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SPECIAL COURT FOR SIERRA LEONE
FREETOWN, SIERRA LEONE.

Before - The Designated Judge
Registrar - Robin Vincent Esq.
Date Filed - 14th May 2004

THE PROSECUTOR

against

SAMUEL HINGA NORMAN

MOININA FOFANA

ALLIEU KONDEWA

Case No. SCSL - 2004 - 14-PT.

DEFENCE RESPONSE TO
**PROSECUTION MOTION FOR MODIFICATION OF PROTECTIVE
MEASURES FOR WITNESSES.**

SPECIAL COURT FOR SIERRA LEONE	
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Office of the Prosecutor

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DEFENCE Response to Prosecution Motion for Modification of Protective Measures for Witnesses.

(1) Introduction.

By Motion dated the 4th May 2004 the Prosecution seeks two (2) orders as set out below, which they contend are necessary for the protection of witnesses and alleged victims who will be testifying before the Court. Relying on Rules 53, 54, 69, 73 and 75 of the Special Court's Rules of Evidence and Procedure the Prosecution is seeking the following Orders:

- (a) Modification of deadline for disclosure to 21 days (P.6189).
- (b) Additional protective measures during trial (P.6198)

In Principle Defence Counsel would not object to reasonable measures designed for the protection of Witnesses and Victims, provided that such measures are

“....consistent with the rights of the Accused.
 (See Rule 75 of the Special Court Rules.)

Having due regard to the objective that the Prosecution seeks to

achieve, the presumption of innocence of every accused person until he is proved guilty, and the evidence brought by the Prosecution in support of their motions, It is here submitted that the orders sought go far beyond what is necessary for the protection of witnesses *and* victims, derogate from the rights of the Accused persons to a transparent and fair trial, are excessive *and* oppressive, and run contrary to the letter and spirit of Article 17 of the Statute, entitled "RIGHTS OF THE ACCUSED."

(2) **PROSECUTOR'S SUBMISSIONS** (First Order Sought)

The substance of the Prosecutor's submission in respect of the first order sought, i.e. Modification of deadline for disclosure to 21 days, is that the period of 42 days set down in the Decision of the Trial Chamber in the Annex to the decision on the Prosecutor's motion for immediate protective measures for witnesses *and* victims *and* for non-public disclosure made on 23rd May 2003 will considerably increase the risk of potential harm to witnesses should the identifying data of protected witnesses be revealed too far in advance of their testimony.

With respect to the Prosecution, all the evidence they have produced from the Chief of Investigation, the Inspector-General of Police, Mr. Saleem Vahidy *and* An Michels do not in any way affect or modify the effect and purport of the Considered Order made by Judge Bankole Thompson on 23 May 2003 on this point, *to wit*:

".....

The Special Court for Sierra Leone (The Special Court).....

.....Being seized of the Motion for Immediate Protective measures for witnesses *and* victims *and* for Non-Public disclosure filed by the Prosecutor on 7th April 2003 for an order requesting various protective measures to safeguard the Security *and* privacy of victims, witnesses *and* to safeguard the integrity of the prosecution's evidence and of these proceedings.....

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

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

.....Considering also that it is of paramount importance to protect the right of the Accused to a fair *and* public trial *and* that only in exceptional circumstances should such a right be derogated from.....

...Having meticulously examined the merits of the submissions by the Defence in response to the said Prosecution Motion *and* sought to balance the interests of the victims and witnesses for protection *and* privacy with the right of the Accused to a fair trial in the context of the specific measures requested.....

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

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

I hereby grant the Prosecution Motion and Order as follows:
(a – k).

I hereby further order that consistent with (a) above, “the Prosecutor shall disclose the names and unredacted Statements of the witnesses to the Defence in at least 42 days before the witness is to testify at the trial to allow the defence sufficient *and* reasonable time to prepare effectively for trial, having regard to the gravity of the charges against the Accused persons *and* the magnitude of the Prosecutor’s allegations against them....”

The Defence submits that this issue of the protection of witnesses has been exhaustively considered and decided upon as set out above, and any reduction in the time already allowed will not only be inconsistent with the above cited judicially considered decision, but will substantially interfere with the effective planning of the case for the defence, especially having regard to the gravity of the charges and the multiplicity of witnesses the Prosecution intend to call. This it is submitted will be totally unfair to the Accused, and will in fact undermine the integrity of the proceedings.

It is submitted that the evidence adduced in support of the Motion is largely speculative, subjective, conjectural and centred on events *and* activities which ought not to affect the work of the Special Court or its proceedings. In fact most of what is contained in the various declarations is evidence which would not normally be admissible in adversarial proceedings for various violations of the Rules of evidence, and Counsel submits that the earlier decisions of the Court ought not to be altered.

(3) **PROSECUTOR'S SUBMISSIONS** (Second Order Sought).

The Defence submits that in the order made by the Designated Judge on the 23rd May 2003 adequate protection has been given to the witnesses by means of the various orders (a – k) in the decision.

The Defence further submits that the request of the Prosecution to be allowed to use voice-distortion equipment as well as testifying behind a screen will not only seriously derogate from the right of the Accused to a “...fair and public trial” as required both by the Statute and the Rules of the Special Court, but will also deprive the Accused of the face to face confrontation, which will undoubtedly be an “inestimable advantage” to the Court.

It is further submitted that Rule 79 (A) makes adequate provision for the Court to be cleared of both Press *and* Public whenever this is considered necessary, but the Accused must be able to see *and* face his accusers, always bearing in mind that the Court itself must be in a position to observe the demeanour of a witness in Court particularly when it comes to matters of testing veracity and determining credibility.

The Defence submits that the categorization of witnesses into Category A, B *and* C makes no substantial difference to the issues which would determine whether or not such an order should be granted, having regard to the guaranteed rights of the Accused in the Statute *and* the Rules, and the need for a fair *and* transparent hearing. It is further submitted that such

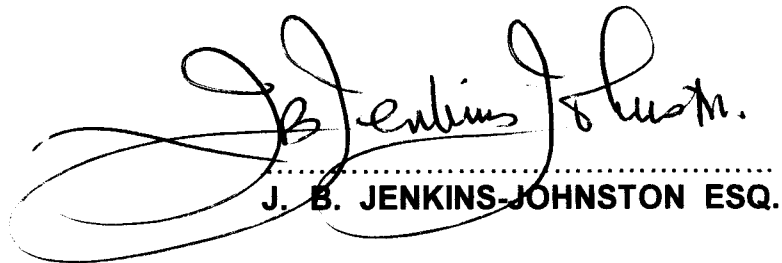
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measures as the use of a Screen or Voice distortion would be excessive and would encourage people to give false testimony knowing that they could neither be seen by the Accused nor indeed properly heard by them. While it is necessary for all witnesses *and* victims to be protected, it is also absolutely necessary to avoid over-protection of the said witnesses and jeopardizing the fair trial of the Accused, especially considering the seriousness of the charges against them. Defence relies on our earlier response to the Motion of 7th April 2003.

(4) **CONCLUSION**

The Defence submits that the Motion should be denied for the reasons stated herein.

DATED THIS 14TH DAY OF MAY 2004.



J. B. JENKINS-JOHNSTON ESQ.

.....
S. B. TEJAN-SIE ESQ.