

SPECIAL COURT FOR SIERRA LEONE
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TRIAL CHAMBER I

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

Registrar: Robin Vincent

Date: 6th of April 2005

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

**RULING ON THE ORAL APPLICATION OF THE PROSECUTION TO VARY THE
PROTECTIVE MEASURES OF WITNESS TF1-141**

Office of the Prosecutor:

Luc Côté
Lesley Taylor
Peter Harrison

Defence Counsel for Issa Hassan Sesay:

Wayne Jordash
Sareta Ashraph

Defence Counsel for Morris Kallon:

Shekou Touray
Melron Nicol-Wilson

Defence Counsel for Augustine Gbao:

Andreas O'Shea
John Cammegh

1. This is the Ruling of the Chamber on the Prosecution's application to vary the protective measures of Witness TF1-141.
2. On the 18th of January 2005 during the trial of this case, the Prosecution made an application that Prosecution Witness TF1-141 be permitted to testify via closed-circuit television and that there be a support person from the Victims and Witnesses Unit present with the Witness during his testimony.
3. The Prosecution conceded that it could not establish the age of Witness TF1-141. A nurse had estimated that he was approximately 14 years of age in December 2000 and

thus, while he is clearly a young person, the Witness may be over 18 years of age. The Prosecution further conceded that because of this, the Witness would not automatically be entitled to testify via closed-circuit television pursuant to this Chamber's *Decision on Prosecution Motion for Modification of Protective Measures for Witnesses*. The Prosecution submitted, however, that this Witness would qualify as a vulnerable witness, despite his age.

4. The Prosecution submitted as a matter of law that the Trial Chamber nonetheless has the discretion to grant these special protective measures for the testimony of Witness TF1-141 pursuant to Rules 75(B)(i)(c) and 85(D) of the Rules of Procedure and Evidence.

5. In order to establish the factual foundation for its application and to provide supporting expert guidance to the Chamber on this issue, the Prosecution called Ms. An Michels, the psychologist attached to the Victims and Witnesses Unit and filed a statutory declaration that she had prepared as Exhibit 15. Ms. Michels was questioned by the Prosecution and cross-examined by Defence Counsel for all three Accused.

6. In the course of her testimony, Ms. Michels stated that from her observations she has concluded that Witness TF1-141 suffered from post-traumatic stress. She found that the Witness exhibits clearly the three groups of symptoms of post-traumatic stress and that he falls within the category of a witness who is severely traumatised. She also emphasized that he was particularly vulnerable given the level of his mental development due to his young age, the fact that he was a child ex-combatant and the fact that he was confronted with the traumatic events when he was much younger. As a result of these factors, she opined that this particular witness has a higher risk for retraumatisation from testifying. In light of her findings, Ms. Michels recommended that the Witness testify via closed-circuit television as this would create a quieter and less overwhelming environment for him and also prevent a direct confrontation. In addition, she recommended that he testify in the presence of a support person from the Victims and Witness Unit with whom the Witness is familiar in order to increase his comfort level and to control his feelings of fear and depersonalisation.

7. At the end of their cross-examination of Ms. Michels, Counsel for all three Accused indicated that they did not oppose the Prosecution's application.

8. Based on the foregoing considerations, this Chamber is satisfied that the Prosecution has established a case to justify the exercise of the Chamber's discretion under the Rules to permit Witness TF1-141 to testify via closed-circuit television in the presence of a support person.

9. The Chamber accordingly **GRANTS** the Prosecution's application and **ORDERS** as follows:

1. That Witness TF1-141 shall testify via closed-circuit television;
2. That a support person from the Victims and Witness Unit shall be present with the Witness while he is testifying; and
3. That the support person shall not communicate with the Witness during testimony except as so directed by the Chamber.

Done at Freetown this 6th day of April 2005

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

[Seal of the Special Court for Sierra Leone]