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SCSL-04-15-T
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SPECIAL COURT FOR SIERRA LEONE

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TRIAL CHAMBER I

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

Registrar: Mr. Lovemore G. Munlo SC

Date: 14th of July, 2006

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

Public Document

WRITTEN REASONED RULING ON THE PRELIMINARY CHARACTERIZATION OF
EXPERT WITNESS TF1-296

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TIME: 12.03

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

NOTING the “Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces” disclosed by the Office of the Prosecution (“Prosecution”) on the 4th of May, 2005 pursuant to Rule 94 of the Rules of Procedure and Evidence of the Court (“Rules”) and, in particular, the *Curriculum Vitae* of Expert Witness TF1-296 attached thereto;

NOTING that on the 11th of July, 2006, this Chamber, having heard the parties, delivered an Oral Ruling accepting Witness TF1-296 as Expert Witness;

NOTING that the Chamber indicated at that time that a reasoned written Ruling on this matter would be delivered in due course;

PURSUANT to Article 17 of the Statute of the Special Court for Sierra Leone and Rules 54, 75 and 94 of the Rules;

THE TRIAL CHAMBER HEREBY ISSUES ITS REASONED WRITTEN RULING:

A. Background

1. Expert Witness TF1-296 was included in the initial Prosecution Witness List in this Trial and was accordingly formally classified by the Prosecution as an Expert Witness,¹ but the said Expert Witness TF1-296 was not included in the initial Prosecution Witness List for the CDF Trial.
2. Each Defence Team in the RUF Trial did indicate, with Notice pursuant to Rule 94(B) of the Rules, its intention to cross-examine the Witness on her “Report on the Situation in Sierra Leone in Relation to Children with the Fighting Forces”.
3. Following a Decision of this Chamber in the case of *Prosecutor v. Norman, Fofana and Kondewa*, Witness TF1-296 was included in the Prosecution Witness List for the CDF Trial and permitted to testify entirely in closed session in the said Trial, and did so testify.²

4. In that same Decision, for the purposes of her projected testimony in the CDF Trial, this Trial Chamber characterized Witness TF1-296 as an Expert Witness, in the following terms:

CONSIDERING the Child Soldier Witness' professional experience in general and in Sierra Leone particularly, which is detailed in her CV, properly characterize this witness as an expert on children within fighting forces;

CONSIDERING that by virtue of her experience and expertise, the Child Soldier Witness will be able to enlighten the Chamber on enlistment process of children into the CDF and give an explanation and evaluative opinion of the official age determination process undertaken during the disarmament process of child combatants;

5. However, no such specific expert characterization for the Witness in connection with her testimony in the RUF trial was made by the Trial Chamber prior to its Oral Ruling of the 11th of July, 2006.

B. Applicable Law

6. Articulating the law governing Expert Witnesses, this Chamber recently held that it "has to decide first whether the witness has the necessary qualifications to be accepted as an expert, before determining whether his or her evidence is admissible as expert evidence".³ We have also previously ruled that "the party calling the expert witness should satisfy the Trial Chamber that the expert witness has at his or her disposal the special knowledge, experience, or skills needed to potentially assist the Trial Chamber in its understanding or determination of issues in dispute."⁴

7. We are, further, guided by the principle that "the admission of expert evidence is a preliminary matter and must be distinguished from the Chamber's eventual assessment of the weight and probative value of the evidence."⁵

8. Rule 94bis of the Rules specifically governs the issue of expert witness testimony. It provides as follows:

¹ *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Materials Filed pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial of 1 April 2004, 26 April 2004.

² *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures, 21 June 2005.

³ *Id.*, Decision on Fofana Submissions Regarding Proposed Expert Witness Daniel J. Hoffman Phd., 7 July 2006.

⁴ *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Decision on the Confidential Prosecution Notice Under Rule 92bis to Admit the Transcripts of Testimony of TF1-369, 23 May 2006. Please note that this Decision has been filed confidentially.

3.

(A) Notwithstanding the provisions of Rule 66(A), Rule 73bis(B)(iv)(b) and Rule 73ter(B)(iii)(b) of the present Rules, the full statement of any expert witness called by a party shall be disclosed to the opposing party as early as possible and shall be filed with the Trial Chamber not less than twenty one days prior to the date on which the expert is expected to testify.

(B) Within fourteen days of filing of the statement of the expert witness, the opposing party shall file a notice to the Trial Chamber indicating whether:

- i. It accepts the expert witness statement; or
- ii. It wishes to cross examine the expert witness.

(C) If the opposing party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

9. However, the Chamber notes that this Rule does not provide a definition of an expert witness. We, therefore, adopt the definition of an “expert” as put forward in the ICTY Decision in the case of *Prosecutor v. Galic* of the 3rd of July, 2002 that an expert is:

A person whom by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute.⁶

10. Stating the object of the testimony of an expert witness, an ICTR Trial Chamber in the *Akayesu* case observed that an expert’s testimony is “testimony intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a specific field”⁷. In addition, as stated in *May and Wierda*:

The purpose of expert evidence is to provide a court with information that is outside its ordinary experience and knowledge. Indeed, a Trial Chamber should refrain from acting as its own expert in cases where expert evidence is appropriate.⁸

⁵ *Id.*

⁶ *Prosecutor v. Galic*, IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps, 3 July 2002, p.2. See also *Prosecutor v. Ndayambaje, Kanyabashi, Nyiramasuhuko, Ntahobali, Nsabimana and Nteziryayo*, Case No. ICTR-98-42-T, Oral Decision on the Qualification of Mr. Edmond Babin as Defence Expert Witness, 13 April 2005, para. 5.

⁷ *Prosecutor v Akayesu*, ICTR-96-4-T, Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness, 9 March 1998; see also Richard May and Marieke Wierda, *International Criminal Evidence: Transnational 2002*, (“*May and Wierda*”), p. 202, para. 6.88.

⁸ *May and Wierda*, p. 199, para 6.83.

11. In addition the Appeals Chamber of the ICTR recently held that:

... nothing in Rule 94 bis of the Rules implies that, absent a timely motion from the party opposing an expert, a Trial Chamber is obligated to admit expert testimony or to accept a witness's qualification as an expert. Rule 94 bis only sets forth a procedure by which an expert's report can be accepted into evidence without that expert testifying. In other respects, the admission of expert testimony is governed only by the general provision of Rule 89, which entrusts the Trial Chamber with broad discretion to employ rules of evidence that "best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law." The determination of whether an expert witness is qualified is subject to the Trial Chamber's discretion.⁹

The Chamber further held that:

... A witness's qualification as an expert turns on the contribution he or she can make to a Trial Chamber's analysis of a particular case. Thus, the same person might be qualified as an expert in one case and not in another.¹⁰

12. We recall that the standard for the admission of expert testimony, as held in *Bagosora*, is whether the specialized knowledge possessed by the expert, applied to the evidence which is the foundation of the opinion, may assist the Chamber in understanding the evidence.¹¹

13. As regards the applicable criteria for the evaluation of an expert witness's *prima facie* qualification as an expert, this Chamber has previously held that such a preliminary finding can be made on the basis of the material before the Chamber and that the determination can be made on the basis of the witness's credentials and experience as outlined in his or her curriculum vitae.¹²

14. [Redacted]

⁹ *Prosecutor v. Gacumbitsi*, Case No. ICTR-2001-64-A, Judgment, 7 July 2006, para. 31.

¹⁰ *Id.*, para. 32.

¹¹ *Prosecutor v. Bagosora, Kabiligi, Ntabakuze, Nsengiyumva*, Case No. ICTR-98-41-T, Decision on Motion for Exclusion of Expert Witness Statement of Filip Reyntjens, 28 September 2004, para. 8.

C. Findings

15. For the purposes of her testimony before this Court in the RUF trial, this Chamber, consistent with the applicable jurisprudence outlined above, has carefully reviewed the *Curriculum Vitae* of Expert Witness TF1-296. Based on such review and the fact that she was accepted and did testify as an Expert Witness before this Chamber in the CDF Trial on the 16th of June, 2005 as well as before Trial Chamber II in the AFRC Trial on the 4th and the 5th of October, 2005 the Chamber finds specifically that the Witness has several years of practical experience in various countries dealing with child protection issues while working for international and non governmental organizations.

16. By reason of the above findings, we are satisfied by virtue of her professional and practical experience and expertise in general, and particularly in Sierra Leone, that this Witness can be properly characterized as an expert on the issue of children in the fighting forces and provide assistance to this court on the process of child recruitment by the fighting forces as well as on the procedures concerning age verification.

17. The protective measures ordered by this Trial Chamber for this Witness, and in particular the measure of closed session for the entirety of her testimony, remain in force pursuant to Rule 75 of the Rules.

BASED ON THE AFOREMENTIONED

PURSUANT to Rule 54 and 94^{bis} of the Rules

THIS TRIAL CHAMBER HEREBY

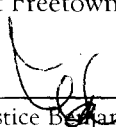
ACCEPTS the Witness as an Expert Witness for the purposes of the RUF Trial.

The Defence will have the opportunity, if they so wish, to challenge Expert Witness TF1-296 qualifications, credentials, domain of expertise as well as the relevance and admissibility of her evidence during cross-examination, if any.

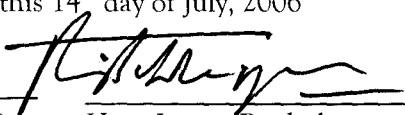
¹² *Prosecutor v. Norman, Fofana and Kondewa*, Case No. SCSL-04-14-T, Decision on Fofana Submissions Regarding Proposed Expert Witness Daniel J. Hoffman Phd., 7 July 2006, supra note 3.

ORDERS that the totality of the evidence of this witness be heard in closed session. However, those portions of the evidence of this Witness that could reasonably be released without disclosing her identity shall be released publicly upon proper review of the Witnesses and Victims Section.


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



Hon. Justice Benjamin Mutanga Itoe



Hon. Justice Bankole
Thompson
Presiding Judge
Trial Chamber I



Hon. Justice Pierre Boutet

