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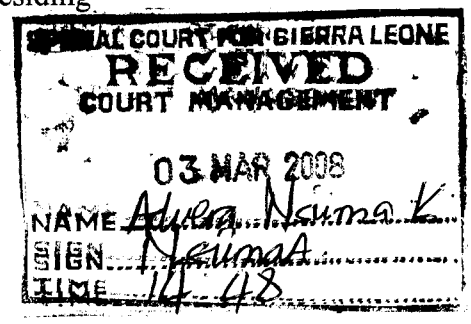
SCSL-04-15-T
(24537-24566)

24537

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

APPEALS CHAMBER

Before:	Justice George Gelaga King, Presiding Justice Emmanuel Ayoola Justice Raja Fernando Justice Renate Winter Justice Jon M. Kamanda
Registrar:	Herman von Hebel
Date filed:	3 March 2008



THE PROSECUTOR **Against** **Issa Hassan Sesay**
Morris Kallon
Augustine Gbao

Case No. SCSL-04-15-T

PUBLIC WITH CONFIDENTIAL ANNEX

PROSECUTION NOTICE OF APPEAL AND SUBMISSIONS REGARDING "DECISION ON THE SESAY DEFENCE MOTION REQUESTING THE LIFTING OF PROTECTIVE MEASURES IN RESPECT OF CERTAIN PROSECUTION WITNESSES"

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I. TITLE AND DATE OF FILING OF APPEALED DECISION

1. The Prosecution files this Notice of Appeal pursuant to Rules 73(B) and 108(C),[1] and the Practice Direction of 30 September 2004,[2] to appeal the "Decision on Sesay Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses," dated 9 November 2007.[3]

II. SUMMARY OF PROCEEDINGS RELATING TO APPEALED DECISION

2. On 19 January 2007, the First Accused filed the "Confidential Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Requested Witnesses".[4] An addendum to this Motion was later filed by the First Accused on 25 September 2007, listing an additional ten (10) witnesses for whom the First Accused sought the lifting of protective measures.[5]
3. On 29 January 2007, the Prosecution filed its "Confidential Prosecution Response to Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Requested Witnesses."[6]
4. The First Accused's "Reply to Prosecution Response to Defence Motion Requesting the Lifting of Protective Measures in Respect of Requested Witnesses"[7] was filed on 5 February 2007.
5. Trial Chamber I delivered its Decision on 9 November 2007 ordering, that the Prosecution disclose to the Defence the unredacted statements of the witnesses listed in the Motion.[8] The Decision dealt with the statements listed in the Motion by

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[1] Rules of Procedure and Evidence of the Special Court for Sierra Leone, as amended ("**Rules**").
[2] Practice Direction for Certain Appeals Before the Special Court, 30 September 2004.
[3] *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-873, "Decision on Sesay Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses," 9 November 2007 ("**Decision**").
[4] *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-687, "Confidential Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Requested Witnesses," 19 January 2007 ("**Motion**").
[5] *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-824, "Public with Confidential Addendum to Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Requested Witnesses," 25 September 2007 ("**Addendum**").
[6] *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-700, "Confidential Prosecution Response to Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Requested Witnesses," 29 January 2007.
[7] *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-704, "Reply to Prosecution Response to Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Requested Witnesses", 5 February 2007.
[8] At p. 14, the Decision uses the words "disclose to the Defence the unredacted statements of the witnesses

considering them in terms of witness statements originally disclosed by the Prosecution under Rule 68 and witness statements originally disclosed under Rule 66.[9]

6. The Prosecution application for leave to appeal the Decision was filed on 12 November 2007.[10]
7. On 19 November 2007, the First Accused filed the "Sesay Defence Response to Prosecution Application for Leave to Appeal Decision on the Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses."[11]
8. The Prosecution filed its Reply on 26 November 2007.[12]
9. On 25 February 2008, the Trial Chamber granted the Prosecution application for leave to appeal the Decision.[13]

III. GROUNDS OF APPEAL

10. Ground One: The Trial Chamber erred in ordering the Prosecution to disclose unredacted versions of witness statements of the Rule 68 Witnesses, portions of which had been originally disclosed pursuant to Rule 68.
11. Ground Two: The Trial Chamber erred in ordering the Prosecution to disclose unredacted versions of witness statements originally disclosed pursuant to Rule 66 that were redacted to protect the identity of the witness.

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list in the Motion," which the Prosecution has understands to mean the witnesses listed in the Motion and the Addendum.

[9] See Motion, paras. 26 to 35.

[10] *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-877, "Confidential Prosecution Application for Leave to Appeal Decision on the Sesay Defence Motion Requesting Lifting of Protective Measures in Respect of Certain Prosecution Witnesses," 12 November 200; and SCSL-04-15-T-878, "Confidential Addendum to Prosecution Application for Leave to Appeal Decision on the Sesay Defence Motion Requesting Lifting of Protective Measures in Respect of Certain Prosecution Witnesses," 13 November 2007.

[11] *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-884, "Public Sesay Defence Response to Prosecution Application for Leave to Appeal Decision on the Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses," 19 November 2007.

[12] *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-898, "Confidential Prosecution Reply to Sesay Defence Response to Prosecution Application for Leave to Appeal Decision on the Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses," 26 November 2007.

[13] *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-1001, "Decision on Prosecution Application for Leave to Appeal Decision on the Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses," 25 February 2008.

12. Ground Three: The Trial Chamber erred in ordering that the Defence may contact the witnesses subject to the Motion by first asking the Witnesses and Victims Unit ("**WVS**") to ascertain if the witness consents to speak to the Defence, and where consent is given for WVS to arrange an interview with the Defence.

IV. RELIEF SOUGHT

13. The Decision should be set aside and the Motion dismissed. In the alternative, the Appeals Chamber should determine whether summaries or further redacted statements, which continue to protect the identities of the witnesses at issue should be disclosed. In the further alternative, the matter should be remitted to the Trial Chamber for further submissions on the applicable law and the facts.
14. In addition, the order varying the applicable protective measures orders by permitting the Defence to have WVS approach the witnesses to seek their consent to speak to the Defence should be set aside.

SUBMISSIONS ON THE GROUNDS OF APPEAL

PART A. STATEMENT OF FACTS

15. The Motion sought disclosure of the unredacted statements of certain protected Prosecution witnesses. For twelve (12) of the witnesses listed in the Motion and for ten (10) witnesses listed in the Addendum, material from these witnesses' statements had previously been disclosed in a redacted form pursuant to Rule 68. The following Rule 68 witnesses were listed in the Motion and the Addendum (together the "**Rule 68 Witnesses**"):

Motion	**Addendum**
TF1-040	TF1-274
TF1-033	TF1-335
TF1-354	TF1-374
TF1-416	**TF1-376**[14]
TF1-408	TF1-399
TF1-516	TF1-520
TF1-376	TF1-542
TF1-424	TF1-553
TF1-511	TF1-561
TF1-338	TF1-581
See para. 1 of Confidential Annex A	
See para. 1 of Confidential Annex A	

16. The Motion also sought disclosure of unredacted versions of statements of 15 Prosecution witnesses which statements were disclosed, pursuant to Rule 66, to the Defence in redacted form. None of these 15 witnesses testified as prosecution witnesses in the RUF trial. These witnesses were listed in the Motion as follows (together the "**Rule 66 Witnesses**"):

[14] TF1-376 is printed in bold to show that the witness was listed in the Motion and in the Addendum.

Motion
TF1-062
TF1-063
TF1-079
TF1-102
TF1-131
TF1-153
TF1-182
TF1-273
TF1-275
TF1-318
TF1-319
TF1-325
TF1-347
TF1-352
TF1-356

17. The above listed witnesses are protected by measures granted in the: (i) current proceedings pursuant to a number of decisions, the final one delivered on 5 July 2004 (the final one to be called the "**RUF Protective Measures Decision**");[15] and (ii) many are protected by measures granted in the trial of *Prosecutor v. Charles Ghankay Taylor* ("**Taylor trial**").
18. The RUF Protective Measures Decision distinguished between witnesses of fact (group I witnesses), and experts or witnesses who waived their right to protection (group II witnesses). Three further categories of witnesses were created for group I witnesses, which were in addition to a normal group I witness, namely: Category A –

[15] *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-180, ' Decision on Prosecution Motion for Modification of Protective Measures for Witnesses," 5 July 2004. Earlier protective measures decisions were granted, see: *Prosecutor v. Sesay,* SCSL-03-05-PT-38 "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-03-05-PT-33, "Decision on the Prosecutor's Motion for Immediate protective Measures for Witnesses and Victims and for Non-Public Disclosure," 23 May 2003; *Prosecutor v. Gbao,* SCSL-03-05-PT-48, "Decision on the Prosecutor's Motion for Immediate protective Measures for Witnesses and Victims and for Non-Public Disclosure," 10 October 2003.

witnesses who are victims of sexual assault and gender crimes; Category B – child witnesses; and Category C – insider witnesses.[16] In describing its basis for this further distinction between witnesses and the need for additional protective measures for these Categories, the Trial Chamber said:

> 32. The Chamber's argument, demonstrating the necessity of balancing the right to a public hearing of the Accused with the requirement to guarantee the protection of victims and witnesses, also applies to these additional measures. Moreover, it is trite law that 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.
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> 33. Specifically, for Categories A and C (victims of sexual violence and insider witnesses), voice distortion for the public speakers were sought. Regarding Category A, victims of sexual violence, the Prosecution pointed out the risk of 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 particular vulnerability of members of this group and their families to acts of retaliation and potential harm, due to their important testimony implicating directly the Accused. In the opinion of the Trial Chamber, these submissions once more demonstrate convincingly the risks for the security and danger to which both categories of witnesses could be exposed if disclosed and the requirement to grant appropriate measures for their protection.
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> 34. As regards Category B witnesses, 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 while the image on the screen for the public at that time would be distorted. As stated by Psychologist An Michels, vulnerable witnesses such as children have a high risk of re-traumatisation and the possibility of stigmatisation and rejection is real and high. On this issue the U.S. Supreme Court, whose reasoning we find instruction and persuasive, held in Maryland v. Craig that the use of closed circuit television does not violate the constitutional right

[16] RUF Protective Measures Decision, para. 1.

> of an Accused to confrontation if it is necessary in the opinion of the Court to protect a child witness from psychological harm.[17]

19. The Trial Chamber imposed a number of protective measures for all Group I witnesses (witnesses of fact), including the use of pseudonyms at all times, testifying behind screens, voice distortion for Category A and C witnesses, testifying with the use of closed-circuit television for Category B witnesses (children), and where Defence counsel wish to contact a Prosecution protected witness or a relative of such person, Defence counsel must make a written request to the Trial Chamber, then at the direction of the Trial Chamber the Prosecution shall contact the person to ask for his or her consent and undertake the necessary arrangements to facilitate such contact.[18]
20. The RUF Protective Measures Decision was delivered in July 2004 and no application for leave to appeal was taken. The Prosecution interacted with witnesses knowing that this order was in effect, in particular, the Trial Chamber's acknowledgement of the importance of "balancing the right to a public hearing of the Accused with the requirement to guarantee the protection of victims and witnesses...."[19]
21. As noted above, many of the witnesses affected by the Decision are Prosecution witnesses in the Taylor trial. A protective measures order was made in the Taylor trial ("**Taylor Protective Measures Decision**")[20] that replicates several of the protective measures included in the RUF Protective Measures Decision. The terms of the Taylor Protective Measures Decision are applied in subsequent orders made by in the Taylor Trial.[21]

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[17] RUF Protective Measures Decision, paras. 32-34.
[18] RUF Protective Measures Decision, see DISPOSITION, pp. 15-17.
[19] RUF Protective Measures Decision, para. 32.
[20] *Prosecutor v. Taylor*, SCSL-03-1-PT-99, "Decision on Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures and on Confidential Prosecution Motion for Leave to Substitute a Corrected and Supplemented List as Annex A of the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures", 5 May 2006, para. 1(m)).
[21] See for example *Prosecutor v. Taylor*, SCSL-03-01-PT-251, "Decision on Confidential Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and On Public Urgent Prosecution Motion for Leave to Substitute A Supplemental Witness List as Annex A(4) of the Confidential Urgent Prosecution Motion for Immediate Protective Measures", 26 March 2007.

22. The Motion further sought, and the Decision granted, the Defence leave to contact the witnesses listed in the Motion and Addendum, by first asking WVS to contact the witness to determine whether they consent to an interview with the Defence and where consent is given to assist in arranging the interview.[22] This varied both the RUF Protective Measures Decision and the Taylor Protective Measures Decision. The former required a written request to the Trial Chamber[23] while the latter required the written consent of the Prosecution or leave of the court.[24]
23. The Prosecution is not aware of any request being made to the Trial Chamber, prior to service of the Motion, for permission to interview any Prosecution witness.

PART B. STANDARD OF REVIEW

24. The Prosecution submits that the Trial Chamber erred in exercising its discretion to order the Prosecution to disclose unredacted versions of the Rule 68 Witnesses and the Rule 66 Witnesses, in that the Trial Chamber "misdirected itself either as to the principle to be applied, or as to the law which is relevant to the exercise of the discretion, or ... [gave] weight to extraneous or irrelevant considerations, or ... has failed to give weight or sufficient weight to relevant considerations, or ... made an error as to the facts upon which it has exercised its discretion".[25] The exercise of the discretion was one that was not "reasonably open" to the Trial Chamber,[26] and the Trial Chamber "abused its discretion",[27] or "erred and exceeded its discretion",[28] and

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[22] Decision, see DISPOSITION, pp. 14-15.
[23] RUF Protective Measures Decision, see DISPOSITION, p. 17, para. (o).
[24] Taylor Protective Measures Decision, para. 1(m)
[25] *Prosecutor v. Norman, Fofana, Kondewa,* SCSL-04-14-688, "Decision on Interlocutory Appeals on Trial Chamber Decision Refusing to Subpoena the President of Sierra Leone," 11 September 2006, para. 6; *Prosecutor v. Milosević,* IT-99-37-AR73, "Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder", Appeals Chamber, 18 April 2002, para. 5. See also *Prosecutor v. Milosević,* IT-02-54-AR73.6, "Decision on the Interlocutory Appeal by the *Amici Curiae* Against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case", 20 January 2004, para. 7; *Prosecutor v. Bizimungu,* ICTR-99-50-AR50, "Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber II Decision of 6 October 2003 Denying Leave to File Amended Indictment", 12 February 2004, para. 11; *Prosecutor v. Karemera,* ICTR-98-44-AR73, "Decision on Prosecutor's Interlocutory Appeal Against Trial Chamber III Decision of 8 October 2003 Denying Leave to File Amended Indictment", 19 December 2003, para. 9.
[26] *Prosecutor v. Delalić et al,* IT-96-21-A, Appeals Chamber, "Judgement", 20 February 2001, paras. 274–275 (see also para. 292, finding that the decision of the Trial Chamber not to exercise its discretion to grant an application was "open" to the Trial Chamber).
[27] *Ibid.*, para. 533 ("... the Appeals Chamber recalls that it also has the authority to intervene to exclude evidence, in circumstances where it finds that the Trial Chamber abused its discretion in admitting it"), and

committed a "discernible error" in the exercise of its discretion,[29] and that the Decision was so unreasonable and plainly unjust that the Appeals Chamber is able to infer that the Trial Chamber must have failed to exercise its discretion properly.[30]

25. For the reasons given below, the Prosecution also submits that the Decision erred in interpreting and applying Rules 66 and 68, in that it failed to correctly articulate or to correctly apply the legal rules and principles regarding the obligations imposed by Rules 66 and 68.

PART C. GROUNDS OF APPEAL

i) Ground One - The Trial Chamber erred in ordering the Prosecution to disclose unredacted versions of witness statements of the Rule 68 Witnesses, portions of which had originally been disclosed pursuant to Rule 68

26. The Trial Chamber erred in law, or alternatively erred in the exercise of its discretion, in ordering the Prosecution to disclose to the Defence the full unredacted statements of witnesses whose Rule 68 information had already been provided to the Defence.
27. **First,** the Trial Chamber erred in law by failing to strike the appropriate balance between the rights of the Accused on the one hand with "the need to guarantee the utmost protection and respect for the rights of victims and witnesses"[31] on the other.
28. Relying on decisions of the International Criminal Tribunal for Rwanda ("**ICTR**"),[32] the Trial Chamber reasoned that unredacted statements **must** be disclosed by the

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see also at para. 564 (finding that there was no abuse of discretion by the Trial Chamber in refusing to admit certain evidence, and in refusing to issue a subpoena that had been requested by a party at trial).

[28] *Ibid.*, para. 533.

[29] *Prosecutor v. Naletilić and Martinović,* IT-98-34-A, Appeals Chamber, "Judgement," 3 May 2006, paras. 257-259; *Prosecutor v. Mejakić et al.*, IT-02-65-AR11*bis*.1, "Decision on Joint Defence Appeal Against Decision on Referral Under Rule 11*bis*," 7 April 2006 ("***Mejakić* Rule 11*bis* Appeal Decision**"), para. 10.

[30] Compare *Mejakić* Rule 11*bis* Appeal Decision, para. 10

[31] *Prosecution v. Sesay*, "Decision on the Prosecutor's Motion for Immediate protective Measures for Witnesses and Victims and for Non-Public Disclosure", SCSL-2003-05-PT-IP-038, 23 May 2003, para. 9.

[32] Decisions relied on included *Prosecutor v. Karemera et al.,* ICTR-98-44-T, "Decision on the Prosecutor's Application Pursuant to Rules 39, 68 and 75 of the Rules of Procedure and Evidence for an Order for Conditional Disclosure of Witness Statements and Other Documents Pursuant to Rule 68(A)", 4 July 2006 and *Prosecutor v. Bagosora et al.,* ICTR-98-41-T, "Decision on Disclosure of Identity of Prosecution Informant", 24 May 2006 ("***Bagosora* Decision 2**") (note the Decision erroneously gives the date of the *Bagosora* Decision as 4 May 2006).

Prosecution under Rule 68 where the identity of the witness who made the statement is inextricably connected with the substance of the statements "notwithstanding any protective measures".[33] However, the ICTR decisions are not authority for the principle that disclosure of exculpatory material must be made without regard for other interests. This is apparent from the wording of the ICTR Rule 68, which as the table below demonstrates, is significantly different from Rule 68 of the Special Court for Sierra Leone ("**SCSL**"):

SCSL Rules	**ICTR Rules**[34]
Rule 68: Disclosure of Exculpatory Evidence (*amended 14 March 2004*) (A) The Prosecutor shall, within 14 days of receipt of the Defence Case Statement, make a statement under this Rule disclosing to the defence the existence of evidence known to the Prosecutor which may be relevant to issues raised in the Defence Case Statement. (B) The Prosecutor shall, within 30 days of the initial appearance of the accused, make a statement under this Rule disclosing to the defence the existence of evidence known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence. The Prosecutor shall be under a continuing obligation to disclose any such exculpatory material.	**Rule 68: Disclosure of Exculpatory and Other Relevant Material** (A) The Prosecutor shall, as soon as practicable, disclose to the Defence any material, which in the actual knowledge of the Prosecutor may suggest the innocence or mitigate the guilt of the accused or affect the credibility of Prosecution evidence. (B) Where possible, and with the agreement of the Defence, and without prejudice to paragraph (A), the Prosecutor shall make available to the Defence, in electronic form, collections of relevant material held by the Prosecutor, together with appropriate computer software with which the Defence can search such collections electronically. (C) The Prosecutor shall take reasonable steps, if confidential information is provided to the Prosecutor by a person or entity under Rule 70(B) and contains material referred to in paragraph (A) above, to obtain the consent of the provider to disclosure of that material, or the fact of its existence, to the accused. (D) The Prosecutor shall apply to the Chamber sitting in camera to be relieved from an obligation under the Rules to

[33] Decision, para. 26.
[34] Rule 68 of the ICTR's Rules of Procedure and Evidence.

SCSL Rules	ICTR Rules[34]
	disclose information in the possession of the Prosecutor, if its disclosure may prejudice further or ongoing investigations, or for any other reason may be contrary to the public interest or affect the security interests of any State, and when making such application, the Prosecutor shall provide the Trial Chamber (but only the Trial Chamber) with the information that is sought to be kept confidential. (E) Notwithstanding the completion of the trial and any subsequent appeal, the Prosecutor shall disclose to the other party any material referred to in paragraph (A) above.

29. ICTR Rule 68(D) specifically provides for an application by the Prosecutor for relief from disclosing "information in the possession of the Prosecutor, if its disclosure may prejudice further or ongoing investigations, or for any other reason may be contrary to the public interest or affect the security interests of any State...." There is no equivalent in the SCSL Rules, but that difference is accounted for by the content of the obligation created by SCSL Rule 68, which is a limited obligation, namely "to make a statement ... disclosing to the defence the existence of evidence known to the Prosecutor ...." It is not the obligation created by Rule 68 of the ICTR. In the present case the obligation created by the SCSL's Rules has in fact been complied with and exceeded because the Rule 68 information has already been extracted from statements and such extracts given *verbatim* (and not in the form of a statement) to the Accused.
30. The cases referred to in the Decision interpret Rule 68 of the ICTR, but those cases also acknowledge the existence and purpose of Rule 68(D) and those cases were determined on the basis that "The Prosecution has made no application to the Chamber under Rule 68(D)."[35]
31. In addition, when deciding whether statements should be disclosed, the ICTR Trial

[35] *Bagosora* Decision 2, para. 9.

Chamber in *Bagosora* took note of the significant concession on the part of the Prosecution "that the Accused must already know Witness AIU's identity, given the content of his statement."[36] No such concession is made with respect to the application before this Trial Chamber. Indeed, the Prosecution would be extremely concerned if the First Accused did know the identity of any of the witnesses who are the subject of this application.[37]

32. The Prosecution did seek relief pursuant to Rule 68(D) in an earlier *Bagosora* motion, and in that earlier decision the ICTR Trial Chamber made clear that where Rule 68(D) is invoked the Prosecution may redact the statement so that only the substance of the exculpatory information is disclosed:

> 8. Having reviewed the statements, the Chamber is satisfied that they may feasibly be redacted so as to conceal the identity of any targets of ongoing investigations, while still conveying the substance of exculpatory information. This is the appropriate means of both respecting the rights of the Accused and safeguarding the ability of the Prosecution to continue its investigations under Rule 68 (D).[38]

33. The above statement is an explicit endorsement of the need to balance the rights of the accused while at the same time safeguarding the Prosecution's ability to continue investigations in other proceedings.

34. However, in the later *Bagosora* decision the Prosecution did not apply for relief under Rule 68(D) and the identity of the witness was already known to the Accused. Nonetheless, the Trial Chamber permitted some redaction of the statements: "Witness AIU's present location does not assist in understanding the content of the statement. Accordingly, any indications in the statement of the witness's present location is not exculpatory and need not be disclosed to the Defence."[39] Where the witness' identity is not known to the Defence and where the disclosure of non-Rule 68 material is sought, the Prosecution should be permitted, at a minimum, to redact the statements for the purpose of "safeguarding the ability of the Prosecution to continue its

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[36] *Bagosora* Decision 2, para. 10.
[37] With the exception of the two persons referred to in the Table above whose names were released in error.
[38] *Prosecutor v. Bagosora et al*, ICTR-98-41-T, "Decision on Disclosure of Defence Witness Statements in Possession of the Prosecution Pursuant to Rule 68(A)," ("***Bagosora* Decision 1**") 8 March 2006, para. 8.
[39] *Bagosora* Decision 2, para. 6.

investigations, "[40] and to redact any information identifying the current location of witnesses.[41]

35. As set out above, the ICTR rule governing disclosure of exculpatory material includes provisions which set out exceptions to the duty to disclose. As also set out above, in the later *Bagosora* Decision, the Chamber found that, as the Prosecution had made no arguments on the point, it could not consider whether any of the exceptions in Rule 68(D) applied. The position of the prosecution in the *Bagosora* Decision is, therefore, to be contrasted with the position of the Prosecution in the current proceedings.

36. In the instant case, the Prosecution made arguments on why disclosure should not be made and why redactions should have been permitted, and the Trial Chamber failed to give due consideration to those arguments. Had such a balancing exercise been undertaken, it would have led the Trial Chamber to consider and order less intrusive methods of permitting the Defence access to the witnesses. Further, contrary to the authority cited,[42] the Trial Chamber's decision goes beyond disclosure of the witnesses' identities to the Defence, but requires disclosure of non-Rule 68 material as well.

37. Rule 68 material must be disclosed, but the Trial Chamber erred in ruling that non-Rule 68 material must be disclosed. The Trial Chamber, in taking the view that non-Rule 68 material must be disclosed, failed to give proper consideration to the effect of its Decision on the Prosecution's right to present evidence in separate proceedings and that "disclosure may prejudice further or ongoing investigations". The ICTR recently emphasized the scope and importance of this Prosecutorial function, stating that:

> ... the exceptional relief from disclosure obligations afforded to the Prosecutor pursuant to Rules 65(C) and 68(D) of the Rules are not limited to the case or investigations of only one Accused, but refer to investigations in general conducted by the Prosecutor. Relief may be granted if there is a showing that disclosure may prejudice any further or ongoing investigations, may be contrary

[40] *Bagosora* Decision 1, para. 8.
[41] *Bagosora* Decision 2, para. 6.
[42] See *Prosecutor v. Karemera et al.*, ICTR-98-44-T, "Scheduling Order", 30 March 2006.

> to the public interest, or may affect the security interest of any State.[43]

38. In this regard, disclosure of unredacted witness information to the First Accused and his counsel in the RUF case will have a chilling effect on the Prosecution's ability to present the best relevant evidence in separate proceedings. The subjective fears of witnesses are supported by objective threats to their security and attempts to interfere with the administration of justice. The attitude of the RUF Accused and Defence to protective measures, as discussed in paragraph 46 below, further compounds the negative consequences of the Decision to the security of Prosecution witnesses and the Prosecution's right to present evidence.
39. **Secondly,** the Trial Chamber erred in interpreting the plain language of Rule 68. Rule 68 does not oblige the Prosecution to disclose unredacted witness statements but rather, "to make a statement ... disclosing to the defence the existence of evidence known to the Prosecutor ...". In fact, by providing the Defence with the actual *verbatim* exculpatory portions of a statement, the Prosecution has exceeded its obligations under Rule 68. However, the fact that the Prosecution has provided more than the Rule requires does not confer a new right on the Accused.
40. The Trial Chamber's reasoning is not only inconsistent with Rule 68 but goes beyond its purpose. The Trial Chamber's conclusion was that the existence of evidence which meets the very broad disclosure language of Rule 68 requires the disclosure of all evidence from the witness, including that which does not meet the definition of Rule 68 material. In that regard, the Trial Chamber erroneously held that the Accused has an absolute right to the disclosure of not only the witness' identity but the full unredacted statements of witnesses if such statements have any information which falls within Rule 68's very broad language, even where the Rule 68 material has been previously provided.
41. Though it may be consistent with the purpose of the Rule to permit the Defence the opportunity to seek consent to speak to a witness who has given Rule 68 evidence, no consent has ever been sought. Nor is there any further suggestion in the Rule that the

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[43] *Prosecutor v. Karemera et al,* ICTR-98-44-T, "Decision on Joseph Nzirorera's Motion for Unsealing *Ex Parte* Submissions and for Disclosure of Withheld Materials," 18 January 2008, para. 3.

Defence is entitled to unredacted statements taken for other proceedings and investigations. Again, reliance on the ICTR decisions fails to appreciate that disclosure in these cases was not made as an absolute right, but only after properly considering the balance of competing interests.

42. The Trial Chamber erred in not considering or ordering less intrusive measures to provide the Defence with the information to which it was entitled under the Rules. The Trial Chamber could have considered, and ordered, the Prosecution to provide a summary of the additional points to which the witness could testify rather than the full unredacted statement of the witness. The Trial Chamber could have ordered the Prosecution to stipulate that the witness would provide the Rule 68 information disclosed, in lieu of providing the full unredacted statement of the witness. Such directions would have balanced the rights of the Accused against the rights of the witnesses and also against the right of the Prosecution to present the best evidence in other proceedings, and would have been consistent with the purpose and wording of Rule 68.

43. The need to consider less intrusive measures is heightened by the need to ensure that the protective measures ordered in the Taylor trial are not compromised or eroded by considering the First Accused's request in a vacuum. It is necessary to consider the links between the various proceedings before the SCSL and the effect any ruling might have on these separate proceedings (see also para. 2 of Confidential Annex A).

44. **Thirdly,** the Trial Chamber erred in failing to apply the correct test when considering a variation in protective measures. As stated in the CDF trial, "where a party in a case seeks to rescind, vary or augment protective measures granted to the witness, it should present *supporting evidence* capable of establishing on a preponderance of probabilities that the witness is no longer in need of such protection."[44] The Trial Chamber's reasoning that the variations to the protective measures are minimal and do not diminish the protection available is not consistent with the test to be applied, nor is it factually accurate. The measures expose the witnesses' identity to persons

[44] *Prosecutor v. Norman*, SCSL-04-14-T-274, "Ruling on Motion for Modification of Protective Measures for Witnesses", 18 November 2004, at para. 43 (emphasis added).

whose disregard of protective measures has been admitted by counsel by the First Accused, as discussed below.

45. Where an application to rescind protective measures is commenced the question to be determined is whether there is a diminution in the threat level faced by witnesses. In this regard, counsel for the First Accused has not satisfied its obligation to present independent factual evidence that the security situation facing the protected witnesses has changed and thus warrants a variation of the protective measures orders. In the Taylor trial,[45] arguments similar to those offered by the Sesay Defence were dismissed by Trial Chamber II. Trial Chamber II rejected a Defence motion seeking unredacted disclosure in respect of 15 core witnesses as the Defence had failed to "demonstrate that the potential threats to the security of witnesses [had] diminished" and did not consider that limiting disclosure of the unredacted statements to the Defence team alone was sufficient.[46]

46. Further, the Trial Chamber's conclusion that the variation to the protective measures are minimal and do not diminish the protection available fails to take account of non-compliance with protective measures orders. On 5 July 2006, counsel for the First Accused made the following comments in court:

> PRESIDING JUDGE: Are you suggesting that his apprehensions are unfounded?
> MR JORDASH: Totally unfounded. These accused have known this witness is going to give evidence from months. Their colleagues and friends from the rebel groups, colleagues and friends from outside the rebel groups have known he has given evidence in the AFRC trial for months. It doesn't stay within the confines of this Court, or Trial Chamber II, that a witness has given evidence. That is in a sense --
> JUDGE BOUTET: Why not?
> MR JORDASH: Because people speak. People speak. Because family members of the witnesses speak. Because accused from Trial Chamber II speak to their friends about what is going on in their trial. Sierra Leone is like a huge grapevine where information travels at an incredible rate. Information such as witnesses identity, whilst special measures assist perhaps in keeping some of the information within the domain of the Court,

[45] *Prosecutor v. Taylor*, SCSL-03-01-PT-209, "Decision on Defence Motion to Lift the Redactions of Identifying Information of Fifteen Core Witnesses", 21 March 2007.
[46] *Ibid.*, para 38.

18 much of it, especially when it concerns the significant players
19 in the conflict, and this man is a significant player --
20 PRESIDING JUDGE: Isn't it a veiled suggestion that the
21 protective measures are a facade? Is that a veiled suggestion
22 that they are?
23 MR JORDASH: It's not a veiled suggestion. It's a
24 suggestion that they have only limited value.
25 PRESIDING JUDGE: I see.[47]

47. Access by family members and friends of the Accused to protected material is a blatant violation of protective measures deserving of independent investigation. To give additional information to people who have exhibited total disregard for existing protective measures only ensures that additional violations will take place.

48. In addition to failing to take account of the above, the Trial Chamber also did not have the most up-to-date information before it regarding the threats faced by witnesses. Many of the witnesses affected by the Decision are Prosecution witnesses in the Taylor trial. The Decision states that the Trial Chamber consulted with Trial Chamber II pursuant to Rule 75(H). However, following such consultation and three days prior to the Decision, the Prosecution filed a motion seeking protective measures, which was granted, and so addressed once more the real and objective threats faced by its witnesses, particularly those in the Taylor trial.[48]

49. **Finally,** the Prosecution wishes to stress the irreparable prejudice which it will suffer. It is the Prosecution's experience that many witnesses are reluctant to speak to the Prosecution at all, while several who have given statements have thereafter refused to assist the Prosecution any further. Other witnesses have made it clear that they would only testify in closed session. Therefore, the disclosure of the unredacted statements to the Defence will likely adversely impact the witnesses' subjective assessment of their security and may also add to the objective risk to their security. As stated, many of the witnesses in the Motion are protected witnesses in the Taylor trial.[49] Disclosure of their unredacted statements to the Defence in this case could affect their continued willingness to provide relevant information to the Trial Chamber in the Taylor trial or in such other investigations as are authorized by the Prosecutor. This

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[47] *Prosecution v. Sesay*, SCSL-04-15-T, "Trial Transcript', 5 July 2006, page 36.

[49] Response, para. 23.

would impede the Prosecution in its "duty ... to present the best available evidence to prove its case"[50] and so interfere with the course of justice.

ii) Ground Two - The Trial Chamber erred in ordering the Prosecution to disclose unredacted versions of witness statements originally disclosed pursuant to Rule 66 that were redacted to protect the identity of the Rule 66 Witnesses

50. In respect of the statements of witnesses originally disclosed under Rule 66, the Chamber referred to Rule 66(A)(ii) and found that provision of the unredacted statements would be of material assistance to the Sesay Defence, that the requested variations to the applicable protective measures were minimal and that the Sesay Defence had established a *prima facie* case that there was good cause for disclosure of the statements in unredacted form.[51] Further, the Chamber held that these statements also contained exculpatory material and, as the identity and unredacted portions of the statements were inextricably linked to the substance of the statement, the unredacted statements should be disclosed.[52]

51. In respect of the Trial Chamber's findings on disclosure of the unredacted statements of witnesses originally disclosed under Rule 66, the same errors were made regarding a failure to: (i) strike the appropriate balance between the rights of the Accused, the rights of witnesses and the rights of the Prosecution; (ii) apply the correct test when considering a variation in protective measures; and (iii) appreciate that the Prosecution rather than WVS is the appropriate body to make contact with the witnesses. Accordingly, the Prosecution adopts the arguments made in respect of these issues in Ground Two above and Ground Three below and applies them to disclosure of the statements originally disclosed under Rule 66.

52. Importantly, the Motion did not seek relief pursuant to Rule 66(A)(ii), and as such relief was not applied for, the Response did not address that sub-Rule. In circumstances where a Motion goes forward on one basis and the opposing party

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[50] *Prosecutor v. Nahimana*, ICTR-99-52-I, "Decision on Prosecutor's Oral Motion for Leave to Amend the List of Selected Witnesses", 26 June 2001, para. 20.
[51] Decision, para 31.
[52] Decision, paras 32 to 35.

addresses the issue raised in the Motion, it is unfair to consider the Motion on alternative bases not raised or addressed by the parties.[53] The Prosecution did not have the opportunity to address the proper application of Rule 66(A)(ii).

53. In addition, the Trial Chamber erred by linking a finding of materiality in respect of the identity of the author of Rule 68 material with the disclosure of non-Rule 68 material obtained from that author. A finding that a statement contains some exculpatory material is not sufficient in and of itself to require that *all* information obtained from that witness is "material" and should be disclosed to the Defence. Nor does such a finding constitute a showing of good cause under Rule 66(A)(ii) to require disclosure of the non-Rule 68 information material obtained from the author.

54. Rule 66 states:

> **Rule 66: Disclosure of materials by the Prosecutor (amended 29 May 2004)**
>
> (A) Subject to the provisions of Rules 50, 53, 69 and 75, the Prosecutor shall:
>
> i. Within 30 days of the initial appearance of an accused, disclose to the Defence copies of the statements of all witnesses whom the Prosecutor intends to call to testify and all evidence to be presented pursuant to Rule 92 *bis* at trial.
> ii. Continuously disclose to the Defence copies of the statements of all additional prosecution witnesses whom the Prosecutor intends to call to testify, but not later than 60 days before the date for trial, or as otherwise ordered by a Judge of the Trial Chamber either before or after the commencement of the trial, upon good clause being shown by the Prosecution. Upon good cause being shown by the Defence, a Judge of the Trial Chamber may order that copies of the statements of additional prosecution witnesses that the Prosecutor does not intend to call be made available to the defence within a prescribed time.
> iii. At the request of the defence, subject to Sub-Rule (B), permit the defence to inspect any books, documents, photographs and tangible objects in his custody or control, which are material to the preparation of the defence, upon a showing by the defence of categories of,

[53] See the Decision at paras. 30-33.

> or specific, books, documents, photographs and tangible objects which the defence considers to be material to the preparation of a defence, or to inspect any books, documents, photographs and tangible objects in his custody or control which are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.
>
> (B) Where information or materials are in the possession of the Prosecutor, the disclosure of which may prejudice further or ongoing investigations, or for any other reasons may be contrary to the public interest or affect the security interests of any State, the Prosecutor may apply to a Judge designated by the President sitting ex parte and in camera, but with notice to the Defence, to be relieved from the obligation to disclose pursuant to Sub-Rule (A). When making such an application the Prosecutor shall provide, only to such Judge, the information or materials that are sought to be kept confidential.

55. Pursuant to the words of Rule 66(A)(ii) the burden is on the applicant to show good cause, and where good cause is demonstrated then the Trial Chamber "may order that copies of the statements of additional prosecution witnesses that the Prosecutor does not intend to call be made available to the defence..." [underlining added]. A discretion remains with the Trial Chamber even upon a demonstration of good cause; and that discretion is granted in order to permit the Trial Chamber to weigh the evidence demonstrating good cause against the rights of witnesses for whom protective measures have been ordered.
56. It is also the case, and it may turn on the strength of applicant's evidence, that the Trial Chamber could order something short of disclosure of the unredacted statement. In balancing the rights of the accused with the protection of witnesses the Trial Chamber could have ordered an inspection of the statement, with the name and information of identity redacted, alternatively the Prosecution could have been ordered to provide a summary of all information contained in the statement absent the name and identifying information of the witness.
57. As noted above, fifteen (15) Rule 66 Witnesses are listed in Annex A to the Motion, with assertions corresponding to each that are attempts to meet the test imposed by Rule 66(A)(ii). A review of the assertions in Annex A demonstrates that the material

provided cannot demonstrate good cause. Accordingly, the Trial Chamber erred in failing to apply the law to the information contained in Annex A to the Motion. Good cause must be shown, speculation that a statement may contain exculpatory evidence is not enough, especially where, as here, the Prosecution has provided all Rule 68 material.

58. Should the unredacted statements of witnesses previously disclosed in redacted form under Rule 66 be disclosed to the Defence, similar prejudice may be suffered by the Prosecution as outlined in paragraph 49 above. The Prosecution therefore adopts the arguments set out therein.

ii) Ground Three - The Trial Chamber erred in ordering that the Defence contact witnesses through WVS

59. The RUF Protective Measures Decision states:

> o. The Defence Counsel shall make a written request to the Trial Chamber or a Judge thereof, for permission to contact any Prosecution witness who is a protected witness 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 parent's or guardian's consent 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.[54]

60. There was no evidence before the Trial Chamber that any requests had been made to contact any Prosecution witness. Hence, there could be no evidentiary basis, and certainly no principled reason, to vary an existing order.

61. The Motion sought to rescind protective measures and it was argued by the parties on that basis. The test in such applications is that "...where a party in a case seeks to rescind, vary or augment protective measures granted to the witness, it should present *supporting evidence* capable of establishing on a preponderance of probabilities that the witness is no longer in need of such protection" [emphasis added].[55] No

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[54] RUF Protective Measures Decision, p. 17.
[55] *Prosecutor v. Norman*, SCSL-04-14-T-274, "Ruling on Motion for Modification of Protective Measures for Witnesses", 18 November 2004, at para. 43 (emphasis added).

supporting evidence was submitted to the Court to justify any variation of the protective measures.

62. While Trial Chamber I advised that it consulted with Trial Chamber II, such consultation does not alter the proposition that, in order to vary a protective measure, supporting evidence to justify the variation must be adduced by the applicant.

63. The question the Trial Chamber was required to address was whether there was a diminution in the threat level faced by witnesses. Evidence on this question is available. For example, WVS could address this issue, in addition to evidence from Defence investigators or other persons familiar with security issues in Sierra Leone and the region. No such evidence was tendered. In fact, instead, as noted in paragraph 48 above, a Prosecution motion addressing the real and objective threats faced by its witnesses, particularly those in the Taylor trial was filed three days prior to the Decision and was subsequently granted

64. As was pointed out above, in the Taylor trial,[56] arguments similar to those offered by counsel for the First Accused were dismissed by Trial Chamber II because the Defence had failed to "demonstrate that the potential threats to the security of witnesses [had] diminished...."[57]

65. The Trial Chamber erred in finding that the Taylor Protective Measures Decision is silent on the means of contacting Prosecution witnesses.[58] The Taylor Protective Measures Decision states:

> (m) That the Defence Counsel shall not directly or indirectly contact any protected Prosecution witness except with the written consent of the Prosecution or leave of court.[59]

66. Accordingly, there was no supporting evidence before the Trial Chamber to justify a variation of protective measures, and the Trial Chamber erred in finding that no order had been made on the matter in the Taylor trial.

67. Witnesses in war crimes trial may be very vulnerable as a result of sustained trauma, other witnesses, in particular "insider" witnesses, may be suspicious of unknown

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[56] *Prosecutor v. Taylor*, SCSL-03-01-PT-209, "Decision on Defence Motion to Lift the Redactions of Identifying Information of Fifteen Core Witnesses", 21 March 2007.
[57] *Ibid.*, para 38.
[58] Decision, para. 39.
[59] Taylor Protective Measures Decision, para. 1(m).

individuals, fearing that their own acts may be scrutinized. For both types of witnesses it is the case that they are familiar with members of the Prosecution rather than WVS, and that the Prosecution may, in the majority of cases, be in the best position to explain why attempts are now being made by the Defence in the RUF trial to speak to these Prosecution witnesses.

68. For the reasons set out above, the Trial Chamber erred in ordering that Prosecution witnesses be contacted by WVS and not by the Prosecution.

PART D. RELIEF SOUGHT

69. The Decision should be set aside and the relief sought in the Motion should be dismissed. Alternatively, where it is deemed that further material should be disclosed in the form of summaries or stipulations of evidence, the Prosecution should be permitted to redact or edit such document to protect the identity of the witness. In the further alternative, should the Appeals Chamber determine that further argument on the facts and the law is required, the matter should be remitted to the Trial Chamber.

70. The order permitting the Defence to contact Prosecution witnesses by having WVS contact the Prosecution witness to seek their consent should be set aside.

Filed at Freetown, on 3 March 2008

For the Prosecution,

P. H. Harrison

Pete Harrison

RECORD ON APPEAL

1. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-687, "Confidential Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Requested Witnesses," 19 January 2007.
2. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-700, "Confidential Prosecution Response to Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Requested Witnesses," 29 January 2007.
3. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-704, "Reply to Prosecution Response to Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Requested Witnesses", 5 February 2007.
4. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-824, "Public with Confidential Addendum to Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Requested Witnesses," 25 September 2007.
5. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-873, "Decision on Sesay Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses," 9 November 2007.
6. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-877, "Confidential Prosecution Application for Leave to Appeal Decision on the Sesay Defence Motion Requesting Lifting of Protective Measures in Respect of Certain Prosecution Witnesses," 12 November 2007.
7. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-878, "Confidential Addendum to Prosecution Application for Leave to Appeal Decision on the Sesay Defence Motion Requesting Lifting of Protective Measures in Respect of Certain Prosecution Witnesses," 13 November 2007.
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9. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-898, "Prosecution Reply to Sesay Defence Response to Prosecution Application for Leave to Appeal Decision on the Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses," 26 November 2007.
10. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-1001, "Decision on Prosecution Application for Leave to Appeal Decision on the Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses," 25 February 2008.

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2. *Prosecutor v. Kallon,* SCSL-03-05-PT-33, "Decision on the Prosecutor's Motion for Immediate protective Measures for Witnesses and Victims and for Non-Public Disclosure," 23 May 2003

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3. *Prosecutor v. Gbao,* SCSL-03-05-PT-48, "Decision on the Prosecutor's Motion for Immediate protective Measures for Witnesses and Victims and for Non-Public Disclosure," 10 October 2003

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4. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-180, "Decision on Prosecution Motion for Modification of Protective Measures for Witnesses," 5 July 2004

5. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-687, "Confidential Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Requested Witnesses," 19 January 2007

6. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-700, "Confidential Prosecution Response to Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Requested Witnesses," 29 January 2007.

7. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-704, "Reply to Prosecution Response to Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Requested Witnesses", 5 February 2007

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14. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-1001, "Decision on Prosecution Application for Leave to Appeal Decision on the Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses," 25 February 2008

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15. *Prosecutor v. Taylor* , SCSL-03-1-PT-99, "Decision on Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures and on Confidential Prosecution Motion for Leave to Substitute a Corrected and Supplemented List as Annex A of the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures", 5 May 2006

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18. *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T-274, "Ruling on Motion for Modification of Protective Measures for Witnesses", 18 November 2004

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25. *Prosecutor v. Nahimana*, ICTR-99-52-I, "Decision on Prosecutor's Oral Motion for Leave to Amend the List of Selected Witnesses", 26 June 2001
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31. *Prosecutor v. Karemera et al.*, ICTR-98-44-T, "Decision on the Prosecutor's Application Pursuant to Rules 39, 68 and 75 of the Rules of Procedure and Evidence for an Order for Conditional Disclosure of Witness Statements and Other Documents Pursuant to Rule 68(A)", 4 July 2006 http://69.94.11.53/ENGLISH/cases/Karemera/decisions/040706.htm

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B. Rules of Procedure and Evidence and Practice Directions

1. Rules of Procedure and Evidence of the Special Court, Rules 66, 68, 73(B), 75(H), 108(C), as amended.

2. Practice Direction for Certain Appeals Before the Special Court of 20 September 2004.

3. Rules of Procedure and Evidence of the International Criminal Tribunal for Rwanda, Rule 68, as amended. http://69.94.11.53/ENGLISH/rules/index.htm

C. Other Documents

1. *Prosecution v. Sesay et al*, SCSL-04-15-T, "Trial Transcript", 5 July 2006

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CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the ***Confidential*** Case File.

Case Name: The Prosecutor – v- Sesay, Kallon & Gbao
Case Number: SCSL-2004-15-T
Document Index Number: 1021
Document Date 03rd March, 2008
Filing Date: 03rd, March, 2008
Number of Pages: 30
Page Number: **24566**
Document Type: - ***Confidential Annex A***

☐ Affidavit
☐ Indictment
☐ Correspondence
☐ Order
☒ **Other**
☐ Reply
☐ Response
☐ Application

Document Title **Public with Confidential Annex -- Prosecution Notice of Appeal and Submissions Regarding "Decision on the Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses"**

Name of Officer:

Advera Nsiima

Signed: Nsiima.