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SCSL-03-01-PT
(4851 – 4855)

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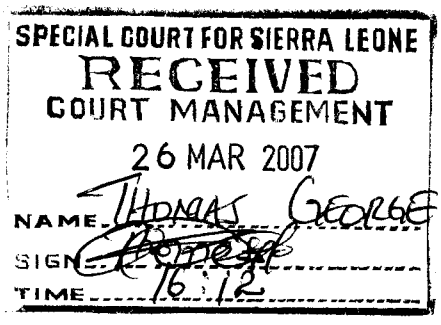
SPECIAL COURT FOR SIERRA LEONE
TRIAL CHAMBER II

Before:	Justice Julia Sebutinde, Presiding Judge Justice Richard Lussick Justice Teresa Doherty
Registrar:	Mr. Herman von Hebel, Acting Registrar
Date:	26 March 2007



PROSECUTOR Against Charles Ghankay Taylor
(Case No.SCSL-03-1-PT)

DECISION ON CONFIDENTIAL URGENT PROSECUTION MOTION FOR IMMEDIATE PROTECTIVE MEASURES FOR WITNESSES AND FOR NON-PUBLIC DISCLOSURE AND ON PUBLIC URGENT PROSECUTION MOTION FOR LEAVE TO SUBSTITUTE A SUPPLEMENTED WITNESS LIST AS ANNEX A(4) OF THE CONFIDENTIAL URGENT PROSECUTION MOTION FOR IMMEDIATE PROTECTIVE MEASURES FOR WITNESSES AND FOR NON-PUBLIC DISCLOSURE FILED ON 8 MARCH 2007 AND ON PUBLIC URGENT PROSECUTION REQUEST FOR INTERIM MEASURES

Office of the Prosecutor:
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TRIAL CHAMBER II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court"), composed of Justice Julia Sebutinde, Presiding Judge, Justice Richard Lussick and Justice Teresa Doherty;

SEISED of the "Confidential Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure", filed on 8 March 2007 ("First Motion") requesting an immediate order that protective measures ordered in previous decisions of the Trial Chamber (mentioned below) be extended with immediate effect to the 6 witnesses shown in Annex A(4) to the First Motion;

SEISED ALSO of the "Public Urgent Prosecution Motion for Leave to Substitute a Supplemented Witness List as Annex A(4) of the Confidential Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure Filed on 8 March 2007", filed on 19 March 2007 ("Second Motion") wherein the Prosecution seeks leave to substitute for Annex A(4) of the First Motion, a supplemented list of 9 witnesses shown in Annex A(5) of the Second Motion;

SEISED ALSO of the "Public Urgent Prosecution Request for Interim Measures" filed on 22 March 2007("Third Motion") wherein as an alternative to the orders sought in the First and Second Motions, the Prosecution requests the Trial Chamber to issue not later than 29 March 2007 an interim order permitting the Prosecution to transmit the redacted statements of all witnesses listed in Annex A(5) to the Second Motion, to the Court Management Section of the Registry no later than 29 March 2007, for disclosure to the Defence once a decision on the First and Second Motions has been rendered[1];

NOTING the "Confidential Response to 'Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure'", filed on 19 March 2007 ("Response to First Motion"), wherein the Defence does not oppose the order sought in the Motion in light of previous decisions of the Trial Chamber on this issue[2], but submits that:

(i) notwithstanding that the Prosecution filed the First Motion as "urgent", disclosure less than three months before the trial start date must, in the absence of an explanation, be considered late disclosure[3];

(ii) the grounds cited by the Prosecution are insufficient and do not justify the filing of the First Motion confidentially[4];

(iii) the jurisprudence of the Special Court "does not grant the Prosecution *carte blanche* to withhold witness identities without justification"[5]; and

(iv) the Prosecution's "near blanket withholding of identities continues to implicate the adequate preparation of the defence case"[6];

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[1] Third Motion, paras 6-8.
[2] Response to First Motion, para. 2.
[3] Ibid., para. 3.
[4] Ibid., para. 4.
[5] Ibid., para. 5.
[6] Ibid., para. 6.

NOTING the "Public Prosecution's Reply to 'Defence Response to "Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and Non-Public Disclosure"'", filed on 21 March 2007;

RECALLING the Trial Chamber's "Order for Expedited Filing", dated 22 March 2007, ordering that: (1) Any response to the Second Motion shall be filed on or before 4.00 p.m. on Friday 23 March 2007; and (2) Any reply to the response to the Second Motion shall be filed on or before 4.00 p.m. on Monday 26 March 2007;

NOTING the "Public Response to 'Public Urgent Prosecution Motion for Leave to Substitute a Supplemented Witness List As Annex A(4) of the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure Filed on 8 March 2007'", filed on 23 March 2007 ("Response to Second Motion") in which it is stated that "[t]he Defence are confident, in light of the previous Prosecution Reply, that the Prosecution will continue to take at face value the Defence intention not to oppose the order sought in the Motion"[7];

NOTING the "Public Prosecution's Reply to Defence "Response to 'Public Urgent Prosecution Motion for Leave to Substitute a Supplemented Witness List as Annex A(4) of the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure Filed on 8 March 2007'"", filed on 26 March 2007;

CONSIDERING that it is in the interests of a fair and expeditious trial for the Trial Chamber to consider the First, Second and Third Motions together;

RECALLING the Trial Chamber's **May 2006 Decision**[8] ordering that certain protective measures specified in paragraphs (a) to (m) of that decision shall be applicable to the witnesses referred to in that decision;

RECALLING the Trial Chamber's **September 2006 Decision**[9] and **January 2007 Decision**[10], extending the protective measures ordered in the May 2006 Decision to the witnesses referred to in those decisions;

COGNISANT of the provisions of Articles 16(4), 17(2) and 17(4) of the Statute of the Special Court for Sierra Leone, and of Rules 26*bis*, 53, 54, 69, 73 and 75 of the Rules of Procedure and Evidence;

NOTING that the Prosecution states that the factual basis of the First and Second Motions is that all the witnesses listed in Annexes A(4) and A(5) face similar threats to those considered by the Trial Chamber in the May 2006, September 2006 and January 2007 Decisions, and that the Prosecution,

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[7] Response to Second Motion, para. 2.

[8] Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-03-1-PT), Decision on Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures AND on Confidential Prosecution Motion for Leave to Substitute a Corrected and Supplemented List as Annex A of the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures, dated 5 May 2006.

[9] Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-03-1-PT, Decision on Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure, dated 15 September 2006;

[10] Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-03-1-PT), Decision on Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure with Four Annexes, One of Which Filed Ex-Parte, dated 22 January 2007.

in adopting the explanations and arguments considered by the Trial Chamber in the January 2007 Decision, submits that the circumstances outlined therein remain unchanged[11];

RECALLING that, in the January 2007 Decision, the Trial Chamber was satisfied by the evidence presented that "the potential threats to the security of witnesses are genuine and have not diminished since the First Protective Measures Decision and the Second Protective Measures Decision"[12];

RECALLING that in a recent decision[13], the Trial Chamber was satisfied on the evidence that "there are no signs of improvement in the security situation in Liberia"[14];

CONSIDERING that the jurisprudence relating to protective measures granted by the Special Court is well settled and that the measures sought in the present Motion are consistent with the previous practice of the Trial Chamber;

MINDFUL of the Trial Chamber's duty to balance the need to safeguard the privacy and security of witnesses with the rights of the Accused to a fair trial;

SATISFIED that the potential threats to the security of witnesses still exist and have not diminished since the decisions mentioned above;

HOLDING that the Prosecution was not justified in filing the First Motion confidentially given the nature of the contents thereof;

FINDING that, in view of the fact that the Defence consents to the order sought in the First and Second Motions, the other submissions made by the Parties are academic and that it is not necessary for the Trial Chamber to decide them in order to dispose of the Motion;

HEREBY GRANTS THE FIRST AND SECOND MOTIONS

AND ORDERS

(1) that the protective measure granted in the May 2006, September 2006 and January 2007 Decisions be applicable to the witnesses listed in the supplemented witness list Annex A5 attached to the Second Motion;

(2) that in the circumstances, the interim measures sought by the Prosecution in the Third Motion are unnecessary and are denied;

(3) that the First Motion be reclassified as "Public".

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[11] First Motion, para. 14.
[12] i.e. the May 2006 Decision and the September 2006 Decision respectively.
[13] Prosecutor v. Charles Ghankay Taylor, Case No. SCSL-03-1-PT, Decision on Defence Motion to Lift the Redactions of Identifying Information of Fifteen Core Witnesses, dated 21 March 2007, para. 38.
[14] See First Motion, para. 16.

Done at Freetown, Sierra Leone, this 26th day of March2007.

Justice Richard Lussick

Justice Julia Sebutinde
Presiding Judge

Justice Teresa Doherty

[Seal of the Special Court for Sierra Leone]