

SPECIAL COURT FOR SIERRA LEONE
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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 24 September 2004

PROSECUTOR **Against** **SAM HINGA NORMAN**
MOININA FOFANA
ALLIEU KONDEWA
(Case No.SCSL-04-14-T)

**ORDER ON AN APPLICATION BY THE PROSECUTION TO HOLD A CLOSED
SESSION HEARING OF WITNESS TF2-151**

Office of the Prosecutor

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

SEIZED of the Prosecution’s oral application made during the trial on 23 September 2004 for the continued cross-examination of Witness TF2-151 to take place in a closed session;

NOTING the Defence Response by the Counsel for the First, Second and Third Accused opposing the Prosecution’s application made;

MINDFUL of the provisions of Article 17(2) of the Statute which provides that a public hearing is subject to certain limitations, that include measures ordered by the Special Court for the protection of victims and witnesses:

The accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Court for the protection of victims and witnesses;

MINDFUL of the provisions of Rule 79 of the Rules of Procedure and Evidence of the Special Court (“Rules”) provides that:

(A) The Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of:

- (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.

(B) The Trial Chamber shall make public the reasons for its order.

(C) In the event that it is necessary to exclude the public, the Trial Chamber should if appropriate permit representatives of the press and/or monitoring agencies to remain;

NOTING that Rule 75 (A) and (B) of the Rules provides that:

(A) A Judge or a Chamber may, on its own motion, or at the request of either party, or of the victim or witness concerned, or of the Witnesses and Victims Section, order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the accused.

(B) A Judge or a Chamber may hold an *in camera* proceeding to determine whether to order:

(i) Measures to prevent disclosure to the public or the media of the identity or whereabouts of a victim or a witness, or of persons related to or associated with him by such means as:

(a) Expunging names and identifying information from the Special Court's public records;

(b) Non-disclosure to the public of any records identifying the victim or witness;

(c) Giving of testimony through image- or voice- altering devices or closed circuit television, video link or other similar technologies; and

(d) Assignment of a pseudonym;

(ii) Closed sessions, in accordance with Rule 79;

(iii) Appropriate measures to facilitate the testimony of vulnerable victims and witnesses, such as one-way closed circuit television;

CONSIDERING that the Rules must be consistent with the purpose and object of the Statute and provide appropriate means to give effect to the Statute; and that a proper application of the Statute and Rules of the Special Court requires that purposive and contextual principles of interpretation be applied by the Trial Chamber;

MINDFUL of the rights of the Accused to a fair and public hearing must be balanced with the need to also guarantee the protection and respect for the rights of victims and witnesses;

CONSIDERING that provision is made in Rule 75 of the Rules for the Trial Chamber to order appropriate measures to safeguard the privacy and security of victims and witnesses and that when read together with Rule 79 and in conformity with Article 17(2) of the Statute of the Special Court, Rule 79 reflects the affirmative obligation of the Court to afford protection to victims and witnesses where it is shown that their privacy or security may be threatened;

MINDFUL of the special feature of the Special Court which is that it is located in Sierra Leone where the crimes being tried are alleged to have been committed and that this fact has a substantial impact on the security considerations for victims and witnesses;

CONSIDERING that the Special Court has already established a precedent of permitting the testimony of witnesses to be elicited during closed session based upon the principle of protection of victims and witnesses where the interests of justice so dictate;[\[1\]](#)

CONSIDERING that permissibility of closed session testimony is an extraordinary protective measure that will only be granted where it is shown that there is a very real risk to the witness and /or his or her family that their privacy or security will be threatened;

CONSIDERING that the Trial Chamber has already granted Witness TF2-151 the protective measures of testifying under a pseudonym;[\[2\]](#)

CONSIDERING that Witness TF2-151 in his testimony has expressed specific concerns and fears for his safety if he were identified as having given evidence;

CONSIDERING that additional protective measures are required for Witness TF2-151 because he is well-known on account of his occupation and the personal contacts that he has made there, and that if any of this evidence is heard publicly it would lead to his identification, and compromise his safety and security;

CONSIDERING that it is in the interests of justice that this witness be adequately protected in the course of and after his testimony in Court;

FOR ALL THE ABOVE-STATED REASONS,

GRANTS the Application by the Prosecution that the testimony of Witness TF2-151 be heard in closed session.

Done in Freetown, Sierra Leone, this 24th day of September 2004

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

[Seal of the Special Court for Sierra Leone]

[1] Order on an Application by the Prosecution to Hold a Closed Session Hearing of Witnesses TF2-082 and TF2-032, 13 September 2004; Witness TF1-235, RUF Trial Transcript, 29 July 2004.

[2] Decision on Prosecution's Motion for Modification of Protective Measures for Witnesses, 8 June 2004.