

THE SPECIAL COURT FOR SIERRA LEONE
FREETOWN – SIERRA LEONE

IN THE TRIAL CHAMBER

Before: Judge Bankole Thompson
Judge Itoe
Judge Boutet

Date filed: 1 December 2004

THE PROSECUTION

Against

SAMEUL HINGA NORMAN, MOININA FOFANA, and ALLIEU KONDEWA

CASE NO. SCSL-2004-14-T

JOINT MOTION BY HINGA NORMAN, MOININA FOFANA, AND ALLIEU
KONDEWA SEEKING PERMISSION FOR DEFENCE INVESTIGATORS TO
SIT IN COURT DURING CLOSED SESSIONS

Office of the Prosecutor:

Mr. Luc Cote
Mr. James C. Johnston

Court Appointed Counsel for Sam Hinga Norman:

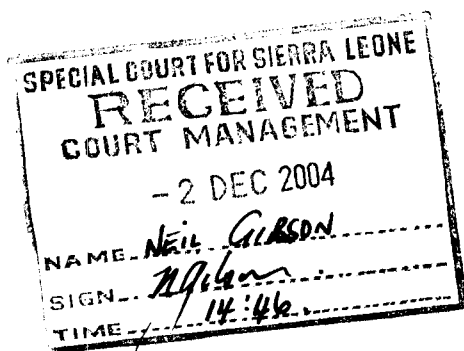
Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.

Court Appointed Counsel for Moinina Fofana:

Mr. Michiel Pestmen
Mr. Arrow Bockarie
Mr. Victor Koppe

Court Appointed Counsel for Allieu Kondewa:

Mr. Charles F. Margai
Mr. Yada Williams
Mr. Ansu Lansana



I. BACKGROUND

1. On Friday November 26, Charles Margai, counsel for the third accused, made an oral request to the Trial Chamber asking that Defence investigators be able to sit in on closed sessions.
2. The Trial Chamber made note of his request and asked that it be put in writing.
3. This motion, which is made jointly by the Accused, is in response to this request.

II. ARGUMENT

4. Rule 79(A) of the Rules of Procedure and Evidence of the Special Court (**The Rules**) states the “Trial Chamber may order that the press and public may be excluded from all or part of the proceedings...” The Defence submits that, with regards to the proceedings, investigators should be considered as a part of the defence team, and not part of either the press or the public, and should thus not be excluded from closed sessions.
5. The Defence looks to the “Directive on the Assignment of Counsel” for the Special Court for a definition of a defence team. Article I defines a defence team as: “The individuals providing services to a Suspect or Accused in accordance with a Provisional Assignment Agreement or Legal Services Contract described in Article 16 of this Directive.” According to this definition, investigators should be considered part of the defence team given that they provide services to the accused in accordance with a Legal Services Contract.
6. Moreover, Rule 69 (C) states that “...the identity of the victim or witness shall be disclosed in sufficient time before a witness is called to allow adequate time for preparation of the prosecution and the defence.” Given that investigators are an integral part of the preparation process, it can be inferred that the Rules grant investigators the privilege of knowing the identities of all victims or witnesses who are to be called during the course of the trial. There thus seems to be little reason to exclude them from sitting in on closed sessions.

7. The Defence also notes that on numerous occasions Prosecution investigators have sat in the courtroom during closed sessions. The principle of equality of arms thus dictates that the Defence be granted this same privilege.
8. Lastly, and perhaps most importantly, Article 17 (4)(b) of the Statute of the Special Court states that the accused should have "...adequate time and facilities for the preparation of his or her defence." Allowing investigators to fully participate in all aspects of the trial will go a long way in providing the accused with adequate time and facilities to prepare their defence. The Defence investigators have an extensive knowledge of the happenings of the war. It is thus invaluable to have the investigators in court, as they can provide immediate and invaluable information to Counsel which can aid in the cross-examination of witnesses who have testified outside of the scope of their witness statements. Given the nature of cross-examination, if investigators are not in court, it may happen that they are not able to communicate to Counsel pertinent information concerning the evidence given during the examination in chief. The Defence submits that this would prejudice the quality of defence.

III. SUBMISSION

9. For the above reasons, the Defence requests that the Trial Chamber allows Defence investigators to sit in on closed sessions.

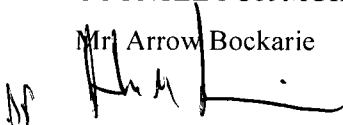
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