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**SPECIAL COURT FOR SIERRA LEONE**

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

**TRIAL CHAMBER I**

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

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

**Date:** 7<sup>th</sup> of March 2007

<b>PROSECUTOR</b>	<b>Against</b>	<b>ISSA HASSAN SESAY</b> <b>MORRIS KALLON</b> <b>AUGUSTINE GBAO</b> (Case No. SCSL-04-15-T)
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**Public Document**

**ORDER TO RE-CLASSIFY AND REVIEW DEFENCE MATERIALS**

Office of the Prosecutor:

James C. Johnson  
Peter Harrison

Defence Counsel for Issa Hassan Sesay:

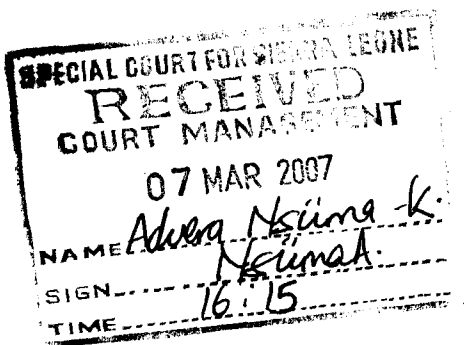
Wayne Jordash  
Sareta Ashraph

Defence Counsel for Morris Kallon:

Shekou Touray  
Charles Taku  
Melron Nicol-Wilson

Court Appointed Counsel for Augustine Gbao:

Andreas O'Shea  
John Cammegh



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

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

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

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

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

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

**MINDFUL** of the Decisions and Orders of This Trial Chamber concerning protective measures for Prosecution witnesses, including the Decisions on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure for each individual accused in the

RUF trial<sup>1</sup> and, in particular, the Decision on Prosecution Motion for Modification of Protective Measures for Witnesses filed on the 5<sup>th</sup> of July 2004;<sup>2</sup>

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

CONSIDERING, however, that Article 17(2) of the Statute of the Special Court (“Statute”) provides that “[t]he accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Court for the protection of victims and witnesses”;

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

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

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

“protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses”<sup>4</sup>

<sup>1</sup> *Prosecutor v. Sesay*, SCSL-03-05-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 23 May 2003; *Prosecutor v. Kallon*, SCSL-03-07-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 23 May 2003; and *Prosecutor v. Gbao*, SCSL-03-09-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 10 October 2003.

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

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

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

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

REITERATING that all Parties must exercise the utmost diligence when dealing with confidential issues and, in particular, any information that could lead to the identification of a protected or potential witnesses or victim;<sup>6</sup>


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


HEREBY ORDERS as follows:

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

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

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

Case No. SCSL-04-15-T 

  
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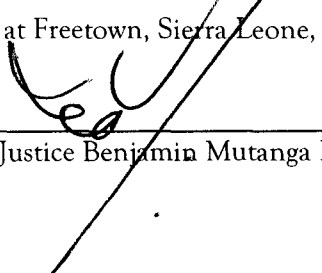


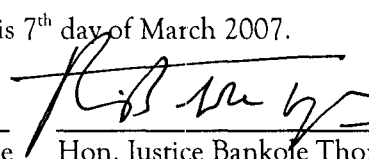
7<sup>th</sup> of March 2007

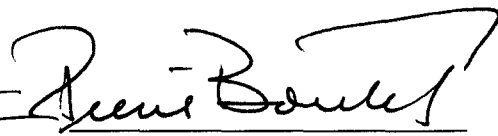
4. That this information to be filed on or before Monday, the 19<sup>th</sup> of March 2007.

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Done at Freetown, Sierra Leone, this 7<sup>th</sup> day of March 2007.

  
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Hon. Justice Benjamin Mutanga Itoe

  
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Hon. Justice Bankole Thompson  
Presiding Judge  
Trial Chamber I

  
\_\_\_\_\_  
Hon. Justice Pierre Boutet

[Seal of the Special Court for Sierra Leone]

