

SCSL - 04 - 15 - T

(9582 - 9590)

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

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

Registrar: Mr. Robin Vincent

Date filed: 23 November 2004

THE PROSECUTOR**Against**

ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO

Case No. SCSL – 2004 – 15 – T

**PROSECUTION REQUEST FOR LEAVE TO CALL ADDITIONAL WITNESSES
AND DISCLOSE ADDITIONAL WITNESS STATEMENTS,
PURSUANT TO RULES 66(A)(ii) and 73bis(E)**

Office of the Prosecutor:

Luc Côté
Lesley Taylor
Pete Harrison
Sharan Parmar

Defence Counsel for Issa Sesay
Wayne Jordash

Defence Counsel for Morris Kallon
Shekou Touray

Defence Counsel for Augustine Gbao
Andreas O'Shea
John Cammegh

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT MANAGEMENT	
23 NOV 2004	
NAME	Neil Gibson
SIGN	<i>Neil Gibson</i>
TIME	15:25

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

THE PROSECUTOR

Against

ISSA HASSAN SESAY
MORRIS KALLON
AUGUSTINE GBAO

Case No. SCSL – 2004 – 15 – T

PROSECUTION REQUEST FOR LEAVE TO CALL ADDITIONAL WITNESSES
AND DISCLOSE ADDITIONAL WITNESS STATEMENTS,
PURSUANT TO RULES 66(A)(ii) and 73bis(E)

I. PROCEDURAL BACKGROUND

1. On 1 April 2004, the Trial Chamber issued the “Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial” (“**the Original Order**”). On 26 April 2004, pursuant to the Original Order, the Prosecution filed a “Witness List”, which included a summary of the expected testimony of each witness and totalled 266 witnesses.
2. On 7 July 2004, the Trial Chamber issued the “Order to Prosecution to Produce Witness List and Witness Summaries” (“**the Second Order**”). On 12 July 2004, pursuant to the Second Order, the Prosecution filed a “Modified Witness List”, which included a summary of the expected testimony of each witness. The Modified Witness List totalled 173 witnesses.
3. On 29 July 2004, the Trial Chamber issued the “Decision on Prosecution Request For Leave to Call Additional Witnesses” (“**the Decision**”).¹
4. On 23 November 2004, the Prosecution filed a “Renewed Witness List”, which included a summary of the expected testimony of each witness. The Renewed

¹ Registry Page Number (“RP”) 7310 – 7321.

Witness List totals 102 witnesses. Eighteen of these witnesses have already given evidence.

5. Pursuant to Rules 73bis(E), the Prosecution respectfully requests that the Trial Chamber allow the addition of **three** witnesses to the said Reduced Witness List for the reasons outlined below. The Prosecution further requests that certain statements of these witnesses be disclosed pursuant to Rule 66(A)(ii).

II. ARGUMENT

6. In the Original Order of 1 April 2004, the Trial Chamber stated that should the Prosecution seek to add any witnesses or exhibits to the lists submitted on 26 April 2004, “it shall be permitted to do so only upon good cause being shown”.
7. In its Decision of 29 July 2004, the Trial Chamber recognized that several factors have been taken into account by the international ad hoc tribunals assessing the “interests of justice” and “good cause” for adding witnesses to the witness list.² The Trial Chamber proceeded to refer to the following considerations *inter alia* as observed in the *Nahimana* Decision³ of the International Tribunal for Rwanda:
 - a) Materiality of the witness evidence sought to be added;
 - b) Prejudice to the defence;
 - c) On-going investigations;
 - d) Replacements or corroboration with existing evidence;
 - e) The Prosecution’s duty to present the best available evidence; and
 - f) Time and facilities being adequate to preparation by the defence.
8. The Trial Chamber noted additional considerations such as the sufficiency and timing of disclosure and the probative value of the proposed testimony.
9. The Prosecution respectfully submits that the factors outlined below demonstrate how the addition of each witness to the Reduced Witness List meets the standard

² Paragraph 29, RP 7318.

³ See *Prosecutor v. Nahimana et al*, ICTR-99-52-I, “Decision on the Prosecutor’s Oral Motion for Leave to amend the list of selected witnesses”, 26 June 2001 (*Nahimana*, 26 June 2001’), as referred to in the Decision at para. 29. RP 7318.

of being in the “interests of justice”, as articulated by the Trial Chamber in the Decision issued on 29 July 2004.

A. Prosecution’s Proposed Additional Witnesses

10. The Prosecution respectfully requests that the witnesses listed below be added to the Reduced Witness List and that the Prosecution be allowed to call these witnesses to testify at trial. The Prosecution submits that these three witnesses clearly meet the requirements of “good cause” and their addition to the witness list will be in the “interests of justice”. As outlined below, the statements from the witnesses were recently taken by OTP investigators, and one has been disclosed. These witnesses include:

- (i) **TF1-366**: A statement from witness TF1-366 was first obtained on 5 February 2004 and later on 30 August 2004. The witness was originally a member of the G-4 in charge of ammunition, later a senior frontline commander for the RUF, and finally a senior mining operations commander under the Accused Issa Sesay.

Investigative efforts:

Investigations into locating this particular witness have been on-going since September 2003, at which time this witness was referred to by another Prosecution witness. Investigators travelled to a remote area of Sierra Leone in search of this witness in early 2004, produced a preliminary statement and proceeded to make two additional visits to the location. However, the witness proceeded to express an unwillingness to testify and serious apprehension about the Special Court. Following further contact with investigators, the witness provided a statement on 30 August 2004 and finally agreed to testify in September 2004.

Substance of testimony:

The Prosecution considers the testimony of this witness to be of important value to the case against all three RUF accused. This witness travelled with the Accused Issa Sesay during the AFRC/RUF Junta (“the Junta”) and will testify to joint decision-making by the RUF and AFRC high command

testify to joint decision-making by the RUF and AFRC high command throughout this time. The witness will provide evidence of the individual criminal responsibility of the Accused Morris Kallon in relation to the Bo crime base alleged in the indictment during the Junta. The witness will describe being present at a key arms shipment during the Junta in Magburaka attended by the Accused Issa Sesay and the Accused Morris Kallon.

Furthermore, the witness will give direct evidence on the coordination between RUF and AFRC operations throughout 1998, including a key radio message from the Accused Morris Kallon, and details of regular radio communications between the two groups, which included specific troop movements. The witness will testify to the culmination of this coordination by giving evidence of how the Accused Issa Sesay led the late 1998 Kono offensive with the ultimate objective of targeting Freetown and joining the AFRC there, on instruction from Sam Bockerie. Similarly, the witness will provide further evidence on the operations of the Accused Morris Kallon in relation to the Freetown invasion. The witness will testify to the operations of a senior RUF commander during the Freetown invasion and outline evidence in relation to the operations of the combined AFRC/RUF retreat from Freetown following the invasion.

The witness will provide evidence on the individual criminal responsibility of the Accused Issa Sesay in relation to forced labour and diamond mining operations, as well as direct participation by the Accused Sesay in the joint criminal enterprise in relation to transactions with Charles Taylor. The witness will provide evidence of the individual criminal responsibility of the Accused Issa Sesay and the Accused Augustine Gbao in relation to the killing of alleged Kamajors in Kailahun District. The witness will give evidence on the direct criminal responsibility of all three RUF accused during the attacks against United Nations peacekeepers in the year 2000. The key paragraphs of the Amended Consolidated Indictment to which the witness will testify include, but is not limited to, paragraphs 34, 36, 37, 38, and 39.

- (ii) **TF1-367**: A statement from witness TF1-367 was obtained on 20 August 2004.

Investigative efforts:

Investigators have been attempting to identify and locate this witness since August 2003. The name and location of this witness was originally provided by a source at that time, further information was received by an additional source in September 2003 and March 2004. Continued attempts by investigators to locate TF1-367 did not meet with success. Later in June 2004, investigators obtained information from a third source securing the location of this witness. Investigators discovered that the witness was in fact away from this location, and finally made contact in August 2004 once the witness had returned.

Substance of testimony:

The witness will testify to the collaboration and coordination between the RUF and AFRC and provide evidence as to the command authority of all three Accused.

The witness will give evidence on the participation by the RUF in the Freetown invasion including being present with the Accused Issa Sesay at an arms shipment in Kailahun District intended for use during the late 1998 Kono offensive and later the Freetown invasion. The witness will also testify to coordination and communications between senior RUF and AFRC leadership immediately prior to and during the Freetown invasion, including troop movements and key radio exchanges.

The witness will provide evidence of the individual criminal responsibility of the Accused Morris Kallon in relation to the Bo crime base alleged in the indictment during the Junta. The witness will provide evidence of the individual criminal responsibility of the Accused Augustine Gbao in relation to killings in Kailahun District. The witness will give evidence concerning the overall command responsibility of the Accused Issa Sesay as a senior RUF commander in Kailahun District.

The witness will give evidence of the participation by the Accused Sesay and the Accused Kallon in the joint criminal enterprise, specifically, coordinating key diamonds and arms transactions with agents of Charles Taylor. In particular, the witness will give unique direct evidence on two particular diamond transactions undertaken by the Accused Sesay in Liberia, one of which involved the Accused Kallon.

The key paragraphs of the Amended Consolidated Indictment that the witness will testify include, but not limited to, paragraphs 34, 36, 37, 38, and 39.

- (iii) **TF1-368**: A statement from witness TF1-368 was obtained on 4 September 2004. The name and location of this witness was provided to investigators in early September 2004 by a source. The witness was a senior mining coordinator in late 1998 and 1999.

Substance of Testimony:

This witness will present detailed evidence on the mining operations of the RUF in the District of Kono. This witness will also provide evidence on the individual criminal responsibility of the Accused Issa Sesay and the Accused Morris Kallon in the District of Kono. Specific evidence on the individual criminal responsibility of the Accused Issa Sesay will be given in relation to forced labour and diamond mining operations during a time period *subsequent* to the evidence of witness TF1-366. The witness will also give evidence of the participation of the Accused Sesay in the joint criminal enterprise in relation to diamond transactions with Charles Taylor. Furthermore, the witness will testify to the authenticity of a diamond collection log, an important Prosecution exhibit. The key paragraphs of the Amended Consolidated Indictment that the witness will testify include, but not limited to, paragraphs 34, 36, 37, 38, and 39.

11. As demonstrated above, the Prosecution submits that the content of the expected testimonies of these witnesses meets the standard required for “good cause”, and that their addition to the Reduced Witness List is in the “interests of justice”. The testimony of each witness outlined above presents evidence that is new and does

not duplicate the evidence of those witnesses already on the Renewed Witness List. More broadly speaking, their evidence is not merely corroborative or cumulative but presents direct evidence that is important to the Prosecution's case against each RUF accused. Each of the proposed witnesses offers distinct and direct evidence of the conduct of one or more of the RUF accused in relation to specific crimes and time periods alleged in the indictment.

12. The expected testimony of all proposed witnesses is significant because the bulk of the evidence will be of events and acts that they observed.
13. The Prosecution does not plan to call these witnesses to testify until at least the March 2005 session of this trial and it is likely that these witnesses will testify at a later trial session. The Prosecution submits that the Accused' rights are adequately protected since they will have significant time to examine and prepare for these additional three witnesses. This is especially true given the recent significant reduction of the number of witnesses expected to be called by the Prosecution, as demonstrated by the Reduced Witness List.

C. Good cause exists to disclosure the three additional witness statements

14. Pursuant to Rule 66(A)(ii), the Prosecution is required to
 - (c)ontinuously disclose to the Defence copies of the statements of all additional prosecution witnesses whom the Prosecutor intends to call to testify, but not later than 60 days before the date for trial, or as otherwise ordered by a Judge of the Trial Chamber either before or after the commencement of the trial, upon good cause being shown by the Prosecution. Upon good cause being shown by the Defence, a Judge of the Trial Chamber may order that copies of the statements of additional prosecution witnesses that the Prosecutor does not intend to call be made available to the Defence within a prescribed time.
15. Pursuant to the Trial Chamber's decision of 11 May 2004, in which it ordered that the joint trial of the three RUF accused would commence 5 July 2004, the date from which the Prosecution was required to disclose all additional witness statements was 11 May 2004.
16. According to the Trial Chamber's Decision of 29 July 2004, additional witness statements may be disclosed provided the Prosecution has established good cause.

The Prosecution submits that having established that the interests of justice will be served with the addition of these three witnesses to the Reduced Witness List, good cause exists to disclose the said statements.

17. The disclosure status of the three witnesses whom the Prosecution seeks addition to the Modified Witness List is as follows:

- (i) **TF1-366**: The statement of this witness dated 5 February 2004 has not been disclosed. The statement of this witness dated 30 August 2004 has not been disclosed.
- (ii) **TF1-367**: The statement of this witness dated 20 August 2004 was disclosed 9 November 2004 pursuant to the Prosecution's disclosure obligations under Rule 68.
- (iii) **TF1-368**: The statement of this witness dated 4 September 2004 has not been disclosed.

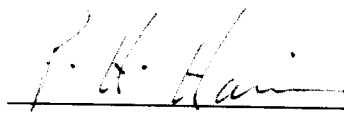
18. The Prosecution seeks permission from the Trial Chamber to disclose the statements of Witness TF1-366 and TF1-368.

D. Protective Measures for Additional Witnesses

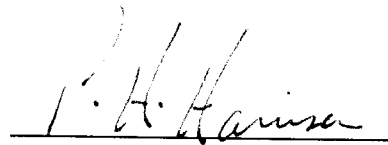
19. Should the Trial Chamber grant the Prosecution's request to add these three witnesses to the Renewed Witness List, the Prosecution will seek protective measures for each witness. Specifically, the Prosecution will file a motion seeking leave to add witnesses TF1-366, TF1-367 and TF1-368 to the Prosecution list of Category C witnesses, and therefore, request that protective measures be granted to each said witness that are applicable to Category C witnesses.

Filed in Freetown, 23 November 2004

For the Prosecution,



for
Luc Côté
Chief of Prosecutions



Pete Harrison
Trial Attorney