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SCSL-03-01-T  
(17014-17061)

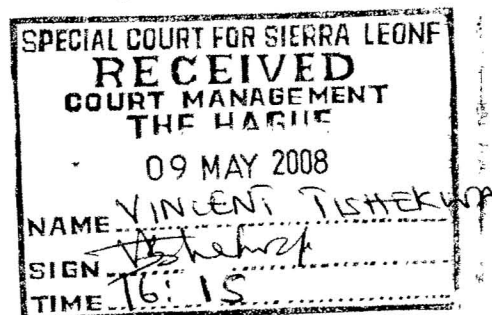
17014

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

Before: Justice Teresa Doherty, Presiding  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice El Hadji Malick Sow, Alternate Judge

Registrar: Mr. Herman von Hebel

Date filed: 8 May 2008



**THE PROSECUTOR**

**Against**

**Charles Ghankay Taylor**

Case No. SCSL-03-01-T

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***PUBLIC WITH CONFIDENTIAL ANNEXES B AND E***

**URGENT PROSECUTION APPLICATION FOR RECONSIDERATION OF ORAL DECISION REGARDING  
PROTECTIVE MEASURES FOR WITNESS TF1-215 OR IN THE ALTERNATIVE APPLICATION FOR  
LEAVE TO APPEAL ORAL DECISION REGARDING PROTECTIVE MEASURES FOR WITNESS TF1-  
215**

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Office of the Prosecutor:

Ms. Brenda J. Hollis  
Ms. Julia Baly  
Ms. Kirsten Keith

Counsel for the Accused:

Mr. Courtenay Griffiths  
Mr. Terry Munyard  
Mr. Andrew Cayley  
Mr. Morris Anyah

## **I. Introduction**

1. The Prosecution files this Application pursuant to Rules 54, 73 (A) and 73(B) of the Rules of Procedure and Evidence (“**Rules**”) seeking:
  - i) urgent reconsideration of the Decision made on 6 May 2008, which held that witness TF1-215 was not protected by protective measures previously ordered by the Court;<sup>1</sup> or in the alternative
  - ii) urgent application for leave to appeal the above mentioned decision.
2. The Prosecution requests the above relief on the basis that the Trial Chamber erred in deciding that the witness had no protective measures in place.

## **II. Background**

3. Witness TF1-215 testified in the RUF case with the basic in-court protective measures ordered by Trial Chamber I.<sup>2</sup> On 31 March 2008 the Defence and the Trial Chamber were notified of the existing protective measures applicable to this witness. On 6 May 2008, prior to the witness taking the stand, the Prosecution again informed the Trial Chamber and the Defence of the protective measures applicable to TF1-215.
4. The Trial Chamber requested the Prosecution to provide a copy of the list of witnesses to which the RUF Decision applied. Subsequently the Defence orally applied to have the protective measures rescinded. Before ruling on the Defence application, the Trial Chamber and Defence were provided copies of other Prosecution filings related to the RUF decision.<sup>3</sup>
5. The Trial Chamber questioned the wording of the Renewed Motion and whether the RUF Decision applied to TF1-215. Having heard the arguments by each Party and having reviewed the pertinent filings provided by the Prosecution, the Trial Chamber held that the RUF Decision did not provide TF1-215 protective measures:

After careful consideration of that decision and the submissions of counsel we find nothing in the decision which would entitle witness TF1-215 to any protective

<sup>1</sup> Taylor Trial Transcript, 6 May 2008, p. 9122– Impugned Decision is **Annex A**.

<sup>2</sup> The witness testified on 2 August 2005 in the RUF trial with use of a pseudonym and screen pursuant to: *Prosecutor v Sesay et al*, SCSL-2004-15-T-180 “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses”, 5 July 2004 (“**RUF Decision**”). The practice at the SCSL is that witnesses who testify using a pseudonym also use a screen.

<sup>3</sup> Including: *Prosecutor v Sesay et al*, SCSL-2004-15-PT-102, “Renewed Prosecution Motion for Protective Measures pursuant to Order to the Prosecution for renewed Motion for Protective measures dated 2 April 2004”, 4 May 2004 (“**Renewed Motion**”) and “Material Filed pursuant to order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial of 1 April 2004”, 26 April 2004 (“**Witness List of 26 April**”)

measures. In our view the decision relates solely to those witnesses listed in annexes A and B of the renewed Prosecution motion for protective measures. Witness TF1-215 is not among those witnesses listed in the annexes. Accordingly the witness will testify in open court and the Defence application to rescind the protective measures of this witness is now moot.<sup>4</sup>

6. As a result of this Trial Chamber's Decision, the Prosecution was unable to call TF1-215 to testify, as the witness stated he would not testify without the protective measures which had been in place for his prior testimony because of his fears for his safety and the safety of his family. The witness maintains that position and has provided a statement to this effect in **Annex B**, which is filed confidentially.

### III. Applicable Law

#### Reconsideration of Decision

7. The silence of the Statute and the Rules regarding reconsideration of decisions is not in itself determinative of the issue and is "not necessarily inconsistent with a judicial body's inherent jurisdiction to exercise this power in exceptional circumstances."<sup>5</sup> A Chamber has an inherent jurisdiction to reconsider its own decisions.<sup>6</sup> The issue is thus the circumstances which may occasion reconsideration of a Trial Chamber decision.
8. The Appeals Chamber has considered such inherent jurisdiction: "A power to reconsider would arise in the event of a *clear error of reasoning*."<sup>7</sup> Trial Chamber I has also held that a Trial Chamber has inherent power to reconsider decisions where *a clear error of reasoning* in a previous decision has been demonstrated and the Decision sought to be reconsidered *has led to an injustice*.<sup>8</sup> It has further adopted the views taken by ICTR Trial Chamber II, that

<sup>4</sup> Taylor Trial Transcript, 06.05.08, p.9122-9123

<sup>5</sup> *Prosecutor v Norman et al*, SCSL-04-14-T-507, "Decision on Urgent motion for Reconsideration of the Orders for Compliance with the order Concerning the preparation and Presentation of the Defence Case", 7 December 2005, para. 10

<sup>6</sup> *Prosecutor v Norman et al*, "Decision on Prosecution Appeal against the Trial Chamber's decision of 2 August 2004 refusing Leave to File an Interlocutory Appeal", 17 January 2005, paras. 31, 32, 35 and 40 ("**CDF Appeals Decision**"); *Prosecutor v Taylor*, SCSL-03-01-PT-125, "Decision on Defence Motion to Set Aside and / or Reconsider Trial Chamber's "Decision On Urgent Prosecution Motion For Immediate Protective Measures For Witnesses And For Non-Public Disclosure" dated 13 September 2006", 5 October 2006, para. 24 and supra note 6, Norman Decision 7 December 2005, para. 11.

<sup>7</sup> CDF Appeals Decision, para. 35 (emphasis added)

<sup>8</sup> *Prosecutor v Sesay et al*, SCSL-04-15-T-1033, "Decision on Kallon Motion on Challenges to the Form of the Indictment and for Reconsideration of Order Rejecting Filing and Imposing sanctions", 6 March 2008, p.1 (emphasis added)

circumstances justifying reconsideration include but are not limited to circumstances where the impugned decision was erroneous in law or an abuse of discretion when decided.<sup>9</sup>

9. This Trial Chamber also considered the circumstances justifying reconsideration of decisions and referred to a change of circumstances that removes or alters the basis for the original order, consistent with the Separate and Concurring Opinion of Justice Robertson in an AFRC Appeals Chamber Decision.<sup>10</sup> This Opinion also recognised that "...the Appeals Chamber has an inherent discretionary power to reconsider a previous interlocutory decision, *for example, if a clear error of reasoning has been demonstrated or it is necessary to do so in order to prevent an injustice.*"<sup>11</sup>
10. The Appeals Chamber's observations regarding reconsideration are consistent with established ICTY and ICTR jurisprudence. The ICTY Appeals Chamber stated:
 

"The Appeals Chamber has an inherent power to reconsider any decision including a judgment *where it is necessary to do so in order to prevent an injustice.* The Appeals Chamber has previously held that a Chamber may reconsider a decision, and not only when there has been a change of circumstances, *where the Chamber has been persuaded that its previous decision was erroneous and has caused prejudice.* Whether or not a Chamber does reconsider its decision is itself a discretionary decision."<sup>12</sup>
11. This jurisprudence establishes that the bases for exercising the discretionary power to reconsider are non-exhaustive, and include where the decision was erroneous;<sup>13</sup> an abuse of discretion when decided;<sup>14</sup> or where an injustice has been occasioned.<sup>15</sup>

<sup>9</sup> Supra note 7, Norman Decision, 7 December 2005, para. 14.

<sup>10</sup> *Prosecutor v Taylor*, SCL-03-01-PT-226, "Decision on Defence Motion requesting Reconsideration of 'Joint Decision on defence Motions on Adequate Facilities and Adequate time for the Preparation of Mr. Taylor's Defence'", dated 23 January 2007," 25 April 2007, p.3

<sup>11</sup> *Prosecutor v Brima et al*, SCSL-04-16-T-441, "Separate and concurring Opinion of Justice Robertson on Decision on Brima-Kamara Defence Appeal Motion against Trial Chamber II Majority Decision on Extremely urgent Confidential Joint Motion For The Re-Appointment Of Keven Metzger And Wilbert Harris As Lead Counsel For Alex Tamba Brima And Brima Bazzy Kamara", 8<sup>th</sup> August 2005, para. 50

<sup>12</sup> *Prosecutor v Delic et al*, Case No. IT-96-21-Abis, "Judgement on Sentence Appeal", Appeals Chamber, 8 April 2003, para. 48 (emphasis added). The ICTR Appeals Chamber has held: "The Appeals Chamber has an inherent discretionary power to reconsider a previous interlocutory decision, for example, if a clear error of reasoning has been demonstrated or if it is necessary to do so in order to prevent an injustice." *Prosecutor v Nahimana et al*, ICTR-99-52-A "Decision on Jean-Bosco Barayagwiza's Request for Reconsideration of Appeals Chamber Decision of 19 January 2005", 4 February 2005.

<sup>13</sup> The ICTY Appeals Chamber held: "A Trial Chamber may nevertheless always reconsider a decision it has previously made, not only because of a change of circumstances but also where it is realised that the previous decision was erroneous or that it has caused an injustice." *Prosecutor v Galic*, IT-98-29-AR73, "Decision on Application for Leave to Appeal", 14 December 2001, para. 13.

<sup>14</sup> *Prosecutor v Bagosora et al*, ICTR-98-41-T, "Decision on Prosecutor's Motion for Reconsideration of the Trial Chamber's 'Decision on prosecutor's Motion for Leave to vary the Witness List pursuant to Rule 73 bis (E)'", 15 June 2004, para. 9

<sup>15</sup> *Prosecutor v Karemera et al*, ICTR-98-44-PT, "Decision of the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses", 29 August 2005, para. 8. See also *Prosecutor v Muvunyi*, Case No. ICTR-2000-



Alternative request for relief, application for Leave to Appeal

12. Rule 73(B) provides that leave to appeal may be granted in exceptional circumstances and to avoid irreparable prejudice to a party. As noted by this Chamber:

“the overriding legal consideration in respect of an application for leave to file an interlocutory appeal is that the applicant’s case must reach a level of exceptional circumstances and irreparable prejudice. Nothing short of that will suffice having regard to the restrictive nature of Rule 73(B) of the Rules and the rationale that criminal trials must not be heavily encumbered and consequently unduly delayed by interlocutory appeals.”<sup>16</sup>

However, as recognised by the Appeals Chamber, “the underlying rationale for permitting such appeals is *that certain matters cannot be cured or resolved by final appeal against judgement*”<sup>17</sup> (emphasis added).

13. The two limbs to Rule 73(B) – exceptional circumstances and irreparable prejudice – are conjunctive and both must be satisfied if an application for leave to appeal is to succeed. There is no comprehensive or exhaustive definition of “exceptional circumstances”; what constitutes exceptional circumstances “must necessarily depend on, and vary with, the circumstances of each case.”<sup>18</sup> As Trial Chamber I has observed “exceptional circumstances” may exist where the question is one of general principle to be decided for the first time, where further decision is conducive to the interests of justice, where the interests of justice might be interfered with or the question raises serious issues of fundamental legal importance.<sup>19</sup>

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55A-T, Decision on Motion to Strike or Exclude Portions of Prosecutor’s Exhibit No. 34, Alternatively Defence Objections to Prosecutor’s Exhibit No. 34, Tr. Ch. II, 30 May 2006, para.8 which states that a Chamber may reconsider a decision “if there is a reason to believe that a previous decision was erroneous and therefore prejudicial to either party.”

*Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73, Reasons for Refusal of Leave to Appeal from Decision to Impose Time Limit, App. Ch., 16 May 2002, para. 17: “It must be emphasised that a Trial Chamber may always reconsider a decision it has previously made, and not only because of unforeseen circumstances.”

<sup>16</sup> *Prosecutor v. Brima et al*, SCSL-04-16-T-483, “Decision on Joint Defence Request for Leave to Appeal from Decision on Defence Motions for Judgement of Acquittal pursuant to Rule 98 of 31 March 2006”, 4 May 2006 p2.

<sup>17</sup> *Supra* note 7, Norman Decision 17 January 2005, para. 29; see also *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T-357, “Decision on Defence Applications for Leave to Appeal Ruling of the 3<sup>rd</sup> February 2005 on the Exclusion of Statements of Witness TF1-141”, 28 April 2005, para. 21.

<sup>18</sup> *Ibid.* Sesay decision, 28 April 2005, para. 25; *Prosecutor v. Brima et al*, SCSL-04-16-T-588, “Decision on Prosecution Application for Leave to Appeal Decision on Confidential Motion to call Evidence in Rebuttal”, 23 November 2006.

<sup>19</sup> *Ibid.* Sesay Decision, 28 April 2005, para 26.

#### IV Arguments

##### Application for Reconsideration - Decision was Erroneous and Caused Prejudice:

14. The Trial Chamber erred in deciding that TF1-215 is not subject to protective measures. Its decision is based on an erroneous interpretation of the RUF Decision, which granted protective measures to witnesses under Group I (witnesses of fact), and also on a failure to consider the fact that this witness previously testified with protective measures.
15. The RUF Decision, read in conjunction with prior Prosecution filings upon which the RUF Decision is based, show that TF1-215 was included within the protections granted, as were all 266 witnesses of fact listed in the 26 April 2004 witness list.
16. The RUF Decision makes patent the following:
  - i) The Renewed Motion, upon which the RUF Decision is based, divides Prosecution witnesses into two groups: i) witnesses of fact and ii) expert witnesses and witnesses who have waived their right to protection.<sup>20</sup>
  - ii) The Prosecution seeks protective measures for all witnesses in Group I<sup>21</sup> and that it seeks additional special protective measures for certain categories of witnesses, who are general fact witnesses and thus come within Group I but who are further divided into 3 sub-categories (A, B, C) according to their special needs.<sup>22</sup> These are the witnesses listed in Annex A of the Renewed Motion.
  - iii) The Trial Chamber ordered for all witnesses in Group I the use of pseudonym and testimony behind a screen and further ordered for those witnesses that were listed under categories A, B and C additional special measures.<sup>23</sup>
17. Thus the RUF Decision involved a two tier process: consideration of protective measures for all witnesses of fact in Group I and additional protective measures for those fact witnesses that fall within categories A-C.<sup>24</sup> All fact witnesses refer to the 266 witnesses in the 26 April list.
18. Although the Prosecution did not attach the 26 April list to the Renewed Motion, the RUF Decision notes that the Prosecution divided its witnesses into 2 groups based on that witness list. In addition, paragraph 2 of the Renewed Motion clearly states that:

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<sup>20</sup> RUF Decision, Para. 1

<sup>21</sup> *Ibid.* Paras. 5, 2,

<sup>22</sup> *Ibid.* paras. 1, 6, 30

<sup>23</sup> *Ibid.* Disposition

<sup>24</sup> RUF Decision, paras. 5 – 6

“on 26 April the Prosecution filed a Prosecution Witness List of 266 witnesses. This Motion provides an overview of the reasons for the protective measures sought **for those witnesses.**”

A plain and literal construction of this paragraph makes it is clear that the term “those witnesses” encompasses all 266 witnesses in the 26 April list.

19. The Prosecution again refers to 266 witnesses in paragraph 3 of the Renewed Motion, stating that it has divided the 266 witnesses into 2 groups: i) of fact and ii) experts / those who have waived their right to protection. The additional language in this paragraph, wherein the Prosecution sets forth 3 sub-categories of fact witnesses, totalling 87 witnesses as set out in Annex A, is admittedly not as clear as it could be. However, in paragraph 5 of its Renewed Motion, the Prosecution states that the actual number of witnesses called and subject to protective measures could be less than the 266 provided in the 26 April list. If the Prosecution intended that only the 87 witnesses listed in Annex A be granted the protective measures requested, there would be no need for this paragraph. The paragraph was included to indicate that, although the basic protective measures were being requested for all 266 fact witnesses, it was anticipated that not all 266 would testify.
20. Paragraph 20 of the Renewed Motion then requests that all witnesses of fact testify in court using a pseudonym and screen. The fact that this request applies to all fact witnesses is reinforced by subsequent paragraphs 21-32, which request additional measures only for those 87 fact witnesses that fall within the categories A-C in Annex A.
21. The language and intent of paragraphs 2, 3 5 and 20 make clear that the basic in-court protections sought for fact witnesses – the use of pseudonym and screen - related to all 266 fact witnesses.
22. Trial Chamber I interpreted the Renewed Motion in this way in reaching its decision. In footnote 6 of the RUF Decision, the Chamber noted that “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 number of A, B & C witnesses amounts to 87 [...], there are only 7 expert witnesses [...], and no witness has so far waived his/her right.” Thus, Trial Chamber I concluded that the Renewed Motion included all 266 fact witnesses.
23. That the RUF Decision granted basic in-court protections to all 266 fact witnesses listed in the 26 April list, including TF1-215, is clear in light of the implementation of that decision by both Trials Chamber during the testimonies of fact witnesses in the *RUF* and *AFRC* cases.

During those cases, multiple fact witnesses not listed in sub-categories A-C testified with the basic in-court protective measures granted in that Decision.<sup>25</sup> This includes TF1-215, who testified with these basic protections in the *RUF* case. No subsequent application for protective measures was made for this witness prior to his testimony, nor was there any argument regarding protective measures before he began his testimony.

24. Further, in this trial, this Trial Chamber granted the Prosecution request to rescind the basic in-court protections previously granted to TF1-101.<sup>26</sup> TF1-101, a fact witness not listed in sub-categories A-C, testified in the *RUF* trial in accordance with the protective measures granted by the RUF Decision.<sup>27</sup>
25. Thus, this Trial Chamber erred in its reasoning in deciding that TF1-215 was not protected by the RUF Decision.
26. Further the Trial Chamber erred by failing to consider that TF1-215 testified with protective measures in the *RUF* case. As discussed above, it is clear that the RUF Decision granted this witness the protective measures applicable to all witness of fact. However, assuming, *arguendo*, that the witness was granted protective measures in some other way, the fact remains the witness was subject to protective measures during his prior testimony. Rule 75 (F) makes clear that, once granted protective measures, those protections apply in all subsequent proceedings unless rescinded or varied. Contrary to the statement from the bench<sup>28</sup>, Rule 75 (F) specifically mandates that the Trial Chamber be concerned with protective measures granted in other proceedings before this Court, as such measures apply *mutatis mutandis* to all subsequent proceedings. Therefore, regardless of any issues of interpretation regarding the RUF Decision, this Trial Chamber has an obligation to implement the protective measures under which this witness testified in the RUF case, until such time as they are rescinded or varied.

<sup>25</sup> Refer to **Annex C** for the list of TF numbers of witnesses who testified as general Group I witnesses with protective measures in the *RUF* and *AFRC* cases. See also *AFRC* Trial Transcript, 8 April 2005, pp.6-11 regarding protective measures applicable to TF1-320 who was not listed in categories A-C where this Trial Chamber was confronted with the same issue and held that the witness was a group one witness and protected by general protective measures under the RUF Decision. See also "List of Protective Measures received from Trial Chamber I and other Information filed Pursuant to Scheduling Order of 28 January 2005, in particular paragraph 12 (**Annex D**).

<sup>26</sup> Taylor Trial Transcript, 14.02.08, pp. 3896-3897

<sup>27</sup> TF1-101 in testified the RUF on 28 November 2005

<sup>28</sup> Taylor Trial Transcript, 6 May 2008, p. 9114, "I really am not concerned Ms Baly with what this witness did or did not do in another Court or by what means."

### Prejudice

27. TF1-215 is unwilling to testify without the protective measures previously granted to him. As a consequence of this Trial Chamber's Decision, the Prosecution was unable to call him. The decision, therefore, deprives the Prosecution of the right to call evidence relevant to prove its case, including proof of the contextual, or chapeau, elements of crimes against humanity, the forms of liability alleged and a pattern of conduct pursuant to Rule 93, which is relevant to prove forms of liability and the crimes alleged, in particular the campaign of terror.<sup>29</sup> This is clearly prejudicial to the Prosecution.<sup>30</sup>

### Alternative Request For Relief, Application For Leave To Appeal The Decision

#### Exceptional Circumstances

28. An issue of fundamental legal importance arises when a Trial Chamber determines that a previous Decision, issued by a different Trial Chamber, granting protective measures to a witness, does not actually confer such protective measures. This is particularly so, when the other Trial Chamber has already heard evidence from the witness in accordance with the protective measures granted by the Decision. The extent to which the subsequent Trial Chamber can then interpret the decision and hold that the witness is not a protected witness, despite the mandatory obligations under Rule 75 (F), is thus of fundamental importance.
29. Failure to implement those protections in accordance with Rule 75 (F), whatever the origin of the protections, also raises serious issues of fundamental legal importance.
30. For the reasons discussed in paragraphs 28 and 29 above, the Trial Chamber's determination that TF1-215 had no protective measures and its failure to consider the fact that TF1-215 actually testified with protective measures in another case also raises issues for which further argument or decision at the appellate level would be conducive to the interests of justice, particularly as issues concerning the interpretation of the RUF Decision are likely to arise with future witnesses.
31. In addition, failure to implement the provisions of Rule 75 (F), resulting in a witness with relevant evidence being unable to testify due to security concerns, interferes with the course

<sup>29</sup> A proffer of TF1-215's evidence is attached in **Annex E**.

<sup>30</sup> See for instance *Prosecutor v Brima et al*, SCSL-04-16-T-414, "Decision on Prosecution Application for Leave to Appeal Decision on Oral Application for Witness TF1-150 to testify without being Compelled to Answer questions on Grounds of Confidentiality", 12 October 2005, p.3 wherein this Trial Chamber found the fact that the Prosecution was unable to call TF1-150 due to the impugned decision may be capable of causing irreparable prejudice.

of justice. It deprives the witness of protections previously afforded to him and the Prosecution of relevant evidence, without any finding that a sufficient basis has been established to justify rescinding or modifying the existing protections. It is not in the interests of justice that the Prosecution be denied the evidence of this witness, where there has been no rescission of existing protective measures and the witness is about to take the stand.

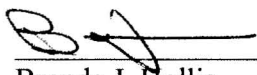
Irreparable prejudice

32. As discussed in paragraph 27 above, the Prosecution may suffer irreparable prejudice as a result of this Trial Chamber's Decision. Depriving the Prosecution of this evidence is a matter that cannot be cured on final appeal.

**V. Conclusion**

33. The Prosecution requests that the Trial Chamber urgently exercise its discretion and reconsider its decision, reverse its finding that TF1-215 had no protective measures, and order that the witness testify with existing protections - use of a pseudonym and behind a screen.
34. In the alternative, the Prosecution requests that the Trial Chamber urgently grant the Prosecution leave to appeal the Trial Chamber decision.

Filed in The Hague,  
8 May 2008  
For the Prosecution,

  
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Brenda J. Hollis  
Senior Trial Attorney

## LIST OF AUTHORITIES

### SCSL Cases

#### *Prosecutor v. Taylor*, Case No. SCSL-03-01-T

*Prosecutor v Taylor*, SCSL-03-01-PT-125, “Decision on Defence Motion to Set Aside and / or Reconsider Trial Chamber’s “Decision On Urgent Prosecution Motion For Immediate Protective Measures For Witnesses And For Non-Public Disclosure” dated 13 September 2006”, 5 October 2006,

*Prosecutor v Taylor*, SCL-03-01-PT-226, “Decision on Defence Motion requesting Reconsideration of “Joint Decision on defence Motions on Adequate Facilities and Adequate time for the Preparation of Mr. Taylor’s Defence”, dated 23 January 2007,” 25 April 2007  
Trial Transcript dated 6 May 2008

#### *Prosecutor v Brima et al*, SCSL-04-16-T

*Prosecutor v Brima et al*, SCSL-04-16-T-441, “Separate and concurring Opinion of Justice Robertson on Decision on Brima-Kamara Defence Appeal Motion against Trial Chamber II Majority Decision on Extremely urgent Confidential Joint Motion For The Re-Appointment Of Keven Metzger And Wilbert Harris As Lead Counsel For Alex Tamba Brima And Brima Bazzy Kamara”, 8<sup>th</sup> August 2005

*Prosecutor v Brima et al*, SCSL-04-16-T-414, “Decision on Prosecution Application for Leave to Appeal Decision on Oral Application for Witness TF1-150 to testify without being Compelled to Answer questions on Grounds of Confidentiality”, 12 October 2005

*Prosecutor v Brima et al*, SCSL-04-16-T-483, “Decision on Joint Defence Request for Leave to Appeal from Decision on Defence Motions for Judgement of Acquittal pursuant to Rule 98 of 31 March 2006”, 4 May 2006

*Prosecutor v Brima et al*, SCSL-04-16-T-488, “Decision on Joint Defence Application for Protective Measures for Defence Witnesses”, 9 May 2006

*Prosecutor v Brima et al*, SCSL-04-16-T-588, “Decision on Prosecution Application for Leave to Appeal Decision on Confidential Motion to call Evidence in Rebuttal”, 23 November 2006.

*Prosecutor v Brima et al*, SCSL-04-16-T-588, “Decision on Prosecution Application for Leave to Appeal Decision on Confidential Motion to call Evidence in Rebuttal”, 23 November 2006

#### *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T

*Prosecutor v Norman et al*, “Decision on Prosecution Appeal against the Trial Chamber’s decision of 2 August 2004 refusing Leave to File an Interlocutory Appeal”, 17 January 2005



*Prosecutor v Norman et al*, SCSL-04-14-T-507, “Decision on Urgent motion for Reconsideration of the Orders for Compliance with the order Concerning the preparation and Presentation of the Defence Case”, 7 December 2005

**Prosecutor v. Sesay, Kallon and Gbao, SCSL-04-15-T**

*Prosecutor v Sesay et al*, SCSL-2004-15-PT-102, “Renewed Prosecution Motion for Protective Measures pursuant to Order to the Prosecution for renewed Motion for Protective measures dated 2 April 2004”, 4 May 2004

*Prosecutor v Sesay et al*, SCSL-2004-15-PT, Material Filed pursuant to order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial of 1 April 2004”, 26 April 2004

*Prosecutor v Sesay et al*, SCSL-2004-15-T-180 “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses”, 5 July 2004

*Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T-357, “Decision on Defence Applications for Leave to Appeal Ruling of the 3<sup>rd</sup> February 2005 on the Exclusion of Statements of Witness TF1-141”, 28 April 2005

*Prosecutor v Sesay et al*, SCSL-04-15-T-1033, “Decision on Kallon Motion on Challenges to the Form of the Indictment and for Reconsideration of Order Rejecting Filing and Imposing sanctions”, 6 March 2008

**ICTR**

*Prosecutor v Bagosora et al*, ICTR-98-41-T, “Decision on Prosecutor’s Motion for Reconsideration of the Trial Chamber’s “Decision on Prosecutor’s Motion for Leave to vary the Witness List pursuant to Rule 73 bis (E)”, 15 June 2004 available at: <http://trim.unict.org/webdrawer/rec/48985/> and [http://trim.unict.org/webdrawer/rec/48985/view/BAGOSORA%20ET%20AL%20-%20DECISION%20ON%20THE%20PROSECUTION%20MOTION%20FOR%20LEAVE%20TO%20VARY%20THE%20WITNESS%20LIST%20\(Rule%2073%20BIS%20E\).PDF](http://trim.unict.org/webdrawer/rec/48985/view/BAGOSORA%20ET%20AL%20-%20DECISION%20ON%20THE%20PROSECUTION%20MOTION%20FOR%20LEAVE%20TO%20VARY%20THE%20WITNESS%20LIST%20(Rule%2073%20BIS%20E).PDF)

*Prosecutor v Karemera et al*, ICTR-98-44-PT, “Decision of the Defence Motions for Reconsideration of Protective Measures for Prosecution Witnesses”, 29 August 2005 available at: <http://trim.unict.org/webdrawer/rec/67643/> and [http://trim.unict.org/webdrawer/rec/67643/view/\[GOVERNMENT%20I\]%20-%20KAREMERA%20ET%20AL%20-%20DECISION%20ON%20THE%20PROSECUTION%20MOTION%20FOR%20LEAVE%20TO%20VARY%20THE%20WITNESS%20LIST%20\(Rule%2073%20BIS%20E\).PDF](http://trim.unict.org/webdrawer/rec/67643/view/[GOVERNMENT%20I]%20-%20KAREMERA%20ET%20AL%20-%20DECISION%20ON%20THE%20PROSECUTION%20MOTION%20FOR%20LEAVE%20TO%20VARY%20THE%20WITNESS%20LIST%20(Rule%2073%20BIS%20E).PDF)

*Prosecutor v. Muvunyi*, Case No. ICTR-2000-55A-T, Decision on Motion to Strike or Exclude Portions of Prosecutor’s Exhibit No. 34, Alternatively Defence Objections to Prosecutor’s Exhibit No. 34, Tr. Ch. II, 30 May 2006 available at: <http://69.94.11.53/default.htm>

and

[http://international.westlaw.com/search/default.wl?tf=2004&effdate=1%2f1%2f0001+12%3a00%3a00+AM&rs=WLI N8.04&fn=\\_top&vr=2.0&ssrc=0&tofrom=%2fsearch%2fresult.aspx&tc=1002&eq=search&action=Search&db=INT-ICTR&sv=Split&rp=%2fsearch%2fdefault.wl&rldb=CLID\\_DB959495&mt=InternationalLaw&query=%22Decision+on+Motion+to+Strike+or+Exclude+Portions+of+Prosecutor%e2%80%99s+Exhibit+No.+34%22&method=WIN](http://international.westlaw.com/search/default.wl?tf=2004&effdate=1%2f1%2f0001+12%3a00%3a00+AM&rs=WLI N8.04&fn=_top&vr=2.0&ssrc=0&tofrom=%2fsearch%2fresult.aspx&tc=1002&eq=search&action=Search&db=INT-ICTR&sv=Split&rp=%2fsearch%2fdefault.wl&rldb=CLID_DB959495&mt=InternationalLaw&query=%22Decision+on+Motion+to+Strike+or+Exclude+Portions+of+Prosecutor%e2%80%99s+Exhibit+No.+34%22&method=WIN)

*Prosecutor v Nahimana et al*, ICTR-99-52-A “Decision on Jean-Bosco Barayagwiza’s Request for Reconsideration of Appeals Chamber Decision of 19 January 2005”, 4 February 2005 available at: <http://69.94.11.53/ENGLISH/cases/Nahminana/decisions/040205.htm>;

<http://trim.unictr.org/webdrawer/rec/60984/>

and

[http://international.westlaw.com/search/default.wl?tf=2004&effdate=1%2f1%2f0001+12%3a00%3a00+AM&rs=WLI N8.04&fn=\\_top&vr=2.0&ssrc=0&tofrom=%2fsearch%2fresult.aspx&tc=1002&eq=search&action=Search&db=INT-ICTR&sv=Split&rp=%2fsearch%2fdefault.wl&rldb=CLID\\_DB959495&mt=InternationalLaw&query=%22Decision+on+Jean-Bosco+Barayagwiza%e2%80%99s+Request+for+Reconsideration%22&method=WIN](http://international.westlaw.com/search/default.wl?tf=2004&effdate=1%2f1%2f0001+12%3a00%3a00+AM&rs=WLI N8.04&fn=_top&vr=2.0&ssrc=0&tofrom=%2fsearch%2fresult.aspx&tc=1002&eq=search&action=Search&db=INT-ICTR&sv=Split&rp=%2fsearch%2fdefault.wl&rldb=CLID_DB959495&mt=InternationalLaw&query=%22Decision+on+Jean-Bosco+Barayagwiza%e2%80%99s+Request+for+Reconsideration%22&method=WIN)

### ICTY

*Prosecutor v Delic et al*, Case No. IT-96-21-Abis, “Judgement on Sentence Appeal”, Appeals Chamber, 8 April 2003 available at:

<http://www.un.org/icty/celebici/appeal/judgement2/cel-aj030408.pdf>

*Prosecutor v Galic*, IT-98-29-AR73, “Decision on Application for Leave to Appeal”, 14 December 2001 available at:

<http://www.un.org/icty/galic/appeal/decision-e/11214DE317061.htm>

*Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73, Reasons for Refusal of Leave to Appeal from Decision to Impose Time Limit, App. Ch., 16 May 2002 available at:

<http://www.un.org/icty/milosevic/appeal/decision-e/16052002.htm>

**Annex A**

**Extracts of Transcripts 6 May 2008 with Impugned Decisions Highlighted**

1           PRESIDING JUDGE: We will give at least five to ten minutes  
2 notice of the intention to resume Court when we reach a decision.

3           MR MUNYARD: I am grateful.

4           PRESIDING JUDGE: Thank you. Please adjourn Court to a  
13:32:24 5 time to be fixed.

6                               [Lunch break taken at 1.32 p.m.]

7                               [Upon resuming at 3.28 p.m.]

8           PRESIDING JUDGE: This is a ruling on an application. The  
9 Defence have opposed and applied to rescind the purported  
15:29:20 10 protective measures for witness TF1-215. The Prosecution submit  
11 that the witness is protected by an order of Trial Chamber I of 5  
12 July 2004, entitled "Decision on Prosecution motion for  
13 modification of protective measures for witnesses", which the  
14 Prosecution submits applies to 266 witnesses of fact including  
15:29:53 15 witness TF1-215.

16           The decision of 5 July 2004 ruled on a 5 May motion filed  
17 by the Prosecution and entitled "Renewed Prosecution motion for  
18 protective measures pursuant to order to the Prosecution for  
19 renewed motion for protective measures", dated 2 April 2004. It  
15:30:20 20 was filed pursuant to an order of the Trial Chamber on 2 April  
21 2004; the order being entitled "Order to the Prosecution for  
22 renewed motion for protective measures".

23           After careful consideration of that decision and the  
24 submissions of counsel, we find nothing in the decision which  
15:30:42 25 would entitle witness TF1-215 to any protective measures. In our  
26 view, the decision relates solely to those witnesses listed in  
27 annexes A and B of the renewed Prosecution motion for protective  
28 measures. Witness TF1-215 is not among those witnesses listed in  
29 the annexes. Accordingly, the witness will testify in open court

1 and the Defence application to rescind the protective measures of  
2 this witness is now moot.

3 Ms Baly?

4 MS BALY: Your Honour, the Prosecution does not intend to  
15:31:19 5 call witness TF1-215. The next witness will be witness TF1-028,  
6 to be led by my colleague Ms Alagendra.

7 PRESIDING JUDGE: Thank you, Ms Baly. What language will  
8 the witness speak?

9 MS ALAGENDRA: Your Honours, the witness will testify in  
15:31:42 10 Krio. Also, your Honour, this witness is again subject to  
11 protective measures granted by Trial Chamber I and it's the same  
12 decision that your Honours were looking at today. This witness,  
13 your Honour, is a group 1, category A witness, and the protective  
14 measures afforded to this witness previously were for her to  
15:32:06 15 testify using a pseudonym, behind a screen and with voice  
16 distortion, your Honour.

17 PRESIDING JUDGE: Thank you, Ms Alagendra. In that case -  
18 sorry, I'm just having a look at category A. Yes, I see it in  
19 front of me.

15:32:49 20 MS ALAGENDRA: Your Honours, if I can assist you further,  
21 this particular witness is listed as number 16 in the annexure A,  
22 under the category A, your Honour.

23 PRESIDING JUDGE: Thank you, Ms Alagendra. It will be  
24 necessary to have the screens completely closed in order to allow  
15:33:20 25 the witness to be brought into court, so the court will appear to  
26 be closed for a few moments while the witness is moving in the  
27 courtroom.

28 MS MUZIGO-MORRISON: May it please the Court, your Honour  
29 it would require 30 minutes to enable the technical people to set

**Annex C**

Examples of Witnesses falling under general Group I – not categories A-C - who testified in the RUF case with basic in-court Protective Measures ordered pursuant to the RUF Decision

<b>TF1</b>	<b>Date of Testimony</b>
TF1-074	12/07/04
TF1-214	13/07/04-15/7/04
TF1-021	15/7/04
TF1-077	20/7/04-21/7/04
TF1-217	22/7/04
TF1-331	22/7/04
TF1-305 <sup>1</sup>	27/7/04
TF1-253	28/07/04-29/07/04
TF1-197	21/10/04-22/10/04
TF1-078	22/10/04-27/10/04

Examples of Witnesses falling under general Group I – not categories A-C - who testified in the AFRC case with basic in-court Protective Measures ordered pursuant to the RUF Decision

<b>TF1</b>	<b>Date of Testimony</b>
TF1-277	08/03/05-09/03/05
TF1-098	05/04/05
TF1-278	05/04/05-06/04/05
TF1-084	06/04/05
TF1-320	08/04/05

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<sup>1</sup> Witness TF1-305 was originally granted use of screen and pseudonym under the RUF Decision. However the Prosecution applied for the witness to be treated as a Category A witness – victim of sexual violence – and the witness was then granted voice distortion as per order G of the RUF Decision on page 16.

**Annex D**

Extracts from transcript dated 8 April 2005, pp.6-11, *The Prosecutor Against Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu*

*The Prosecutor Against Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu*, Case No. SCSL – 2004 – 16 PT. List of Protective Measures Received from Trial Chamber I and Other Information Filed Pursuant to Scheduling Order of 28 January 2005, 1 February 2005.



1 I will particularly draw Your Honours' attention to annex A of that  
2 document. Annex A. Witness 320. TF1-320, which is found at page 11.

3 JUDGE LUSSICK: We have not have the document before us, so if you  
4 could read out what you are referring to it would be helpful.

09:35:25 5 MR FOFANAH: As Your Honour pleases. I am referring to page 1619 of  
6 that document and then at least protective measures received from Trial  
7 Chamber I by category, protective measures.

8 PRESIDING JUDGE: Before you go any further, Mr Fofanah, are you  
9 seeking to vary a protective measure granted by Trial Chamber number one?

09:35:47 10 MR FOFANAH: No, I am seeking to indicate to this Court that no  
11 protective measure was granted to this witness by virtue of this annexe.

12 PRESIDING JUDGE: In that case we are having a copy made.

13 MR FOFANAH: As Your Honour pleases.

14 PRESIDING JUDGE: Read out the protective measure relating to this  
09:36:07 15 witness, please.

16 MR FOFANAH: There is nothing. There is nothing. I mean, the  
17 witness was not categorised as requiring any form of protection. There are  
18 various witnesses grouped as group one, under which you have sub-categories  
19 A, B and C protection, and then witness group two, which basically deals  
09:36:28 20 with experts I guess. Witness TF1-320 has nothing against his name. So I  
21 take it that there is no protective measure granted to him. We are kind of  
22 flustered that we see him in a protective enclosure. We seek clarification  
23 from Your Honours.

24 MS TAYLOR: Your Honour, if I may first deal with the issue of  
09:37:08 25 disclosure. The Defence has been in possession of the redacted versions of  
26 this witness's statement, in relation to the first statement, for 18 months  
27 and in relation to the two paragraph confirmation statement since February  
28 of last year; in excess of 12 months. They have been in possession of the  
29 unredacted versions of those statements since 21st February of this year.

1 other than the statement dated yesterday, the last statement is dated 25th  
2 March 2004. That was the last occasion on which anyone from the Office of  
3 the Prosecutor saw this witness. The witness was seen yesterday by  
4 prosecuting counsel in preparation for giving evidence today and I might  
09:38:03 5 say, Your Honours, that the reason that the Prosecution has sought to call  
6 this witness higher up the order than originally indicated is that this  
7 witness is 69 years of age. He is ill and he requires surgery and that  
8 surgery cannot take place until his evidence before this Court has been  
9 completed. The facts about which this witness will testify are quite  
09:38:28 10 discrete. The original statement -- pardon me, Your Honours, I will just  
11 turn up the page. The original statement is three typed pages. The  
12 confirmation statement from March 2004 is one typed page. The Prosecution  
13 has a continuing obligation of disclosure imposed upon it pursuant to Rule  
14 66. The material that was disclosed this morning that was obtained by the  
09:39:14 15 Office of the Prosecutor yesterday, does not amount to any new allegation  
16 whatsoever. There is nothing in the document that was disclosed to the  
17 Defence this morning that will take them by surprise. What is in that  
18 document is an amplification of the material that has been previously  
19 disclosed to the Defence. The only thing that can possibly be said to be  
09:39:37 20 new in that document is that the witness says in the document dated 7th  
21 April 2005 that men were killed in the village. That men were killed in  
22 the village.

23 MR FOFANAH: Sorry, Your Honour, I don't want to interrupt my  
24 colleague at this stage, but I --

09:40:00 25 PRESIDING JUDGE: well, don't; let her finish her --

26 MR FOFANAH: Is she trying to go into the content of that document?

27 PRESIDING JUDGE: She has only pointed out one word.

28 MS TAYLOR: Thank you, Your Honour. The witness from the original  
29 statement runs right through to the statement yesterday gives evidence

1 about the killing of women in a house. Yesterday he said that the  
2 remaining men were killed -- most of the remaining men were killed as well.  
3 Now, in the context where this witness's statement deals with the killing  
4 of people in a village that he said in the original statement, on page  
09:40:49 5 6513, "Those of us who were not killed were taken along as captured  
6 civilians". The Prosecution would submit that there is nothing that can  
7 possibly be described as ambush or surprise in this document. The document  
8 is two pages and one paragraph long. There is nothing in that document  
9 that the Defence have not known about. As I said, in fairness to the  
09:41:11 10 witness it was disclosed because the witness provided amplification and  
11 amplification only and in those circumstances, given the difficulties, the  
12 personal difficulties that this witness faces, the discrete nature of the  
13 evidence which he will give and the very short amplification that he gave  
14 yesterday, the Prosecution would submit that there is no unfairness in  
09:41:44 15 proceeding to the Defence in proceeding with the evidence of this witness  
16 this morning. In relation to the protective measure issue that was raised  
17 by my learned friend Mr Fofanah, I don't have the documents before me in  
18 court, Your Honour, but I do recall that after the status hearing in which  
19 the protective measures were discussed Your Honour raised with me certain  
09:42:11 20 issues about certain witnesses in the document that was filed and the  
21 Prosecution did file a clarification document very shortly thereafter. I  
22 am not sure if it was the same day or the day after. And from memory, I  
23 think this witness was included in that clarification document in the sense  
24 that the protective measures issued by Trial Chamber one on 5th July 2004  
09:42:43 25 were highlighted for this Trial Chamber. If my recollection of that is  
26 incorrect, Your Honours, and there is in fact no protective measure in  
27 place for this witness, I would make an oral application, pursuant to Rule  
28 75, that this witness be granted the protective measures accorded to all  
29 witnesses before the Special Court both in this Chamber and in Trial

1 Chamber one, other than expert witnesses, which are the minimum protections  
2 of testifying behind a screen and the use of a pseudonym and the other  
3 measures that deal with not being photographed coming in and out of the  
4 court. As I said, Your Honours, I am not in a position to help you because  
09:43:26 5 I don't have those documents in front of me, but those will be my  
6 alternative submissions.

7 PRESIDING JUDGE: Ms Taylor, I recall the sequence of appearances  
8 that you refer to, but I too do not have the precise document. I will  
9 therefore ask our legal officer to produce that document for us and we will  
09:43:45 10 adjourn briefly to both consider that document, the other order that has  
11 been filed and the various submissions made by counsel for both the Defence  
12 and the Prosecution.

13 JUDGE SEBUTINDE: Could I just ask -- Mr Fofanah, I realise that you  
14 do have a right of reply.

09:44:20 15 MR FOFANAH: Yes.

16 JUDGE SEBUTINDE: And while you are replying, I just wanted to really  
17 seek your views on the Defence team. Supposing the Bench were inclined to  
18 actually hear only the examination-in-chief of this witness in view of his  
19 health, also in view of the time, of saving time. Supposing we were  
09:44:45 20 inclined today only to hear the evidence-in-chief, would you still object?  
21 So in your reply if you could kindly, you know, respond to that in addition  
22 to what Ms Taylor has submitted and then we will retire and consider.

23 MR FOFANAH: In the last bit certainly we will not object, Your  
24 Honour, because we all seek speedy trial in this case, especially  
09:45:13 25 considering the health of the witness. Then if Your Honour can adjourn to  
26 such reasonable time that will enable us to cross-examine him it will be  
27 fine with us. Especially as I wish to draw two important things. My  
28 learned colleague in her response stated that nothing new has been raised  
29 except for one thing which she indicated.

1 I wish to particularly draw Your Honours' attention to two things in  
2 the additional information which were never contained in the previous.

3 The first is the mention of a village called Dothombo which with  
4 respect, I mean, is very vital for the case of the Defence, because if  
09:45:52 5 Dothombo has been mentioned we probably may need to send somebody around to  
6 find out where that village is and what exactly happened in that village.  
7 Then it will be crucial. Dothombo is coming up only for the very first  
8 time. There is also the mention of the name of a commander who was never  
9 mentioned. No commander was ever mentioned in the previous statement. I  
09:46:25 10 don't know if mentioning that commander now would jeopardize his protective  
11 state.

12 Then if you look at the second page of that additional information at  
13 paragraph three, there is a mention of a colonel. I don't know if Your  
14 Honours have seen it. There is mention of a colonel. So that again is  
09:46:50 15 crucial for our cross-examination.

16 And then on the second point on protective measure, I would  
17 particularly, now that Your Honours have the document that I referred to, I  
18 will refer you to.

19 JUDGE LUSSICK: Well, I still don't have that document, I have  
09:47:08 20 just got --

21 MR FOFANAH: The one that was just printed.

22 JUDGE LUSSICK: I see. I have not been shown that.

23 MR FOFANAH: The one that I refer to which was just printed. That is  
24 page 1609 which is page one of that document. If you look at clause three  
09:47:51 25 or paragraph three. It says that, "This document was prepared pursuant to  
26 an order by Her Honour Judge Doherty". So it is not like it is coming to  
27 this Court for the first time. It was prepared pursuant to an order made  
28 on the 28th day of January 2005. That is all, Your Honours.

29 PRESIDING JUDGE: If there are no other matters, the Court will

1 adjourn to consider this. we will also ask for a copy of the later order  
2 referred to by counsel for the Prosecution. which order for protective  
3 measures has this Court to consider? Is it the order of 1st February 2005  
4 or the subsequent clarifying document filed by you, Ms Taylor?

09:48:58 5 MS TAYLOR: I believe it is the subsequent clarifying document, Your  
6 Honour.

7 PRESIDING JUDGE: You are aware of this, Mr Fofanah, I think you were  
8 in court when that was dealt with, if I remember correctly.

9 MR FOFANAH: Yes, but I clearly cannot recall the date.

09:49:07 10 PRESIDING JUDGE: very well. Obviously you require a copy as well.  
11 Please assist counsel for the defence with a copy of that document.

12 [Break taken at at 9.52 a.m.]

13 [On resuming at 10.35 a.m.]

14 PRESIDING JUDGE: This is a ruling of the Trial Chamber on an  
10:32:10 15 objection by defence counsel concerning the service of a document.

16 [Ruling]

17 PRESIDING JUDGE: The Trial Chamber considers that serving a document  
18 on the morning of the hearing is insufficient notice to the Defence of the  
19 document entitled "Additional information provided by witness T F1-320".

10:32:31 20 Therefore, the Trial Chamber orders that this statement cannot be used  
21 today. In relation to the protective measures as raised by defence  
22 counsel, the protective measures, as varied by Trial Chamber number one, in  
23 relation to the protective measures witness T F1-320 is listed as a group  
24 one witness and the general protective measures apply to him in accordance  
10:33:05 25 with paragraph 12 of the order of 1st February 2005 and the protective  
26 orders as recited on page 6772 of the order of 5th July 2004 in the case of  
27 The Prosecutor v. Sesay, Kallon and Gbao. Those are the two rulings of  
28 this Court. Yes.

29 MS TAYLOR: Your Honour, the Prosecution is content to still lead

**SPECIAL COURT FOR SIERRA LEONE**

OFFICE OF THE PROSECUTOR

FREETOWN - SIERRA LEONE

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

Registrar: Mr. Robin Vincent

Date filed: 1 February 2005

**THE PROSECUTOR****Against**

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

**Case No. SCSL - 2004 - 16 - PT**

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**LIST OF PROTECTIVE MEASURES RECEIVED FROM TRIAL CHAMBER I AND  
OTHER INFORMATION FILED PURSUANT TO SCHEDULING ORDER OF 28  
JANUARY 2005**

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**Office of the Prosecutor**

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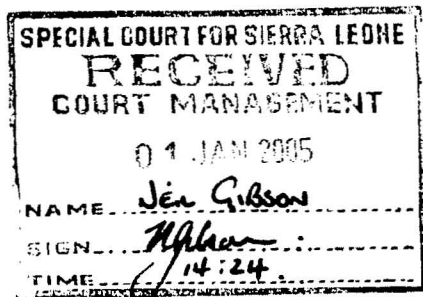
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**SPECIAL COURT FOR SIERRA LEONE**

OFFICE OF THE PROSECUTOR

FREETOWN-SIERRA LEONE

**THE PROSECUTOR**

**Against**

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

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**LIST OF PROTECTIVE MEASURES RECEIVED FROM TRIAL CHAMBER I AND  
OTHER INFORMATION FILED PURSUANT TO SCHEDULING ORDER OF 28  
JANUARY 2005**

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The Prosecution files these materials in accordance with the Scheduling Order issued on 28 January 2005.

**I. Introduction**

1. On 26 April 2004, the Prosecution filed “Materials Filed Pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial of 1 April 2004.” These materials included a Prosecution Witness List of 266 witnesses.
2. On 11 May 2004, the Prosecution filed an “Updated Compliance Report Filed Pursuant to Undertaking by the Prosecution in Pretrial Conference Held 30 April 2004(AFRC).” The compliance report revised the Prosecution Witness List, removing witnesses TF1-103, TF1-106, TF1-146, TF1-189, TF1-274 and TF1-276.
3. On 28 January 2005, Her Honour Judge Doherty ordered the Prosecution to provide the Trial Chamber with a list indicating which witnesses on the current Prosecution Witness List have or will be testifying in other Special Court proceedings, and what protective

measures are already in place for these witnesses from Trial Chamber I. For those witnesses who have already testified before Trial Chamber I, the Scheduling Order also further ordered the Prosecution to indicate the date(s) of such testimony.

4. Pursuant to the Scheduling Order, the Prosecution now submits a Prosecution Witness List (Annex A) indicating the protective measures granted by Trial Chamber I for each of the Prosecution's witnesses. Where applicable, the Witness List also indicates the date(s) on which a witness testified before Trial Chamber I. The Witness List makes specific reference to categories A, B and C protective measures, which are explained below.
5. The Prosecution notes that it intends to file a reduced Witness List following receipt of the outstanding Defence Pretrial Briefs and after considering the import of any decision on its "Motion for Judicial Notice and Admission of Evidence", filed 2 April 2004.

## **II. Protective Measures Received From Trial Chamber I**

6. On 4 May 2004, the Prosecution, in both the RUF trial and the AFRC trial, filed a "Renewed Prosecution Motion for Protective Measures Pursuant to Order to the Prosecution for Renewed Motion for Protective Measures Dated 2 April 2004" in identical terms.
7. In each of those motions, the Prosecution divided the witnesses into two groups. Group I, which included witnesses of fact, was sub-divided in three categories (A) victims of sexual assault and gender crimes, (B) child witnesses and (C) insider witnesses. Group II was made up of expert witnesses.
8. Relying on the Statute of the Special Court as well as the Rules of Procedure and Evidence for the Special Court, the Prosecution sought to protect the witnesses through (a) non-disclosure of the identity of witnesses of fact to the public; (b) delayed disclosure of the identity of witnesses to the Defence until 42 days before they testify in court; (c) the use of voice alteration device during the testimony of some witnesses and (d) the use of closed circuit television through which some witnesses will give their testimony.
9. On 5 July 2004, Trial Chamber I gave its decision with respect to the RUF indictees. For all witnesses in Group I (witnesses of fact), Trial Chamber I ordered as follows:

- a. That all witnesses shall be referred to by pseudonyms at all times during the course of proceedings, whether during the hearing or in documents, including the transcript of the proceedings;
- b. That the names, addresses, whereabouts and any other identifying information of witnesses shall be sealed and not included in any of the public records of the Special Court;
- c. That to the extent that the names, addresses, whereabouts or other identifying data concerning witnesses are contained in existing public documents of the Special Court, that information shall be expunged from those documents;
- d. That documents of the Special Court identifying witnesses shall not be disclosed to the public or media;
- e. That all witnesses testify with the use of a screening device from the public;
- f. That photographing, video-recording, sketching and recording or producing in any other manner of images of any witness of Group I (witnesses of fact) are prohibited while he or she is in the precincts of the Special Court;

10. The Trial Chamber also ordered the following:

- a. That the voice of witnesses in Category A (victims of sexual violence) during their testimony in trial be distorted in the speakers for the public;
- b. That witnesses in Category B (children) testify with the use of a closed-circuit television, with the image appearing on the public's monitors being distorted;
- c. That the voice of witnesses in Category C (insider witnesses) during their testimony in trial be distorted in the speakers for the public;
- d. The Defence shall refrain from sharing, discussing or revealing, directly or indirectly, any disclosed non-public materials of any sort, or any information contained in any such documents, to any person or entity other than the Defence;
- e. 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-disclosure;

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- f. The Defence shall provide to the Registrar and to the Defence Office a designation of all persons working on the Defence team who have access to any information referred to in paragraphs 7(a) through 7(d) above, and requiring the Defence to advise the Registrar and the Defence Office in writing of any changes in the composition of the Defence team;
  - g. The Defence shall ensure that any member leaving the Defence team remits to the Defence team all disclosed non-public materials;
  - h. The Defence shall 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;
  - i. 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.
  - j. That the unredacted witness statements are to be disclosed to Defence 42 days prior to the testimony at trial of these witnesses.
11. The Prosecution notes that the Witness List filed with Trial Chamber I with respect to the RUF indictees has been subsequently reduced on two occasions. In doing so, the Prosecution has filed "core" and "backup" witnesses. The protective measures granted by Trial Chamber I apply notwithstanding this division.


### **III. Submissions**

12. In light of the foregoing, the Prosecution submits a Prosecution Witness List (Annex A) indicating the protective measures received from Trial Chamber I for each of the Prosecution's witnesses. Where no specific category (i.e. A, B, or C) is indicated, the basic measures applied to all Group I witnesses (witnesses of fact) are applicable. The

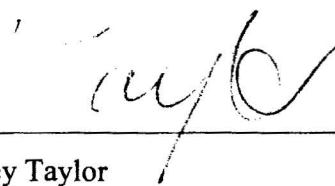
Witness List also indicates the date(s) on which a witness testified before Trial Chamber I.

Filed at Freetown

This 1<sup>st</sup> day of February 2005



Luc Côté  
Chief of Prosecutions



Lesley Taylor  
Senior Trial Attorney

**ANNEX A**  
**Prosecution Witness List with Protective Measures**

Pseudonym (TF1 #)	Protective Measures Received from Trial Chamber I by Category	Date of Testimony before Trial Chamber I
001		
002		
003		
004		
005		
006		
007		
008		
009		
010		
011		
012		
013	B	
014		
015		27/01/05-31/1/05
016	A	21/10/04
017	A	
018		
019		
020	B	
021		15/07/04
022		
023	A	
024	B	
026	A & B	
027	A	
028	A	
029	A	
030	C	
031		
033	C	
034		
035		
036	C	
037		
039		
040		
041		
042		

043		
044		
045	C	
046	C	
047		
049		
050		
051		
052		
053		
054		
055		
056		
057	B	
058		
059		
060		
061		
062		
064	A	19/07/04 – 20/07/04
066		
067		
068		
071	C	18/01/05 – 27/01/05
072		
074		12/07/04
076	A	
077		21/07/04 – 22/07/04
078		25/10/04 – 27/10/04
081		
082		
083		
084		
085	A	
086		
087		
088		
092	A	
093	A & C	
094	A	
096		
098		
099		
101		
102		



104		
105		
107		
108		
110	B	
111		
112		
113		
114		
115		
117	B	
119	A	
120		
121		
122		
123		
124		
125		
126		
127		
128		
129		
130	B	
131	B	
132	A	
133		
134		
135		
136		
138	A & C	
139	Waived all protective measures except disclosure of current address	04/10/04-13/10/04
140	B	
141	B	
142	B	
143	B	
147		
149		
150	Group II Witness	
151	C	
152		
153	C	
155	A	
156		

157	B	
158	B	
159		
160		
165		
167	Waived certain protective measures and testified without voice distortion or a screen. All other protective measures remain in place	14/10/04-20/10/04
168	C	
169		
172		
174		
176		
177		
179		
180	B	
182	C	
183		
184	C	
186		
187	C	
188		
192		
195	A	1/2/05
196	A	13/07/04
197		21/10/04 – 22/10/04
198	A	
199	B	20/07/04 & 27/7/04
200		
202		
204		
205	A	
206		
207		
209	A	
210		
211	B	
212		
213	A	
214		13/07/04 – 15/07/04
215		
216		
217		22/7/04

218	A	
219		
222		
223	B	
225	B	
226		
227		
232		
233		
234		
235	Testified in closed session	29/07/04
240		
243		
246		
247		
250		
251	B	
252		
253		28/07/04 – 29/07/04
254		
255		
256		
257		
259		
261		
263		
264	A	
265		
266		
267	A	
269	A	
270	A	
271	B	
272	Group II Witness	
275	C	
277		
278		
279		
280		
281	A	
282	A	
286		
287		
288		
289		

290		
294		
296	Group II Witness	
297		
299		
301	Group II Witness	
302	A	
303	A	
304		12/01/05 – 18/01/05
305	A	27/07/04
306		
307		
308	A	
309	B	
310		
311		
312		
313		
317	B	
320		
323	B	
325	C	
327		
328	B	
329		
330		
331		22/07/04 – 27/07/04
332		
334	C	
337	C	
339		
343		
344		
345		
346		
347	C	
348	Group II Witness	
349		
350		
351		
352	C	
353		
354	C	
355	Waived all protective measures except for the	28/10/04 – 29/10/04

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	disclosure of his current address	
356	C	
357	B	



**SPECIAL COURT FOR SIERRA LEONE**  
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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- Charles Ghankay Taylor**  
Case Number: **SCSL-03-01-T**  
Document Index Number: **501**  
Document Date **09 May 2008**  
Filing Date: **09 May 2008**  
Document Type: - **Confidential Annexes B and E**  
Number of Pages **11** Page Numbers from: **17030-17031 & 17053-17061**

- ☐ Application
- ☐ Order
- ☐ Indictment
- ☐ Motion
- ☒ **Application**
- ☐ Correspondence

Document Title:

**PUBLIC WITH CONFIDENTIAL ANNEXES B AND E – URGENT PROSECUTION  
APPLICATION FOR RECONSIDERATION OF ORAL DECISION REGARDING  
PROTECTIVE MEASURES FOR WITNESS tf1-215 OR IN THE ALTERNATIVE  
APPLICATION FOR LEAVE TO APPEAL ORAL DECISION REGARDING PROTECTIVE  
MEASURES FOR WITNESS TF1-215**

Name of Officer:

Vincent Tishekwa

Signed: