

SPECIAL COURT FOR SIERRA LEONE
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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 5 March 2004

PROSECUTOR **Against** **Issa Sesay**
Morris Kallon
Augustine Gbao
(Case No.SCSL-04-15-PT)

**REASONS FOR ORDER FOR CLOSED SESSION OF THE STATUS CONFERENCE
AND MODIFICATION OF SAID ORDER IN PART**

Office of the Prosecutor:

Luc Côté

Defence Counsel for Issa Hassan Sesay:

Timothy Clayson

Defence Counsel for Morris Kallon:

Sylvain Roy, Defence Office

Defence Counsel for Augustine Gbao

Andreas O'Shea

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

CONSIDERING the Status Conference held on 2 and 3 March 2004 pursuant to Rule 65 *bis* of the Rules of Procedure and Evidence (“Rules”) of the Special Court and an Order by the Trial Chamber of 13 February 2004;

NOTING THAT according to Rule 65 *bis* of the Rules the purpose of a Status Conference is to:

- (i) organise exchanges between the parties so as to ensure expeditious trial proceedings;
- (ii) review the status of [the accused's] case and to allow the accused the opportunity to raise issues in relation thereto;

NOTING FURTHER THAT according to Rule 78 of the Rules, “[a]ll proceedings before a Trial Chamber, other than the deliberations of the Chamber, shall be held in public, unless otherwise provided”;

NOTING FURTHER THAT pursuant to Rule 79 of the Rules, the Trial Chamber has discretionary authority to order that the press and the public be excluded from all or part of the proceedings, on three grounds, namely,

- (i) national security; or
- (ii) protecting the privacy of persons, as in cases of sexual offences or cases involving minors; or
- (iii) protecting the interest of justice from prejudicial publicity;

CONSIDERING THAT pursuant to Rule 79 (C) of the Rules, the Trial Chamber shall make public its reasons for ordering that proceedings be held in closed session;

HEREBY makes public the submissions of the Parties and the reasons for the Trial Chamber Oral Decision on 2 March 2004 for **CLOSED SESSION:**

RECALLING THAT the Office of the Prosecutor (“Prosecution”) and the Acting Principal Defender of the Defence Office of the Special Court (“Defence Office”) submitted a letter to the Presiding Judge of the Trial Chamber on 17 February 2004 in which it was jointly recommended that the Status Conference be held *in camera* before a designated Judge of the Trial Chamber in order to “facilitate the frank and open exchange of views between the parties,” particularly as many of the issues on the proposed agenda for the Status Conference are “still at a preliminary stage and may well change before trial,” thereby creating confusion at this stage if disclosed to the public;

RECALLING THAT the Trial Chamber convened a meeting with the Parties before the commencement of the Status Conference to hear their submission on whether to hold the Status Conference in open session or closed session;

CONSIDERING THAT the Prosecution submitted that the Status Conference may be more productive if held in closed session, as closed session would promote an open and frank dialogue between the Parties, and that if the Trial Chamber held that the Status Conference were to be conducted in open session, that it would request to go into closed session for discussion of matters pertaining to witness protection;

CONSIDERING FURTHER THAT the Prosecution expressed concern that preliminary indications it would provide in relation to the trial proceedings at the Status Conference may not be put, if made public, in their proper procedural and technical context;

CONSIDERING THAT the Defence for Accused Issa Sesay submitted that issues concerning case management could be dealt with in a neutral way and would not require closed session, with closed session remaining an option for those issues that may arise which could require it;

CONSIDERING THAT the Defence for Accused Augustine Gbao submitted that the Status Conference should be held in open session to promote transparency of the proceedings, and that closed session could be requested on a case-by-case basis as required;

CONSIDERING THAT the Accused Morris Kallon was represented at the Status Conference by Duty Counsel from the Defence Office pursuant to Rule 45 of the Rules, and that Duty Counsel submitted that the proceedings should only be held in closed session with good reason being shown;

CONSIDERING THAT after hearing the parties, the Trial Chamber, pursuant to Rule 79 (iii) of the Rules, held that the Status Conference would be conducted in open session for four agenda items, namely appearances of the parties, issues related to the Accused, general housekeeping matters, and the trial schedule, and that the remainder of the agenda, comprising the issues of pending motions, disclosure, witnesses, protective measures, points of agreement, and judicial notice, would be held in closed session;

CONSIDERING THAT the Trial Chamber based its decision to hold certain sections of the Status Conference in closed session out of an abundance of caution for the following reasons:

- (i) The closed sessions on the items of the agenda so designated will be more conducive to candid and more open views between the parties.
- (ii) Unlike the actual trials, status conferences are in essence informal meetings of the parties the objective of which is to identify and resolve mostly the procedural and technical aspects of a trial.
- (iii) Since most of the factual and legal issues to be deliberated upon at status conferences are still at a preliminary stage, there is a potential that by the premature disclosure of such factual and legal issues the interests of justice and the integrity of the proceedings may be jeopardised;

CONSIDERING FURTHER THAT the Trial Chamber noted that status conferences are not simply court management matters, but are far more than that;

AND ORDERS that the **ORAL ORDER** of 2 March 2004 be **MODIFIED** as follows:

(i) In relation to that section of the agenda entitled pending motions, including the submissions from the Parties on the Prosecution's Request for Leave to Amend the Indictment of 9 February 2004, the proceedings shall be made available to the public in the interests of justice.

Done at Freetown this 5th of March 2004

Judge Bankole Thompson Judge Benjamin Mutanga Itoe Judge Pierre Boutet
Presiding Judge,
Trial Chamber

[Seal of the Special Court for Sierra Leone]