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(9635 (SCSL 9640))



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: 1st October, 2004

PROSECUTOR **Against** **SAM HINGA NORMAN**
MOININA FOFANA
ALLIEU KONDEWA
(Case No.SCSL04-14-T)

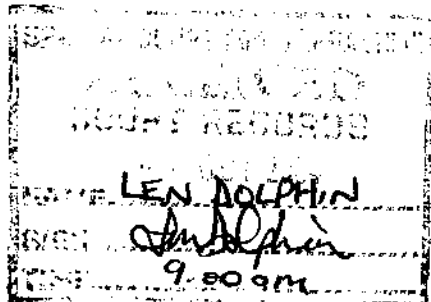
ORDER ON PROTECTIVE MEASURES FOR ADDITIONAL WITNESSES

Office of the Prosecutor:

Luc Côté
James Johnson

Court Appointed Counsel for Sam Hinga

Norman:
Dr Bu-Buakei Jabbi
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Court Appointed Counsel for Moinina Fofana:

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Victor Koppe

Court Appointed Counsel for Allieu Kondewa:

Charles Margai
Yadda Williams
Ansu Lansana

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 Motion of *Protective Measures for Additional Witnesses* on 9th September 2004, where the Prosecution "informs the Trial Chamber of its intention to extend the existing protective measures applicable to its existing witnesses to the three additional witnesses recently added to its list of witnesses", and states that these three additional witnesses are all insider witnesses, falling within Sub-Category C of the Trial Chamber's *Decision on Prosecution Motion for Modification of Protective Measures for Witnesses* of the 8th of June, 2004;

NOTING that at the Status Conference concerning the CDF trial held on the 9th of September, 2004, the Presiding Judge at that Status Conference, Hon. Judge Boutet, reminded the Prosecution that it had not sought protective measures for Witness TF2-221, Witness TF2-222 and Witness TF2-223, who were three additional witnesses that the Trial Chamber agreed to grant leave to the Prosecution to add to the Witness List on the 29th of July, 2004;¹

MINDFUL of the *Decision on Prosecution Motion for Modification of Protective Measures for Witnesses*, delivered by the Trial Chamber on the 8th of June, 2004, where the Trial Chamber granted protective measures for all witnesses to testify before the Court, including the disclosure of unredacted witness statements 21 days prior to testimony;

NOTING the *Prosecution Request for Leave to Call Additional Witnesses*, filed on the 16th of July, 2004, and the *Decision on the Prosecution Request for Leave to Call Additional Witnesses*, delivered on the 29th of July, 2004;

NOTING that Article 16(4) of the Statute of the Special Court for Sierra Leone ("Statute") provides that:

[Witnesses and Victims Unit] shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by such witnesses;



NOTING that Article 17(2) of the Statute provides that:

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;

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.

¹ *Prosecutor v. Sam Hinga Norman, Moinina Fofana, Allieu Kondewa, Decision on Prosecution Request for Leave to Call Additional Witnesses*, 29th July 2004.

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- (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;

MINDFUL of the provisions of Rule 53, Sub-Rules (A) and (C) of the Rules which provides as follows:

(A) In exceptional circumstances, a Judge designated pursuant to Rule 28 may, in the interests of justice, order the non-disclosure to the public of any documents or information until further order.

(C) A Judge may, on the application of the Prosecutor, also order that there be no disclosure of an indictment, or part thereof, or of all or any part of any particular document or information, if satisfied that the making of such an order is required to give effect to a provision of the Rules, to protect confidential information obtained by the Prosecutor, or is otherwise in the interests of justice;

MINDFUL of the provisions of Rule 69 of the Rules which provides as follows:

(A) In exceptional circumstances, either of the parties may apply to a Judge of the Trial Chamber or the Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk, until the Judge or Chamber decides otherwise.

(B) In the determination of protective measures for victims and witnesses, the Judge or Trial Chamber may consult the Witnesses and Victims Section.

(C) Subject to Rule 75, the identity of the victim or witness shall be disclosed in sufficient time before a witness is to be called to allow adequate time for preparation of the prosecution and the defence;

MINDFUL of the provisions of Rule 26bis of the Rules which provides as follows:

The Trial Chamber and the Appeals Chamber shall ensure that a trial is fair and expeditious and that proceedings before the Special court are conducted in accordance with the Agreement, the Statute and the Rules, with full respect for the rights of the accused and due regard for the protection for victims and witnesses;

CONSIDERING that a decision on protective measures requires a balance to be struck between the full respect for the rights of the Accused and the protection needs of victims and witnesses, within the legal framework of the Statute and Rules and within the context of a fair trial;

CONSIDERING that it is not the role of the Prosecution to inform the Trial Chamber of its intention to extend protective measures to witnesses, but that it should instead make a request to the Trial Chamber to consider and make a determination on this issue;

NOTING that the Trial Chamber's Decision of the 8th of June, 2004 granted the following protective measures to witnesses in the CDF trial:

- 1.) That the unredacted witness statements for the Accused Norman and Fofana are to be disclosed to the Defence 21 days prior to the testimony in trial of the witnesses;
- 2.) That orders b-k of the Decisions on Protective Measures² remain in full force and application, as shall read as follows:
 - (b) That the names and any other identifying information concerning all witnesses be sealed by the Registry and not included in any existing or future records of the Court;
 - (c) The Prosecution may designate a pseudonym for each witness, which was and will be used for pre-trial disclosure and whenever referring to such witness in Court proceedings, communications and discussions between the parties to the trial, and the public; it is understood that the Defence shall not make an independent determination of the identity of any protected witness or encourage or otherwise aid any person to attempt to determine the identity of any such persons;
 - (d) That the names and any other identifying information concerning all witnesses described in order (a) be communicated only to the Victims and Witnesses Unit personnel by the Registry or the Prosecution in accordance with established procedure and only in order to implement protection measures for these individuals;
 - (e) That the names and any other identifying data or information on file with the Registry, or any other information which could reveal the identity of Witnesses and Victims, shall not be disclosed to the public or the media and this order shall remain in effect after the termination of the proceedings in this case;
 - (f) That the Defence shall not share, discuss or reveal, 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;
 - (g) That 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-public disclosure;
 - (h) That the Defence provide to the Chamber and the Prosecution a designation of all persons working on the Defence team who, pursuant to order (f) above, have access to any information referred to in order (a) through (e) above (reference herein being made to the Motion), and requiring the Defence to advise the Chamber and the Prosecution in writing of any changes in the composition of this Defence team;

² *Prosecutor v. Samuel Hinga Norman*, SCSL-03-08-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23rd May 2003; *Prosecutor v. Moinina Fofana*, SCSL-03-11-PD, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 16th October 2003; *Prosecutor v. Allieu Kondewa*, SCSL-03-12-PT, Ruling on the Prosecution Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure and urgent Request for Interim Measures until Appropriate Protective Measures are in Place, 10th October 2003.

- (i) That the Defence ensure that any member leaving the Defence team remits to the Defence team all disclosed non-public materials;
 - (j) That the Defence 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;
 - (k) That the Defence Counsel make a written request to the Trial Chamber or a Judge thereof, for permission to contact any protected witnesses 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 parents or guardian of that person 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.
- 3.) That all witnesses, who have not waived their right to protection testify with use of screening a device from the public;
 - 4.) That photography, video-recording, sketching or in any other manner of recording or reproducing images of any witness are prohibited while he or she is in the precincts of the Special Court;
 - 5.) That the voice of witnesses in Sub-Category A and C during their testimony in trial be distorted in the speakers for the public;
 - 6.) That witnesses in Sub-Category B testify with the use of a closed circuit television; the image appearing on the public's monitors being distorted;

MINDFUL that the Trial Chamber in its *Kondewa* Decision,³ stated that:

“The Republic of Sierra Leone is a relatively small community where people are bound to and in fact know and identify themselves very easily thereby increasing the danger of risk of a recruitment of hostilities against potential witnesses and victims and their families if they are identified by the indictees of their sympathisers as those whose testimony would incriminate them, or in due course and more still, the indictees who they support out there;”

MINDFUL of the fact that the security risks for witnesses who testify before the Special Court, taken into consideration by the Trial Chamber in its Decision of the 8th of June, 2004, still exist;

RECOGNISING the unique feature of the Special Court being located in Sierra Leone where the offences charged against the Accused are alleged to have been committed and that this fact has a substantial impact on the security considerations for victims and witnesses;

CONSIDERING that insider witnesses are particularly vulnerable to acts of retaliation and harm and threats to their security;

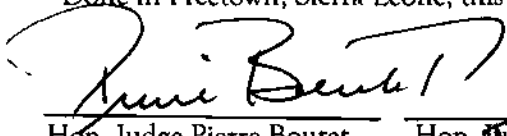
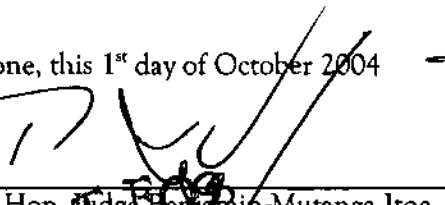
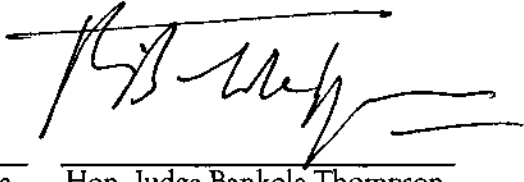
CONSIDERING that in fulfilling its affirmative obligation to provide appropriate measures to safeguard the privacy and security of witnesses, and to ensure that these measures are consistent with the rights of the Accused, the Trial Chamber considers that it is in the interests of justice for the protective measures granted for Sub-Category C witnesses in the Decision of the Trial Chamber of the 8th of June, 2004, to be applied to Witness TF2-221, Witness TF2-222 and Witness TF2-223 for their protection.

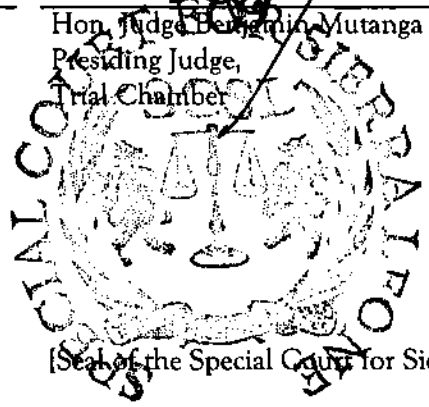
³ Para. 30.

FOR ALL THE ABOVE-STATED REASONS, THE TRIAL CHAMBER

ORDERS that the protective measures granted for witnesses in Sub-Category C of the Trial Chamber's Decision on protective measures of the 8th of June, 2004, as outlined above, be applied for Witness TF2-221, Witness TF2-222 and Witness TF2-223.

Done in Freetown, Sierra Leone, this 1st day of October 2004

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



[Seal of the Special Court for Sierra Leone]