

SEIZED OF the oral application made on the 31st of March, 2006 by Defence Counsel for the First Accused, for Defence Investigators to attend trial proceedings during witness testimonies held in closed session;

MINDFUL of the various Decisions and Orders of this Trial Chamber concerning protective measures, including the “Decisions on the Prosecutor’s Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure” for each individual accused in the RUF trial^[1] and, in particular, the “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses” filed on the 5th of July 2004;^[2]

MINDFUL OF the “Decision on Joint Motion by Sam Hinga Norman, Moinina Fofana and Allieu Kondewa Seeking Permission for Defence Investigators to Sit in Court during Closed Sessions” issued by this Trial Chamber in the CDF Case on the 28th of February, 2005 (“CDF Decision”)^[3] which granted a similar application, subject to certain conditions;

CONSIDERING that in the CDF Decision we held that “where investigators conduct investigations or provide services to the Accused for the preparation of the Defence of the Accused, they should be considered part of a Defence team for that Accused persons ... investigators, by the very nature of their work, may provide immediate and invaluable information to assist in the preparation and conduct of the defence of the Accused as stipulated in Articles 17(4)(b) and 17(4)(e) of the Statute”;^[4]

REITERATING that the presence of Defence Investigators during a witness testimony held in closed session would be consistent with the rights of the Accused to have adequate time and facilities available for the preparation of the Defence of the Accused, and for the Accused to be given the full opportunity to examine or have examined, the witnesses against him as enshrined in Article 17(4)(b) and 17(4)(e) of the Statute;^[5]

REITERATING, further, that it is in the interest of justice and in conformity with the doctrine of equality of arms for investigators that comprise members of both the Defence and the Prosecution Teams to be allowed to attend trial proceedings during witness testimonies held in closed session;^[6]

PURSUANT TO Article 17 of the Statute of the Special Court (“Statute”) and Rules 26bis, 75 and 79 of the Rules of Procedure and Evidence (“Rules”);

FOR THE ABOVE REASONS,

THE TRIAL CHAMBER

HEREBY GRANTS the Defence Application, and accordingly

ORDERS as follows:

a. that investigators from the Defence and Prosecution Teams may attend to trial proceedings during witness testimonies held in closed session;

b. that investigators who constitute members of the Defence or Prosecution Teams comply with the Trial Chamber's existing and future Decisions on Protective Measures for victims and witnesses;

c. that the Lead Counsel of the Defence and Prosecution Teams ensure that investigators that comprise members of their Teams, and who are present during witness testimonies held in closed session, do not disclose the identity of protected witnesses nor should they disclose the evidence that constitutes their testimony during such closed sessions to any unauthorized person;

d. that only one investigator from the Defence Team and from the Prosecution Team be present during witness testimonies held in closed session; and

e. that the names, qualifications and professional details of the investigators of both the Defence and Prosecution Teams be filed with the Court Management Section of the Special Court who shall maintain a log of the presence of such investigators during each witness testimony held in closed session;

Done at Freetown, Sierra Leone, this 31st day of March, 2006

Hon. Justice Benjamin Mutanga
Itoe

Hon. Justice Pierre Boutet
Presiding Judge
Trial Chamber I

Hon. Justice Bankole
Thompson

[Seal of the Special Court for Sierra Leone]

[1] *Prosecutor v. Sesay*, Case No. SCSL-03-05-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003, *Prosecutor v. Kallon*, Case No. SCSL-03-07-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003, and *Prosecutor v. Gbao*, Case No. SCSL-03-09-PT, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 10 October 2003.

[2] *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004.

[3] *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, Decision on Joint Motion by Sam Hinga Norman, Moinina Fofana and Allieu Kondewa Seeking Permission for Defence Investigators to Sit in Court during Closed Sessions, 28 February 2005.

[4] *Id.*, para. 11.

[5] *Id.*, para. 14. See also *Independent Counsel v. Brima Samura*, Case No. SCSL-05-01, Judgment in Contempt Proceedings, 26 October 2005, paras 66-68.

[6] CDF Decision, para. 19.
