused be granted 14 days from the date of receipt of the Prosecution Motions for the filing of a response to such motions and, moreover, that no rulings on protective measures be made at this time in other proceedings before the Special Court;

NOTING, nevertheless, that the Proof of Service of the Court Management clearly indicates that the Team of the Counsel of the Accused has been served with the above mentioned Prosecution Motions through the Assistant of the Counsel for the Accused, Mr. Ben Holden, on the 7th May 2003;

NOTING that pursuant to Rule 7 of the Rules the time-limits for filing a response to the Prosecution Motions has expired;

CONSIDERING that the subject of the Prosecution Motions, and with particular reference to the protective measures for witnesses and victims, albeit of extreme importance, is a common and accepted procedure in international criminal law;

DUE to the materiality of this subject of the Motions to future trial proceedings, the Special Court pursuant to its authority under Rule 7 (A) of the Rules may order an extension of a time limit;

CAUTIONING that the Special Court will not allow any further delays in the future and

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that, in particular, an extension of a time limit remains exceptional;

CONSIDERING FURTHER that at this stage of the proceeding against the Accused a joinder with other cases before the Special Court is deemed to be purely hypothetical and without factual basis;

CONSIDERING that issues before the Special Court are conducted before professional judges, who by virtue of their education and experience are able to ponder independently without prejudice to each and every case which will be brought before them;

CONSIDERING that a request that no rulings on protective measures will be made on other proceedings would halt the continuance of the pre-trial stage for the other Accused and that the Trial Chamber has an obligation to all Accused to be tried within a reasonable time;

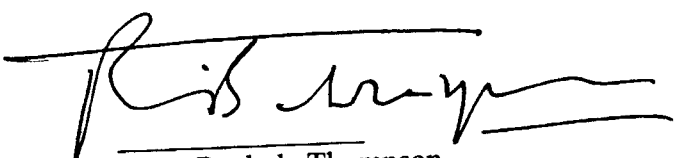
NOW HEREBY, pursuant to Rule 7 and 54 of the Rules,

REJECTS the request of the Counsel for the Accused to be granted a period of 14 days for filing a submission in response to the Motions;

ORDERS that the Counsel for the Accused be granted a period of 7 days from the moment of receipt of this Order for filing his submissions in response to the Motions;

REJECTS the request of the Counsel for the Accused that no rulings on the issue of protective measures be made in other proceedings before the Special Court until Counsel has been given the opportunity to be heard on this matter.

Done in Freetown, Sierra Leone this 16th day of May 2003



Judge Bankole Thompson
Delegated Judge



PROSECUTION AUTHORITIES

2. *The Prosecutor Against Sesay, Kallon and Gbao*, SCSL-2004-15-T, Transcripts of 5 July 2004, pages 32-37.

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO.: SCSL-04-15-T
TRIAL CHAMBER I

THE PROSECUTOR
OF THE SPECIAL COURT
v.
ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO

5 JULY 2004
1015
TRIAL

Before the Judges:

Benjamin Mutanga Itoe, Presiding
Bankole Thompson
Pierre Boutet

For the Registry:

Mr. Robert Kirkwood
Ms. Maureen Edmonds
Mr. Geoff Walker

For the Prosecution:

Mr. David Crane
Mr. Desmond De Silva QC
Mr. Luc Côte
Mr. Robert Petit
Ms. Lesley Taylor
Mr. Abdul Tejan-Cole
Ms. Boi-Tia Stevens

For the Principal Defender:

Ms. Simone Monasebian
Ms. Haddijatou Kah-Jallow

For the Accused Issa Hassan Sesay:

Mr. Timothy Clayson
Mr. A. Serry-Kamal
Mr. Wayne Jordash
Ms. Sareta Ashraph
Mr. Azeem Suterwalla

For the Accused Morris Kallon:

Mr. Shekou Touray
Mr. Raymond Brown
Ms. Wanda Akin

Mr. Melron Nicol-Wilson
Mr. Lansana Dumbuya

For the Accused Augustine Gbao:

Mr. Andreas O'Shea
Mr. John Cammegh
Ms. Glenna Thompson
Mr. Ben Holden

Court Reporter:

Ms. Susan G. Humphries

1 MR. PRESIDENT:

2 Yes, Mister --

3 MR. O'SHEA:

4 Before my learned friend takes the floor, I personally refrained from interrupting Mr. Crane, a course
5 taken by my learned friends on this side of the Bar. However, I would like to place a formal objection
6 to certain aspects of that opening statement which, in my submission, clearly fall outside the rule that
7 Your Honour has mentioned. The matters refer to before the 30th of November 1996, the expression,
8 "army of evil," the expression, "dance with the devil," the expression, "guttred an entire nation," the
9 expression, "macabre dance of death," the expression, "ruin was their motto, destruction was their
10 creed," and, most significantly for my client, the reference to the 7th July 1999 and the Lome Peace
11 Agreement, which for our client is their biggest bone of contention. Therefore, all I do at this stage,
12 Your Honours, is I request that when the Defence make their opening statements, that they be given
13 the same degree of latitude as the Prosecution has been given in this -- on this occasion.

14 JUDGE THOMPSON:

15 Learned Counsel, let me tell you how I am looking at the law here. Unless you can point to some
16 legal authority whereby the Bench, in listening to the opening statement from the parties, is given
17 some kind of latitude to edit the opening statements, in other words, apart from the requirement that
18 the statement must conform to Rule 84. If you are saying that those passages are objectionable,
19 which, of course, I am not suggesting that we can't argue about that, would it not be proper to look at
20 the issue from the perspective of the composition and the ability and the capability of the Tribunal of
21 fact. I would readily, as a lawyer, agree with you that some parts of the opening statement may well
22 be using language of an emotive nature, in other words, a little on the high side from an emotive
23 perspective. But wouldn't that be more relevant in the context of a jury trial where jurors may well be
24 carried away by the high emotive tone of an opening statement where perhaps sometimes it is difficult
25 to know whether jurors may well determine guilt or innocence on the basis of the opening statement of
26 the Prosecution, plus the evidence and vice versa.

27
28 The objections here would seem to me to fade into insignificance considering that this panel
29 comprises judges who, by their training and education, are expected not to be carried away by
30 emotionalism and hyperbolic statements, if you want to call them that, about crime situations. Is that
31 a fair analysis of --

32 MR. O'SHEA:

33 Your Honour, I do not in any way in making this formal objection contest the ability of Your Honours
34 to --

35 JUDGE THOMPSON:

36 We have listened to the opening part of the opening speech and we already indicated to you that, as
37 far as we are concerned, the tribunal of fact will not, in fact, be guided upon or bound by the opening

1 speech.

2
3 It is the evidence that comes from the witness box and also the state of the law the opening speech,
4 as I say, may set high expectations for the Prosecution, but at the end of the day, in the interests of
5 justice, it is whether the Prosecution have proved the counts that they allege and have brought
6 evidence in support of these counts beyond a reasonable doubt. And so it would seem to me that this
7 Chamber may not even have a way of controlling the content of opening statements, whether the
8 Prosecution and whether the Defence, except to say, that every opening statement must conform to
9 Rule 84, but in terms of the language, how -- the level of rhetoric, the kind of oratory that is adopted, I
10 am not sure whether we can inject some kind of judicial control over that. Of course, if language is
11 used here which is not in conformity with the fine traditions of our profession, then I think we can
12 intervene, but at this stage wouldn't really intervention be premature?

13

14 MR. O'SHEA:

15 Well, Your Honour, I am grateful for that indication, the damage is already done. The statement which
16 has just been --

17 MR. PRESIDENT:

18 I can assure you that no damage is done.

19 MR. O'SHEA:

20 No damage from the perspective of the judges --

21 MR. PRESIDENT:

22 Let me assure you, Mr. O'Shea, no damage is done, this is a Bench we know what we are looking for
23 and we know how to get around what we are looking for. And if you are measuring your damage in
24 terms of public imagery, well that is entirely your business, but I think that the damage which should
25 be of a lot of concern to you is what the Court perceives from the statement of the Prosecution.

26 JUDGE THOMPSON:

27 Perhaps I should underscore what my brother is saying, that we are sworn solemnly to determine guilt
28 or innocence on the basis of the evidence adduced before this Court conscientiously, objectively and
29 impartially. We are not called upon here to determine guilt or innocence on the basis of rhetoric,
30 oratory, embellishment or flourish.

31 MR. O'SHEA:

32 Yes, yes. Well, Your Honours, all I am doing here is placing in a formal objection and flagging it up for
33 the purpose of equality of arms, because, in my submission, the matters which I have raised, whether
34 one describes them as emotive language or not, are assertions which do not --

35 MR. PRESIDENT:

36 Mr. O'Shea, I don't want to cut you short, please, we have to move. When the time comes and you
37 go beyond the red line, the Court will perform its duty.

1 MR. O'SHEA:

2 Well it is my submission that the Prosecution has gone beyond the red line, I flag up the --

3 MR. PRESIDENT:

4 Where the Prosecution went beyond the red line and objections were raised, we examined them and
5 we ruled.

6 MR. O'SHEA:

7 Yes.

8 MR. PRESIDENT:

9 The substance of what the Prosecution have said -- I do not know, I mean, let us -- let us understand
10 ourselves. The substance of what the Prosecution has said does not go to the merits, you know, of
11 this case. It is an embellishment, I mean, it is opening a case and I think we should move on, let's
12 move on, you know, and ensure that -- because we have heard what your complaints are. If it is you
13 who will address you will make the opening statement, you know, for your client and you overstep the
14 red line, we will draw your attention to it or maybe the Prosecution -- the Prosecution may like you did
15 and it is for us to see whether everybody is making his submissions or his statements, you know,
16 within the context of what is expected under Rule 84.

17

18 I think we should move ahead, Mr. O'Shea.

19 MR. O'SHEA:

20 I understand, Your Honours, but I would like to --

21 JUDGE THOMPSON:

22 And perhaps I should make the point that I certainly, learned counsel, would take exception to any
23 insinuation about the damage has already been done if that is a reflection on probably the Bench,
24 because I think I assured you just now that we are sworn solemnly to do justice on the basis of the
25 evidence adduced before this Court and our oath obliges us to approach our task conscientiously,
26 impartially and objectively. And I certainly feel slightly offended, though you may probably have
27 misspoken, that if you are suggesting that the damage has been done and the Bench is being brought
28 into this, I think I would take very strong objection to that. I have no -- I have no preconceived or
29 predetermined status here, except to do justice as I have sworn to do it.

30 MR. O'SHEA:

31 Your Honour, as I tried to indicate after you raised this point on the very first occasion, but was not
32 allowed to do so, I do not in any way contest the ability of these three judges to be able to divide what
33 is relevant from what is not relevant. I simply object to matters being raised in an opening statement
34 suggesting that my client did not respect some peace treaty or that my client is evil, these are not
35 things that my client is charged with. And that is my simple point. So if in our opening statements we
36 digress in a similar way, I simply indicate that I hope that we are accorded the same latitude.

37

1 MR. PRESIDENT:

2 That is why I have told you, Mr. O'Shea, that when you cross the red line, I suppose you will be called
3 to order in one way or the other. So can we move, please.

4 MR. O'SHEA:

5 Thank you.

6 MR. PRESIDENT:

7 Thank you.

8

9 Mr. Brown.

10 MR. BROWN:

11 Yes, Your Honour, I will be brief. Now and in the future I cannot imagine at any time raising any
12 question about the impartiality or skill or (*inaudible*) ability of this Bench. I do think, however, that the
13 equality of arms remains a continuing concern and that the opening statements that go out over radio
14 UNAMSIL and are heard throughout the country have the capacity to affect our ability, and have so in
15 the past, to talk even to witnesses or to procure their willingness to come voluntarily to this Court as
16 witnesses. So to that extent -- and I think that was the reference my learned colleague was making
17 when he said about damage potentially being done -- not in any way including Your Honours, but we
18 do have a continuing concern about equality of arms in terms of a focused and unnaturally sensitive
19 population.

20 JUDGE THOMPSON:

21 But the prejudicial publicity there would really, I mean, as I say, if we complain about prejudicial
22 publicity in terms of some of those statements, at the end of the day they do not affect the
23 adjudicating process. The problem of prejudicial publicity in national systems has always been when
24 the system allows for jury trial, but where we talk about it in this particular case we are not -- I don't
25 see how those influences can interfere with the integrity of the adjudicating process where the judges
26 are just sworn to listen to the evidence.

27 MR. BROWN:

28 That was my point, that we have no question about Your Honours, but we do have a question, which
29 is based on experience, about witnesses being intimidated, unwilling even at times to speak because
30 of inflammatory rhetoric of the kind to which counsel has wisely objected. So it implicates equality of
31 arms.

32 MR. PRESIDENT:

33 We have taken note of that, the witnesses will appear in front of you and you will have all the time to
34 cross-examine them, Mr. Brown, I suppose --

35 MR. BROWN:

36 I meant potential Defence witnesses.

37

1 MR. PRESIDENT:

2 Oh yes, well, I suppose your potential Defence witnesses are committed enough, you know, to your
3 cause and to what they have to come and say because it is -- it is -- I do not want to believe, it could
4 be possible, but do you think that they are intimidated by the statement of the --

5 MR. BROWN:

6 Yes, sir.

7 JUDGE THOMPSON:

8 *(Inaudible)* protective measures.

9 MR. BROWN:

10 And we will develop this further, I just wanted to indicate that -- and I do not wish to speak for my
11 brethren to the extent that I join in this objection, it has nothing to do whatsoever with the capacity of
12 this Bench -- but rather the fact that we are running into on a concrete basis daily, people who are
13 frightened not to join our cause but for the cause of truth, but even --

14 MR. PRESIDENT:

15 You know what, people are frightened all over, Prosecution witnesses are frightened, Defence
16 witnesses are frightened, that is where we are caught in the middle.

17 JUDGE THOMPSON:

18 We have protective measures --

19 MR. PRESIDENT:

20 We have to move, we have to move because, you know, witnesses are frightened on both sides of the
21 aisle, you know, so --

22 MR. BROWN:

23 My only point is it is relevant for us to bring to it your attention when acts occur in your presence --

24 MR. PRESIDENT:

25 Yes, we have taken note of it, Mr. Brown.

26

27 Yes, Mr. Jordash.

28 MR. JORDASH:

29 Simply to adopt what has been said. What Mr. Crane has done is effectively send a message out to
30 Sierra Leone that if they come to this Court they are either giving evidence against the dogs of war or
31 for the dogs of war, that helps nobody in these proceedings.

32 MR. PRESIDENT:

33 *(overlapping microphones)* Sierra Leone is watching us live and hearing us. Hearing -- they know the
34 position of this Court, I mean, it was not for flimsy reasons that I made an initial statement, you know,
35 to indicate our position on these matters. This was the same statement that I made on the 3rd of
36 June, you know, on behalf of the Chamber and I think that even your witnesses now have the
37 message, you know, that they will not be disadvantaged by any statements, you know, that I made. I

1 mean, we had made it constantly clear that we are not bound by the statement -- the statement made
2 by the Prosecution under, you know, Rule 84. And so I don't think we should bother much about that.
3 Mr. Jordash, do you think we should bother much about that or we should spend more time on this?

4 MR. JORDASH:

5 Our concern is not Your Honours' ability to be able to put those comments aside, of course, we know
6 and expect you will. Our concern is that the members -- the citizens of Sierra Leone, who are looking
7 to come to this Court, will not be able to put those things out of their mind. You as professional
8 judges, of course, can. They, as frightened citizens, looking, as we all are, I hope, to find out the truth
9 may well not be able to do the same.

10 MR. PRESIDENT:

11 Right, can we move on? Mister --

12 MR. TEJAN-COLE:

13 Tejan-Cole, Your Honour. Thank you, Your Honour, and I am at grateful that I can at last have a word
14 in edgeways.

15

16 MR. PRESIDENT:

17 I hope you will not take much time, I hope so.

18 MR. TEJAN-COLE:

19 I will do my best, Your Honour.

20 MR. PRESIDENT:

21 Right, do your best.

22 MR. TEJAN-COLE:

23 "High we exalt thee, realm of the free; great is the love we have for thee; firmly united ever we stand;
24 singing thy praise O native land. We raise up our hearts and our voices on high; the hills and the
25 valleys re-echo our cry ..."

26 MR. PRESIDENT:

27 What relevance has this to the facts of the case?

28 MR. TEJAN-COLE:

29 My Lord, these are the words --

30 MR. PRESIDENT:

31 Please go to the facts of case Mr. Tejan-Cole.

32 MR. TEJAN-COLE:

33 These are the words --

34 MR. PRESIDENT:

35 No, no, no, no, no, no, please, go to the facts of the case, I don't want any sentiment here. Go to the
36 facts of the case, straight to the facts of the case.

37

PROSECUTION AUTHORITIES

3. *The Prosecutor Against Tadic*, IT-94-1, Judgment, 7 May 1997, paragraphs 542-552.

IN THE TRIAL CHAMBER**Before:**

Judge Gabrielle Kirk McDonald, Presiding
Judge Ninian Stephen
Judge Lal Chand Vohrah

Registrar:

Mrs. Dorothee de Sampayo Garrido-Nijgh

Opinion and Judgment of: 7 May 1997

PROSECUTOR**v.****DUSKO TADIC a/k/a/ "DULE"**

OPINION AND JUDGMENT

The Office of the Prosecutor:

Mr. Grant Niemann
Ms. Brenda Hollis
Mr. Alan Tieger
Mr. William Fenrick
Mr. Michael Keegan

Counsel for the Accused:

Mr. Michaïl Wladimiroff
Mr. Steven Kay
Mr. Milan Vujin
Mr. Alphons Orië
Ms. Sylvia de Bertodano
Mr. Nikola Kostic

I. INTRODUCTION**A. The International Tribunal**

1. This Opinion and Judgment is rendered by Trial Chamber II of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 ("International Tribunal") following

E. Pre-trial Media Coverage and the Infection of Testimonial Evidence

542. Attention was drawn during the course of the trial to the impact of pre-trial media reporting of events in opstina Prijedor and of the indictment and arrest of the accused. In particular, the Defence directed the attention of the Trial Chamber to media coverage in areas to which many refugees from the former Yugoslavia have fled since the events in question. To some extent, this issue related to the reliability of identification witnesses who had not known the accused prior to the conflict. For example, of the 20 television programmes about this case which were considered in a survey of which evidence was given, 15 carried the picture of the accused for at least a part of the report. This is an issue which will be addressed below.

543. Beyond issues of identification, it was the submission of the Defence that this coverage potentially affected the trustworthiness or reliability of testimony given by Prosecution witnesses generally. By contrast, a number of Prosecution witnesses denied having seen reports; many said that they were not interested in seeing reports of events in the former Yugoslavia as they did not wish to relive their experiences. Some of the print media reports noted in another survey of which evidence was given on behalf of the Defence did not contain any reference to the accused. In that survey a large number of newspaper articles and reports in some way relating to the accused were reported on but, of the 83 articles cited, only 12 carried photographs and some articles proved not to be specifically about the accused in another survey of which evidence was given on behalf of the Defence (Defence Exhibit 101). Further, none of the reports published or television programmes shown were the native language of the witnesses.

544. In all trials, the potential impact of pre-trial media coverage is a factor that must be taken into account in considering the reliability of witnesses, and where this aspect was raised in cross-examination of witnesses, it has been taken into account in the evaluation of their testimony.

F. Identification Evidence

545. Where, as here, an accused's defence, arguments of law apart, consists of an alibi, evidence of visual identification of the accused assumes great significance. This Trial Chamber heard much such evidence from witnesses, many of whom had either known the accused since childhood or from long acquaintance with the accused in the Kozarac area, together hereafter referred to as recognition witnesses. In the case of four witnesses, to whom the accused was previously unknown by sight, they had identified him from a collection of 13 photographs in a photospread, shown to them by the Prosecution before giving evidence (Prosecution Exhibits 242, 243, 255, 294); they are hereafter referred to as identification witnesses. Both classes of witnesses identified the witness in court by way of dock identification.

546. The Defence challenged the identifications made by all these witnesses. The Trial Chamber places little weight upon mere dock identification; the circumstances attendant upon such identification, with the accused seated between two guards in the courtroom, require the Trial Chamber to assess the credibility of each witness independently of that identification. The credibility accorded to the testimony of each such witness as to recognition or identification has been considered in the course of this Opinion and Judgment. This portion of the Opinion and Judgment is concerned, however, with the evidence of the four identification witnesses who were involved in the photospread procedure. In fact the photospread procedure was also undertaken, quite unnecessarily, by Draguna Jaskic who had known the accused for very many years and was, therefore a recognition witness. What follows accordingly does not apply to her evidence regarding the accused.

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547. The expert Defence witness, Dr. Willem A. Wagenaar, gave evidence regarding identification generally and, in particular, concerning photospread procedure. He was acknowledged by both parties as expert in the field. The Trial Chamber accepts his very substantial approval of the format of the photospread itself which, he said, in his opinion would afford witnesses a wholly unbiased opportunity to identify the accused, his only qualification being that the 12 men other than the accused, the "foils", should prove to be of the same ethnic background as the accused. It emerged in evidence that with three exceptions this was the case; nine of the foils were from or were born in former Yugoslavia. The Trial Chamber accepts the suitability of the foils and accordingly of the photospread itself.

548. There remains the procedure employed in showing the photospread to the four witnesses. No written directions were given to the officer who conducted the procedure in the case of three of the four witnesses; written guidelines were supplied to the other officer, who attended to the fourth witness, Senad Muslimovic. These guidelines were not produced in evidence and neither of the two officers was called as a witness on this issue.

549. What is known of the procedure adopted by these two officers comes from the evidence of the Prosecution chief investigator, Robert Reid, who was not present at any of the procedures but described what he had been told by those officers as to the procedure they had adopted. That procedure, if accurately described to the chief investigator and then accurately recounted by him in evidence, was generally, although not in every detail, in accordance with what Dr. Wagenaar regarded as satisfactory. Dr. Wagenaar stated in evidence that it was a fair conclusion to say that more would have to be known about the procedure in fact adopted in order to determine the value to be given to the four photospread identifications and yet stated that only if there were gross violations of his suggested procedure would the identification be invalid.

550. In the absence of evidence from the officers who conducted the photospread procedure the Trial Chamber has had recourse to the evidence of the four witnesses themselves as to that procedure, a less satisfactory course in view of the relative brevity of that evidence. However, having examined that evidence, in each case it does not suggest any gross violation of what are said to be proper procedures nor any such impropriety in the procedure as would of itself cause the witness to select the photograph of the accused in preference to any of the other 12 photographs shown to him or her. In the outcome, and despite the absence of evidence of that degree of perfection of procedure which might have been established had the officers who conducted the photospread procedure given evidence, the Trial Chamber is satisfied that the four witnesses utilized an unbiased identification procedure to select the photograph of the accused as the person they described as committing the acts to which they testified.

551. The Defence contended that, since the photospread procedures were all conducted after the much-publicized commencement of this trial, some four years after the witnesses had last seen the accused, and following the widespread display of his photograph in newspapers and on television, which each of them denied having seen, and also in view of the testimony of Dr. Wagenaar, reliance should not be placed on their identification.

552. The Trial Chamber rejects this submission in view of the convincing testimony of these witnesses that they had not seen any such media pictures of the accused before being shown the photospread. It is true that each of them knew very well that it was for the purpose of this trial that they were looking through the photospread, and that for this and other reasons, all that Dr. Wagenaar would wish by way of procedure was not complied with; for instance, the witnesses were apparently not asked in advance to give their own description of the accused so that it might be compared with the particular photograph which they selected from the photospread. However, despite what has been said to be these defects in procedure, the Trial Chamber accepts the four witnesses' identification of the accused.

PROSECUTION AUTHORITIES

4. *The Prosecutor v. Mejakic*, IT-02-65-PT, Decision on Dusko Knezevic's Request Pursuant to Rule 81(D), 28 July 2004.

IN THE TRIAL CHAMBER

Before:

Judge Patrick Robinson, Presiding

Judge O-Gon Kwon

Judge Bert Swart

Registrar:

Mr. Hans Holthuis

Decision of:

28 July 2004

PROSECUTOR

v.

**ZELJKO MEJAKIC
MOMCILO GRUBAN
DUSAN FUSTAR
DUSKO KNEZEVIC**

DECISION ON DUSKO KNEZEVIC'S REQUEST PURSUANT TO RULE 81 (D)

The Office of the Prosecutor:

Ms. Ann Sutherland

Counsel for the Accused:

Mr. Jovan Simic, for Zeljko Mejakic

Mr. Branko Lukic, for Momcilo Gruban

Mr. Theodore Scudder and Mr. Dragan Ivetic, for Dusan Fustar

Ms. Slobodanka Nedic, for Dusko Knezevic

THIS TRIAL CHAMBER of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 ("the International Tribunal"),

BEING SEISED of "Dusko Knezevic's Request Pursuant to Rule 81 (D)" filed confidentially on 14 April 2004 filed by the defence for the accused Dusko Knezevic ("Defence") seeking orders: (1) to prohibit photography, video and audio recording of the accused Dusko Knezevic by third persons: (2)

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directing the Registry not to publish or disclose photographs, video and audio records of the accused Dusko Knezevic to the media; and (3) addressed to the authorities of Republika Srpska to remove billboards and posters with the photograph of the accused and to prohibit posting such billboards and posters while the case is pending, as amended by a filing of 4 May 2004 and addendum filed 11 May 2004 (together "the Motion"), in which the Defence amends its request under order (3) to seek an order directing the Office of the Prosecutor ("Prosecution") and Registry "to cease advertising of indictments in the form wic [sic] contains the photograph of accused Knezevic and to prohibit any advertisement containing Knezevic's photograph or video and audio record while this case is pending", asserting that such billboards, posters and related television broadcasts are "published at the request of the Prosecutor of ICTY and sent by the Registry to the authorities in Republika Srpska according to Rule 60 of the Rules",

NOTING the responses of the Prosecution filed on 28 April and 25 May 2004, objecting to the relief sought, denying any involvement of the Prosecution with the billboards or television broadcasts and stating that, in relation to the posters, once an accused has been arrested, his picture does not appear on subsequent posters, and that it is beyond the powers and duties of the Prosecution to retrieve all previously issued posters whenever an accused is taken into custody,

CONSIDERING the arguments put forward by the Defence in support of the Motion, namely, as regards the first and second requests, that the various Orders issued by the Trial Chamber in this case permitting release of audio-and video-recordings of the proceedings of the International Tribunal were issued before the surrender of this accused and that therefore his counsel had no opportunity to object to the issue of such Orders, SREDACTEDC and as regards the third request (as amended), that "the publication of the advertisement in such form as it was done by Prosecution breaks the right of accused established by the Article 21 of the Statute of the Tribunal: the right to fair trial SsicC and the right to be presumed innocent until proved guilty", and constitutes a misuse of the principle of public proceedings,

CONSIDERING that, with regard to the timing of the objection to the Orders of the Trial Chamber authorising release of the audio- and video-recording, those Orders form part of the public record of the case and that defence counsel are expected to review the existing record of a case when an accused is surrendered to the International Tribunal, that defence counsel for this accused was assigned in September 2002 and only raised this complaint more than one year later,

CONSIDERING that, as stated in its Decision of 20 April 2004¹, the potential impact of pre-trial media coverage is a factor to be taken into account at trial² and not a matter for determination at this stage of the proceedings,

CONSIDERING therefore that, although the Trial Chamber has discretion pursuant to Rule 5 (B) of the Rules to grant relief when an objection is raised other than at the first opportunity where the non-compliance is proved and the Trial Chamber is satisfied that the objecting party has suffered material prejudice, the Trial Chamber is not satisfied as to the issue of prejudice sufficient to warrant the relief sought by orders (1) and (2),

CONSIDERING further that, with respect to the relief sought by order (3), the Prosecution has asserted that it "has no involvement with the billboards or television broadcast" and the Defence has not provided any evidence to show that the Prosecution has requested the publication of the billboards and the television broadcast in Republika Srpska, relying instead on mere assertions and speculation,

HEREBY DISMISSES the Motion.

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Done in English and French, the English text being authoritative.

Patrick Robinson
Presiding

Dated this twenty-eighth day of July 2004
At The Hague
The Netherlands

[Seal of the Tribunal]

-
1. Decision On Motions To Remove Photographs Of Accused From ICTY Website, 20 Apr. 2004.
 2. *Prosecutor v. Dusko Tadic* Case No. IT-94-1, Opinion and Judgment, 7 May 1997, paras 542-44, *Prosecutor v. Simi} et al.*, Case No. IT-95-5, Decision on Joint Defence Motion to Exclude Evidence, 1 Aug. 2002.

PROSECUTION AUTHORITIES

5. *The Prosecutor Against Hinga Norman et al.*, SCSL-2004-14-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 8 June 2004.



SPECIAL COURT FOR SIERRA LEONE

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THE TRIAL CHAMBER

Before: Judge Benjamin Mutanga Itoe, Presiding Judge
Judge Bankole Thompson
Judge Pierre Boutet

Registrar: Robin Vincent

Date: 8 June, 2004

PROSECUTOR **Against** **Sam Hinga Norman**
 Moinina Fofana
 Allieu Kondewa
 (Case No.SCSL-04-14-T)

DECISION ON PROSECUTION MOTION FOR MODIFICATION OF PROTECTIVE MEASURES FOR WITNESSES

Office of the Prosecutor:

Luc Côté
Robert Petit

Defence Counsel for Sam Hinga Norman:

James Jenkins-Johnston

Defence Counsel for Moinina Fofana:

Michiel Pestman

Defence Counsel for Allieu Kondewa:

Charles Margai

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT RECORDS	
- 8 JUN. 2004	
NAME	MARGAI, CHARLES
SIGN	<i>[Signature]</i>
TIME	17-10

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

SEIZED of the Motion for Modification of Protective Measures for Witnesses ("Motion") filed on 4 May 2004 by the Office of the Prosecutor ("Prosecution");

NOTING the Order to the Prosecution for Renewed Motion for Protective Measures of 2 May 2004 ("Order");

NOTING the Response¹ to the Motion filed by Defence Counsel for Moinina Fofana on 14 May 2004 ("Fofana Response");

NOTING the Response² to the Motion filed by Defence Counsel for Sam Hinga Norman on 14 May 2004 ("Norman Response");

NOTING also the Order for Filing of a Consolidated Reply of 13 May 2004;

NOTING further that no Response was filed on behalf of the Accused Allieu Kondewa within prescribed time limits;

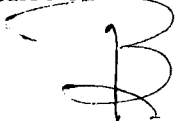
NOTING the Consolidated Reply to the responses filed by the Prosecution on 18 May 2004 ("Consolidated Reply");

CONSIDERING Articles 16 and 17 of the Statute of the Special Court ("Statute") and Rules 53, 69 and 75 of the Rules of Procedure and Evidence ("Rules");

MINDFUL of the need to guarantee the utmost protection and respect for the rights of the victims and witnesses, while ensuring the respect of the rights of the Accused to a fair and public hearing, and seeking to balance those rights with the competing interests of the public in the administration of justice;

¹ Response to Prosecution Motion for Modification of Protective Measures and Request for Permission to Contact Protected Witnesses, 14 May 2004.

² Defence Response to Prosecution Motion for Modification of Protective Measures, 14 May 2004.



I. BACKGROUND

1. Initially, the three Accused were separately indicted.³ Following motions from the Prosecution with respect to each Accused, this Court granted several protective measures for witnesses and victims,⁴ including, for the Accused Norman and Fofana, a 42 days period for the full disclosure to the Defence of any identifying data of each of the Prosecution witnesses prior to the date of their testimony at trial.⁵

2. Subsequently, pursuant to an application by the Prosecution, the three cases were joined together as "CDF Case" by an order of the Trial Chamber issued on 28 January 2004.⁶ A Status Conference was held on 4 March 2004 during which the Prosecution submitted that certain categories of its witnesses, including victim-witnesses or "insider" witnesses, will require greater levels or forms of protection than some other categories of witnesses.

3. On 2 May 2004 the Trial Chamber issued the Order requiring, *inter alia*, the Prosecution to file a renewed⁷ motion for protective measures, specifying, to the extent possible, the form of protection being sought for each of its witness including delayed disclosure, pseudonym, face distortion or closed

³ The indictment against the Accused Sam Hinga Norman was approved on 7 March 2003, while each of the indictments against the Accused Moinina Fofana and Allieu Kondewa were approved on 28 June 2003.

⁴ *Prosecutor v. Samuel Hinga Norman*, SCSL-03-08-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003 ("Norman Decision"); *Prosecutor v. Moinina Fofana*, SCSL-03-11-PD, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 16 October 2003 ("Fofana Decision"); *Prosecutor v. Allieu 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 ("Kondewa Decision"). All these three decisions cumulatively are herein referred to as "Decisions on Protective Measures".

⁵ See *Norman Decision* and *Fofana Decision*, order (a):

"The Prosecution may withhold identifying data of the persons the Prosecution is seeking protection as set forth in paragraph 16 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."

⁶ *Prosecutor v. Samuel Hinga Norman*, SCSL-03-08-PT, *Prosecutor v. Moinina Fofana*, SCSL-03-11-PD, *Prosecutor v. Allieu Kondewa*, SCSL-03-12-PT, Decision and Order on Prosecution Motions for Joinder, 28 January 2004.

⁷ The three Decisions on Protective Measures specified that the protective measures when granted were applicable at that stage of the proceedings, namely at the beginning of the pre-trial phase. See *Norman Decision*, paras 14 and 15 ("a reasonable case has been made for the prosecution witnesses herein to be granted at this preliminary stage a measure of anonymity and confidentiality" and "justify, at this point in time, delaying the disclosure of the identities of the witnesses during the pre-trial phase"), *Fofana Decision*, para 16. ("justify, at this point in time, delaying the disclosure of the identities of the witnesses during the pre-trial phase"); *Kondewa Decision*, para. 29 ("at this pre-trial stage").

session. The said motion should further provide an overview of the reasons for the protective measures sought for witnesses whose names appear on the witness list.

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II. THE SUBMISSIONS

A. The Motion:

4. The Motion is twofold and the Prosecution seeks the following:

(a) Reduction of the 42 days period for the unredacted disclosure of witness statements for the Accused Norman and Fofana;

(b) Additional Protective Measures to be adopted during the testimony of protected witnesses at trial;

(a) Reduction of Disclosure Period for the Accused Fofana and Norman

5. The Prosecution seeks the reduction of the disclosure period of the unredacted witness statements to the Defence for the Accused Norman and Fofana from 42 to 21 days prior to testimony at trial to bring it in line with the one for the Accused Kondewa. The Prosecution argues that the risk has increased since the issuing of the Decisions on Protective Measures.⁸

6. The Prosecution submits that most witnesses will testify with respect to all three accused. As they and their families live in small communities often next to ex-combatants and strong sympathizers of the Accused and investigations by the Prosecution have taken place or will take place there, hence all of them may be exposed to the same dangers.⁹ The Prosecution annexed 7 witnesses statements in support of their Motion to prove the increase in risk of potential harm to witnesses.¹⁰

⁸ Motion, para. 3.

⁹ *Id.*, para. 5.

¹⁰ *Id.*, para. 11. These statements were filed confidential and ex-parte, as annexes 1-7 to the Motion, in order to protect the identity of the witnesses. In addition, the Prosecution filed for this purpose declarations from its Chief of Investigation, from the Inspector General of the Sierra Leone Police, and from the Chief of the Victims and Witness Unit of the Special Court, respectively as annexes 8, 9 and 10 of the Motion. The Prosecution also filed various newspaper reports as annexes 26 to 34 of the Motion.

7. It is further submitted that the 21 days period for disclosure has been regarded as sufficient in many cases at the International Criminal Tribunal for Rwanda ("ICTR") and the International Criminal Tribunal for the former Yugoslavia ("ICTY").¹¹

8. The Prosecution submits that it is concerned about witnesses not testifying out of fear and intimidation by former CDF members. Moreover, the Prosecution submits that the long absence from their jobs or farms would keep many witnesses from testifying.¹²

9. In addition, the Prosecution argues that once investigators for the Defence begin to enquire about the witnesses whose identities have been disclosed within the above-mentioned communities, persons contacted for inquiries by the Defence in this process could further disclose the identities of the witnesses.¹³

(b) Additional Protective Measures for Witnesses During Testimony at Trial

10. The Prosecution divides its witnesses into two groups, based on its revised witness list filed on 4 May 2004¹⁴:

I. Witnesses of Fact

Sub-Categories within this group:

- A. Witnesses who are victims of sexual assault and gender crimes;¹⁵
- B. Child witnesses;
- C. Insider witnesses.¹⁶

II. Expert Witnesses and witnesses who have waived their right to protection¹⁷

¹¹ *Id.*, para. 9.

¹² *Id.*, paras 12-13.

¹³ *Id.*, paras 14-15.

¹⁴ Supplemental Materials filed pursuant to Order from the Bench during Pre-Trial Conference held 28 April 2004 and Order to the Prosecution to File Disclosure Materials and other Materials in Preparation for the Commencement of Trial of 1 April 2004, 5 May 2004.

¹⁵ It has to be noted that, in para. 20 of the Motion, the Prosecution wrongly refers to sub-category A as "Child witnesses" and B "Witnesses who are victims of sexual assault and gender crimes". This is obviously a *lapsus calami*, since on p. 15-17, where details regarding the categories are given, it is changed to A "Witnesses who are victims of sexual assault and gender crimes" and B "Child witnesses".

¹⁶ The pseudonyms indicating each of the protected witnesses belonging to Sub-Categories A, B and C for which the Prosecution is seeking additional protective measures during testimony are contained within Annexes 37, 38 and 39 of the Motion, respectively.

¹⁷ Motion, paras 20-21. Even though the wording and structure of the Motion gives the impression that Group I only consists of Sub-Categories A, B & C, this is obviously not the case, as the total number of these witnesses is 51 -see

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11. The Prosecution seeks for all its witnesses that orders b-k of the current orders contained in the Decisions on Protective Measures should be kept in force to the extent they apply to the trial and post-trial stage. These orders provide as follows:

(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 persons;

(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;

Annexes 37-39 to the Motion, there are only a few expert witnesses and no witness has so far waived his/her right. Counsel for Fofana properly pointed out this lack in clarity; see Fofana Response, para. 3.

Handwritten signatures and initials are present at the bottom of the page. On the left, there is a signature that appears to be 'B'. In the center, there is a large, stylized signature that looks like a '2' or 'V'. On the right, there are initials that appear to be 'R.T.T.'.

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(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.¹⁸

12. Moreover, the Prosecution seeks some additional protective measures for all witnesses, namely that they be allowed to testify with use of screening devices from the public and that photography, video-recording, and sketching or any other manner of recording or reproducing images of any witness be prohibited while he or she is in the precincts of the Special Court.¹⁹

13. Finally, the Prosecution asks for additional protective measures for certain groups of witnesses. Witnesses in Sub-Category A above, namely witnesses who are victims of sexual assault and gender crimes, should testify with voice distortion, to avoid recognition by the public.²⁰ Witnesses in Sub-Category B above, namely child witnesses, should be allowed to testify with closed circuit television to avoid as far as possible serious emotional distress by facing the Accused, while the image appearing on the public's monitors is being distorted. Finally, witnesses in Sub-Category C, namely insider witnesses, should be allowed to testify with voice distortion, as witnesses in Sub-Category A.²¹

14. As some insiders in Sub-Category C could be easily recognised by the public by the content of their testimony, the Prosecution submits that it will make applications, should the need arise, that their evidence be given in closed session.²²

B. The Responses:

15. In its Response, Counsel for Fofana opposes the reduction of the disclosure period of unredacted witness statements to 21 days as the statements disclosed so far are so heavily redacted that they are of little use to the Defence in carrying out their investigations.²³ Moreover, it submits that unredacted witness statements of Category II witnesses should be disclosed immediately, as the

¹⁸ See *Norman Decision*. The wording of the orders differs slightly between each of the Decisions on Protective Measures.

¹⁹ *Id.*, para. 38.

²⁰ *Id.*, para. 25.

²¹ *Id.*, paras 30-33.

²² *Id.*, para. 35.

²³ Fofana Response, paras 6-7.

order sought applies only to witnesses in Category I.²⁴ It further submits that the Defence is obliged not to disclose any protected identity of witnesses and therefore un-redacted statements to the Defence will not endanger any witness. Protective measures should be restricted to sub-categories A, B, C, as category D²⁵ is ill-defined and the Prosecution has failed to show the high risk justifying protective measures for this group.²⁶

16. Finally, the Defence for Fofana asks for the permission to contact all category C witnesses before their testimony at trial.²⁷

17. Counsel for Norman submits that any reduction of the disclosure period will substantially interfere with the effective planning of the case for the Defence and that all the evidence in support of the Motion is speculative and subjective and would normally not be admitted as evidence in adversarial proceedings.²⁸ It is further submitted that voice-distortion equipment and testifying behind screens will have a serious negative effect on the rights of the accused. The Defence strongly opposes the "over-protection" of the A, B, C witnesses groups, which would be the result of the granting of the Motion.²⁹

C. The Consolidated Reply:

18. In its Consolidated Reply the Prosecution concurs that the names and un-redacted statements of witnesses in category II can be disclosed, but so far no one has waived his/her right to protection as granted by the court.³⁰ Regarding the reduction of the disclosure period the Prosecution reiterates that 21 days period is not oppressive to the rights of the Accused and it is an adequate measure given the exceptional circumstances regarding the security of the witnesses.³¹

19. The Prosecution clarifies that in its Motion it seeks that all witnesses be allowed to testify behind a screen in order to protect their identity from the public, but not from the Accused and

²⁴ *Id.*, para. 4.

²⁵ Defence for Fofana refers to this residuum-group as sub-category "D", see also *supra* note 14.

²⁶ Fofana Response, para. 13.

²⁷ *Id.*, para. 14.

²⁸ Norman Response, para. 2.

²⁹ *Id.*, para. 3.

³⁰ Reply, para. 11.

³¹ *Id.*, paras 13-15.

stresses that it has submitted reliable and sufficient evidence establishing the existence of imminent risk of harm to the witnesses; moreover, this measure is standard practice at the ICTR.³²

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20. Regarding the request of Defence Counsel for Fofana for permission to contact protected witnesses the Prosecution submits that so far no witness has agreed to be interviewed by the Defence.³³

II. DELIBERATION

A. Introduction

21. For reasons of clarity, the structure of this Decision will separately address the two reliefs sought by the Prosecution, namely the reduction of the period of full disclosure of witness statements prior to the date of testimony and the additional protective measures during testimony at trial.

B. Applicable Law

22. Pursuant to Article 16 of the Statute, the Special Court is authorized to provide in its Rules for the protection of victims and witnesses. Article 16 (4) provides as follows:

“[Witnesses and Victims 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”.

23. Article 17 of the Statute, paragraph (2), provides that:

“The 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”.

24. Such protective measures shall include, without being limited to, the protection of a witness's identity. Rule 75 (A) and (B) of the Rules state in particular that:

“(A) A Judge or a Chamber may, on its own motion, or at the request of either party, or of the victim or witness concerned, or of the Witnesses and Victims Section, order

³² *Id.*, paras 6, 9, 19-20.

appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused.

(B) A Judge or a Chamber may hold an *in camera* proceeding to determine whether to order:

(i) Measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with him by such means as:

(a) Expunging names and identifying information from the Special Court's public records;

(b) Non-disclosure to the public of any records identifying the victim or witness;

(c) Giving of testimony through image- or voice- altering devices or closed circuit television, video link or other similar technologies; and

(d) Assignment of a pseudonym;

(ii) Closed sessions, in accordance with Rule 79;

(iii) Appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television.”

25. Rule 53 of the the Rules provides in paragraph (A) that:

“In exceptional circumstances, a Judge designated pursuant to Rule 28 may, in the interests of justice, order the non-disclosure to the public of any documents or information until further order.”

and in paragraph (C) that:

“A Judge may, on the application of the Prosecutor, also order that there be no disclosure of an indictment, or part thereof, or of all or any part of any particular document or information, if satisfied that the making of such an order is required to give effect to a provision of the Rules, to protect confidential information obtained by the Prosecutor, or is otherwise in the interests of justice”.

26. Rule 69 of the Rules provides that:

³³ *Id.*, para. 22.

(A) In 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 victim or witness who may be in danger or at risk, until the Judge or Chamber decides otherwise.

(B) In the determination of protective measures for victims and witnesses, the Judge or Trial Chamber may consult the Witnesses and Victims Section.

(C) Subject to Rule 75, the identity of the victim or witness shall be disclosed in sufficient time before a witness is to be called to allow adequate time for preparation of the prosecution and the defence.

C. Reduction of Disclosure Period for the Accused Norman and Fofana

27. Previous jurisprudence of this Chamber established that the process of granting protection to witnesses entails in each specific circumstances a balance between the "full respect" for the rights of the Accused and "due regard" for the protection of victims and witnesses.³⁴ New Rule 26bis of the Rules recently adopted during the continuation of the 5th Plenary Meeting of the Special Court now directly enshrines this principle in the Rules as follows:

"The Trial Chamber and the Appeals Chamber shall 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."

28. In order to achieve such a balance, the Trial Chamber rules that, together with other measures, that the adoption of the rolling disclosure system of unredacted witness statement is fair, the restriction imposed on the right of the Accused to a fair trial in this respect being both necessary and proportionate to the aim of the witness and victim protection.³⁵

29. One of the factors which this Chamber has to take into consideration in the evaluation of this balance is, in particular, the specific feature of this Court that of being located in Sierra Leone. The

³⁴ *Prosecutor v. Augustine Gbao*, SCSL-03-09-PT, Decision on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 10 October 2003 ("Gbao Decision"), para. 47. See also para. 42. See also *Kondewa* Decision, para 21. See also *Prosecutor v. Tadic*, IT-94-1-T, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses, 10 August 1995 ("Tadic Decision"), para. 57.

³⁵ *Gbao* Decision, para. 47.

physical location of the Special Court, in itself, had in this Chamber previous decisions³⁶ and has indeed in considering the merits of this further Motion a substantial impact on security considerations for witnesses and victims. 6231

30. As stated in the *Kondewa* Decision, witnesses and their families might particularly be endangered by threats arising in the specific milieu of their local community:

“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”³⁷

31. In order to satisfy the general requirement of exceptional circumstances envisaged in Rule 69(A) of the Rules,³⁸ the Prosecution has accompanied the Motion with various confidential statements from its witnesses alleging serious threats made to them or their families in different occasions, aiming at discouraging their testimonies against the Accused. Pursuant to Rule 89(C) of the Rules the Chambers accepts this evidence submitted by the Prosecutor.³⁹

32. In addition, in a signed declaration dated 3 May 2004, the Prosecution’s Chief of Investigation reports of information as of several threats made against witnesses for the Prosecution in this case as well as various attempts from what is described as CDF hardliners to disrupt the investigative activity of the Prosecution.⁴⁰ In particular, the Declaration submits that

“Potential witnesses have also expressed fear of reprisals from relatives and friends of the accused, associates of the accused, and those who support the causes or faction the accused represents ... Potential witnesses have also expressed fears for their own family members if it became known that the potential witnesses was co-operating with the Special Court ... The fears expressed by potential

³⁶ *Norman* Decision, para. 10; *Fofana* Decision, paras 10 and 12; *Kondewa* Decision, para. 15; *Gbao* Decision, paras 21-25.

³⁷ *Kondewa* Decision, para. 24.

³⁸ *Kondewa* Decision, paras 16-20; *Gbao* Decision, para. 25. See also *Prosecutor v. Musema*, ICTR-96-13-T, Decision on the Prosecution Motion for Witness Protection, 20 November 1998, para. 15-17; *Tadic* Decision, para. 62.

³⁹ Rule 89(C) of the Rules provides that “A Chamber may admit any relevant evidence”.

witnesses and by sources have increased dramatically over the period of time that I have been supervising the investigations ... indeed almost every individual with whom we come into contact to obtain information regarding the activities of the CDF/Kamajors are at first instance terrified at the thought of testifying in public and are fully convinced that doing so will bring reprisal against themselves and their families ... In addition to the fears expressed by sources and potential witnesses, there have been numerous instances of direct threats against such persons."⁴¹

33. Finally, the Chief of Investigations concludes the Declaration as follows:

"I firmly believe that witnesses, sources, and/or their family or associates risk their lives on a daily basis through their cooperation with the Special Court. It is essential for the safety and security of these potential witnesses be provided with the greatest possible protection under the law that this Court can provide."⁴²

34. This Chamber expresses grave concerns about the seriousness of the increased threats made against the Prosecution witnesses at this stage of the proceedings as such has been described in the evidence adduced by the Prosecution. It emerges also from the review of the evidence in support of this application by the Prosecution that the CDF holds a structure actively organized within the country and still capable of substantial intimidations to witnesses.⁴³

35. Furthermore, the Chamber also recalls the contents of the Twenty-First Report of the Secretary General on the United Nations Mission in Sierra Leone, dated 19 March 2004, in which it is stated:

"Some elements of the former Civil Defence Forces (CDF) who are opposed to the indictment of Sam Hinga Norman, the Former Internal Affairs Minister and National Coordinator of the CDF, could seek to disrupt the work of the [Special] Court through violent activities. Although the group was disarmed, it is believed that its command and control structures remain intact, especially in the east. For this reason, some observers believe that CDF could be capable of mobilizing a credible force."⁴⁴

⁴⁰ Motion, Annex 8 ("Declaration"). The contents of the Declaration are corroborated by the Declaration of the Inspector General of the Sierra Leone Police. See also the Declaration from the Chief of the Victims and Witnesses Unit. It is worth to observe that no evidence to rebut the Prosecution's submissions has been produced by the Defence.

⁴¹ Declaration, paras 6-9. See also paras 15, 17 and 20.

⁴² *Id.*, para. 39.

⁴³ *Id.*, paras 16, 20, 22, 24-25, and 30-34. See also Annex 9 to the Motion, paras 4-13.

⁴⁴ S/2004/228, Twenty-First Report of the Secretary General on the United Nations Mission in Sierra Leone, 19 March 2004, para. 50.

36. Based on the overwhelming weight of un-contradicted affidavit evidence before us it is therefore in the considered opinion of this Trial Chamber that a reasonable case has been made for the Prosecution witnesses to be granted, now, at this further stage of the trial of the Accused, a modification to the current measures of rolling disclosure of the Prosecution witness statements for the accused Norman and Fofana from a 42 days period to a 21 days period, in line with the same time period provided for in the *Kondewa* Decision. This measure provides now and in these circumstances for a proportionate balance of the interests of the witnesses for protection and the Accused right to a fair trial.

D. Additional Protective Measures During Testimony at Trial

Screen from Public and Prohibition of Photography

37. The Prosecution seeks additional measures for the protection of all witnesses residing in Sierra Leone who have not waived their right to protection. They request that all these witnesses be allowed to testify with the use of screening from the public. Moreover, it is requested that the public and the media shall not be allowed to photograph, video-record, sketch or in any other manner record or reproduce images of any witness while he or she is in the precincts of the Special Court.

38. Article 17(2) of the Statute entitles the Accused to a right “to a fair and public hearing, subject to measures ordered by the Special Court for the protection of victims and witnesses” (emphasis added). As has been clarified in the Prosecution Reply, the use of a screen during the testimony of a witness is intended to protect witnesses’ identity from the public and not from the Accused.⁴⁵ Thus, the “veil of anonymity” is lifted in favour of the Accused, and the right of the Accused to a fair hearing is not infringed.

39. A screen to protect the identity of the witness from the public does to a minor extent negatively affect the public nature of the trial and the possibility of the public to fully follow the proceedings, and, consequently the right of the Accused to a public hearing. It is established by jurisprudence of other international criminal tribunals and courts⁴⁶ that, generally, preference should be given to a public hearing to avoid the impression of “in camera” justice for the Accused, as well as to give the

⁴⁵ Consolidated Reply, para. 9.

public the possibility to follow the trial. However, it is also established that "this preference has to be balanced with other mandated interests"⁴⁷, among them protective measures for victims and witnesses, as laid down in Article 17(2) of the Statute.

40. As stated above, the location of the Special Court in the very country where the crimes were allegedly committed increases considerably the risks to witnesses. Based upon the information provided and the statements submitted, the Prosecution has demonstrated that there exist legitimate fears on the side of the witnesses, making it necessary to give considerable weight to security risks that could be encountered.

41. Concluding, it is our opinion that the use of a screen to protect all witnesses in court, who have not waived their right to protection, is a reasonable, appropriate and sensible way of balancing the right of the Accused to a public hearing and the right of the public to be properly informed about the proceedings before the Special Court on the one side, with the security interests of the witnesses on the other.

42. The Defence did not raise any objection regarding the measure sought by the Prosecution not to allow photographs, video-recording, sketching or in any other manner recording or reproducing images of any witness while he or she is in the precincts of the Special Court. We would like to observe that, in the case against *Andre Rwamakuba*, the ICTR found that such a measure was a "normal" protective measure which does "not affect the rights of the Accused."⁴⁸

Special Protective Measures for Sub-Categories A, B, C – Voice Distortion and Closed-Circuit-Television

43. The Prosecution also seeks additional protective measures for certain groups of witnesses:

- (i) Voice distortion for the public for witnesses in Sub-Category A and C, namely victims of sexual violence and insider witnesses; and

⁴⁶ See *Tadic* Decision, para. 32.

⁴⁷ *Id.* para. 33.

⁴⁸ *Prosecutor v Andre Rwamakuba*, ICTR-98-44-T, Decision on the Prosecuotr's Motion for Protective Measures for Witnesses, 22 September 2000, para. 14.

(ii) closed circuit television for child witnesses in Sub-Category B, while the image appearing on the public's monitors is distorted.

It is noted that the Fofana Defence did not oppose these additional measures in its Response.

44. Contrary to the understanding of Counsel for the Accused Norman of the Prosecution Motion these protective measures sought apply only with regards to the public. Thus, these measures will not preclude an accused to see and observe the demeanour of these witnesses.

45. The arguments used to demonstrate the necessity of a balancing of public hearing and witness security also apply to these additional measures. Moreover, the need for special consideration to victims of sexual violence or children during their testimonials in court has been widely recognised in both domestic laws of states and in international courts.⁴⁹

46. Specifically, for Sub-Categories A and C, (victims of sexual violence and insider witnesses) voice distortion for the public speakers were sought. Regarding Sub-Category A, victims of sexual violence, the Prosecution pointed out the risk for re-traumatisation and rejection by the victim's family and community and the possibility to recognise the voice of the witness. For insider witnesses in Category C, the Prosecution underlined the vulnerability of this group to acts of retaliation and potential harm, given the strict laws of the Kamajors not to share information with outsiders. In the opinion of the Trial Chamber these submissions demonstrate convincingly again the risks for the security of witnesses of both categories.

47. For Sub-Category B, child witnesses, the Prosecution seeks the possibility for testimony by way of closed-circuit-television. While the witness testifies in a back room in the court building, this would allow the Accused and the Defence, as well as the Trial Chamber and the Prosecution, to see the witness on a television-screen and observe his/her demeanour. The image on the screen for the public at that time would be distorted. As stated by Psychologist An Michels, especially children⁵⁰ are vulnerable witnesses, the risk of re-traumatisation and the possibility of stigmatisation and rejection is real and high. On this issue the U.S. Supreme Court held in *Maryland v. Craig* held that the use of

⁴⁹ See *Tadic* Decision, para. 47.

⁵⁰ Motion, Annex 11.

closed circuit television does not violate the constitutional right of an Accused to confrontation if it is necessary in the opinion of the Court to protect a child witness from psychological harm.⁵¹

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48. Based upon these information and the evidence submitted the Chamber finds that such risks as described would exist, and, therefore, deems it necessary in the interest of justice for children to be allowed to testify in the way the Prosecution asks for, in accordance with Rule 75(B)(i)(a).

III. DISPOSITION

HEREBY grants the Motion and ORDERS as follows:

- 1.) That the unredacted witness statements for the Accused Norman and Fofana are to be disclosed to the Defence 21 days prior to the testimony in trial of the witnesses;
- 2.) That orders b-k of the Decisions on Protective Measures⁵² remain in full force and application, as shall read as follows:

(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 persons;

(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

⁵¹ See *Maryland v Craig*, 497 U.S. 836 (1990).

⁵² *Prosecutor v. Samuel Hinga Norman*, SCSL03-08-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. Moinina Fofana*, SCSL03-11-PD, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 16 October 2003; *Prosecutor v. Allieu 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. See supra note 4.

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.

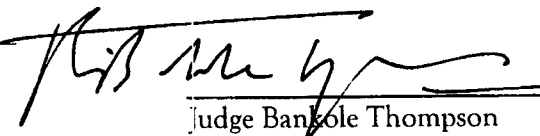
3.) That all witnesses, who have not waived their right to protection testify with use of screening a device from the public;

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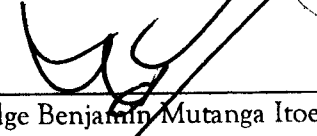
- 4.) That photography, video-recording, sketching or in any other manner of recording or reproducing images of any witness are prohibited while he or she is in the precincts of the Special Court;
- 5.) That the voice of witnesses in Sub-Category A and C during their testimony in trial be distorted in the speakers for the public;
- 6.) That witnesses in Sub-Category B testify with the use of a closed circuit television; the image appearing on the public's monitors being distorted;

And **FURTHER ORDERS** that the Prosecution shall contact the protected witnesses in Sub-Category C above, namely insider witnesses, and ask for his or her consent, or the parents or guardian of that witness if under the age of 18, for an interview by the Defence Counsel for the Accused Fofana, and shall undertake the necessary arrangements to facilitate such contact.

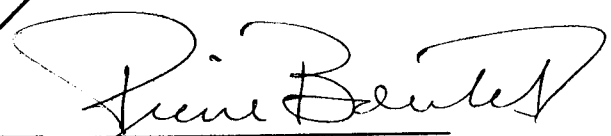
Done at Freetown this 8th day of June 2004



Judge Bankole Thompson



Judge Benjamin Mutanga Itoe



Judge Pierre Boutet

Presiding Judge,
Trial Chamber

