

**SPECIAL COURT FOR SIERRA LEONE
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TRIAL CHAMBER I

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

Registrar: Mr. Lovemore G. Munlo SC

Date: 14th of June, 2006

PROSECUTOR **Against** **ISSA HASSAN SESAY**
MORRIS KALLON
AUGUSTINE GBAO
(Case No. SCSL-04-15-T)

Public Document

**DECISION ON PROSECUTION MOTION FOR THE TESTIMONY OF WITNESSES
TF1-367, TF-369 AND TF1-371 TO BE HELD IN CLOSED SESSION AND FOR OTHER
RELIEF FOR WITNESS TF1-369**

Office of the Prosecutor:

James Johnson
Peter Harrison

Defence Counsel for Issa Hassan Sesay:

Wayne Jordash
Sareta Ashraph

Defence Counsel for Morris Kallon:

Shekou Touray
Charles Taku
Melron Nicol-Wilson

Court Appointed Counsel for Augustine

Gbao:

Andreas O'Shea
John Cammegh

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

SEIZED OF the “Prosecution Motion for Testimony of Witnesses TF1-367, TF1-371 and TF1-369 to be Held in Closed Session and Other Relief for TF1-369”, filed confidentially^[1] by the Office of the Prosecutor (“Prosecution”) on the 26th of May, 2006 (“Motion”), requesting that the testimonies of protected Witnesses TF1-367, TF1-369 and TF1-371 be held entirely in closed session and that the testimony of Witness TF1-369 be interposed during the testimony of Witness TF1-371;^[2]

NOTING that the Defence for the First Accused, Issa Sesay, as well as the Defence for the Second Accused, Morris Kallon, did not file any response to the Motion within the prescribed time limits;

NOTING that Court Appointed Counsel for the Third Accused, Augustine Gbao, filed a public response to the Motion on the 5th of June, 2006 (“Response”);

CONSIDERING that, in the said Response, Court Appointed Counsel for the Third Accused indicated that he does not oppose the Motion that the testimonies of these witnesses be held entirely in closed session but invited the Prosecution to renew orally its request concerning the scheduling of the testimony of Witness TF1-369 during the trial proceeding when it possesses more precise information about the trial progress;^[3]

NOTING that the Prosecution did not file any reply to the Response within the prescribed time limits;

NOTING the “Prosecution Re-Filed Proposed Order of Appearance of Witnesses – Eighth Trial Session” filed on the 5th of July, 2006;^[4]

MINDFUL of the several 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^[5] and, in particular, the “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses” of the 5th of July 2004;^[6]

MINDFUL of this Trial Chamber’s jurisprudence on closed session testimonies;^[7]

MINDFUL of the principle that a decision whether to grant protective measures requires a balance to be struck between full respect for the rights of the Accused to a fair and public trial and the interest needs of victims and witnesses for protection, within the legal framework of the Statute and Rules and in the context of a fair trial;^[8]

RECALLING the “Decision on Prosecution Request for Leave to Call Additional Witnesses and Disclose Additional Witness Statements” of the 11th of February, 2005, which, *inter alia*,

granted leave to the Prosecution to add Witness TF1-367 to its Witness List and, further, extended the current applicable protective measures to this Witness;

RECALLING the “Decision on Prosecution Request for Leave to Call Additional Witness TF1-371 and for Order for Protective Measures” of the 5th of April, 2006 granting leave to the Prosecution to add Witness TF1-371 to its current Witness List and, further, extending the current applicable protective measures to this Witness;

CONSIDERING that both protected Witnesses TF1-367 and TF1-371 are former RUF Commanders and have been categorized as Group I, Category C Witnesses (Insider Witnesses);

CONSIDERING that the Prosecution submits that, by virtue of their position within the RUF, it will be easy for members of the RUF and members of the public to determine the identity of protected Witnesses TF1-367 and TF1-371 if their testimonies are not heard in closed session;[\[9\]](#)

CONSIDERING that the Prosecution further submits that both protected Witnesses TF1-367 and TF1-371 have expressed concerns for their safety and for that of members of their families should it become known that they appeared as Prosecution witnesses in the RUF trial;[\[10\]](#)

MINDFUL that in its Decision of the 5th of July, 2004 the Trial Chamber observed that insider witnesses and their families were particularly vulnerable to acts of retaliation and potential harm if their identities were to be known to the public;[\[11\]](#)

RECALLING the confidential “Decision on Prosecution Request for Leave to Call an Additional Expert Witness” of the 10th of June 2005 which granted leave to the Prosecution to call Witness TF1-369 as an Expert Witness, and the subsequent confidential “Order on Prosecution Motion to Request Protective Measures for Witnesses TF1-041 and TF1-369”, of the 28th of February, 2006 which, *inter alia*, granted protective measures to Witness TF1-369;

RECALLING FURTHER the “Order Regarding Prosecution Motion to Vary the “Decision on Prosecution Request for Leave to Call an Additional Expert Witness”” of the 8th of May, 2006 in which it was ordered that the Prosecution may call Witness TF1-369 at any point in the presentation of its case;

NOTING the confidential “Decision on the Confidential Prosecution Notice Under 92bis to Admit the Transcripts of Testimony of TF1-369” of the 23rd of May, 2006;

CONSIDERING that the Prosecution submits that, for various confidential reasons, it will be easy for members of the public to determine the identity of protected Witness TF1-369; [\[12\]](#)

CONSIDERING that the Prosecution further submits that protected Witness TF1-369 and her current employer have expressed concerns for her safety and security and for that of members of her family should it become known that she appeared as Prosecution witness in the RUF trial;[\[13\]](#)

NOTING also that the Prosecution submits that due to previous commitments, Witness TF1-369 will be available to testify in the RUF Trial only on about late July 2007;

REITERATING that the permissibility of closed sessions testimonies, as opposed to testimonies heard in public, is an extraordinary protective measure that will only be granted where it is shown that there is a real risk to the witness and /or his family that their privacy or security will be threatened;[\[14\]](#)

SATISFIED that, in light of the particular circumstances of these witnesses, it is in the interests of justice that protected Witness TF1-367, TF1-369 and TF1-371 be exceptionally permitted to testify entirely in closed session;

FINDING that, at this stage, it will be premature to make any determination concerning the scheduling of Witness TF1-369's testimony and, in particular, whether her testimony could be interposed with that of any other witness;

REITERATING that, as a matter of efficient trial management practice, similar determinations should ordinarily be done orally on a case-by-case basis during the course of the trial proceedings, taking into consideration the effective progress of the said proceedings and provided that sufficient notice has been given to all relevant parties and the Trial Chamber;[\[15\]](#)

PURSUANT TO Article 17 of the Statute of the Special Court and Rules *26bis*, 54, 69, 75, 78 and 79 of the Rules of Procedure and Evidence of the Special Court;

THE TRIAL CHAMBER

HEREBY PARTIALLY GRANTS the Motion

and, consequently **ORDERS** as follows:

1. That the testimony of protected Witnesses TF1-367, TF1-369 and TF1-371 shall be held entirely in closed session;
2. That in accordance with the norm requiring that criminal trials be conducted in public, the transcripts of these Witnesses' testimonies shall be publicly released after appropriate redaction by the Witness and Victims Section;

DECLINES to consider the remaining of the Motion as premature, and

ORDERS that the Prosecution shall directly liaise with the Defence for the scheduling of the testimony of Witness TF1-369 and, accordingly, promptly report to the Trial Chamber on the availability of the said Witness.

Done at Freetown, Sierra Leone, this 14th day of June, 2006.

Hon. Justice Benjamin Mutanga
Itoe

Hon. Justice Pierre Boutet

Hon. Justice Bankole
Thompson

Presiding Judge
Trial Chamber I

[Seal of the Special Court for Sierra Leone]

[1] Having regard to the principle requiring that criminal trials be conducted in public and consistent with established jurisprudence of the Court, the Chamber deems it necessary that this Decision be now filed publicly, omitting, if necessary and as it may be required, any information that could disclose the identity of the protected Witnesses. See, for instance, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Order to Hear the Evidence of Witness TF1-235 in Closed session, 8 November 2004, para. 1.

[2] Motion, paras 5, 11 and 15.

[3] Response, paras 2-3.

[4] See also *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Order for Public Disclosure of the Identity of Certain Prosecution Witnesses, 2 June 2006.

[5] *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.

[6] *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 (“Decision of the 5th of July, 2004”).

[7] See, for instance, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Order to Hear the Evidence of Witness TF1-235 in Closed Session, 8 November 2004, *supra* note [1](#); *Id.*, Ruling on the Prosecution’s Application for the Entire Testimony of Witness TF1-362 to be Heard in Closed Session, 11 May 2005; See also *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, Order on an Application by the Prosecution to Hold a Closed Session Hearing of Witnesses TF2-082 and TF2-032, 13 September 2004.

[8] See, for instance, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Order on Protective Measures for Additional Witnesses, 24 November 2004, p. 3.

[9] Motion, paras. 9-10.

[10] *Id.*

[11] Decision of the 5th July, 2004, *supra* note [6](#), paras. 33-34.

[12] Motion, para. 13.

[13] *Id.*, para. 14.

[14] See, for instance, *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, Order on an Application by the Prosecution to Hold a Closed Session Hearing of Witnesses TF2-082 and TF2-032, 13 September 2004, *supra* note [7](#).

[15] This has been the case, for instance, of Witness Edwin Kasoma (TF1-288) which has been recently interposed within the testimony of Witness TF1-174.
