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SCSL-03-01-PT
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SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

PHONE: +1 212 963 9915 Extension: 178 7000 or +39 0831 257000 or +232 22 295995

FAX: Extension: 178 7001 or +39 0831 257001 Extension: 174 6996 or +232 22 295996

TRIAL CHAMBER II

Before: Justice Richard Lussick, Presiding Judge
Justice Teresa Doherty
Justice Julia Sebutinde

Registrar: Lovemore G. Munlo, SC

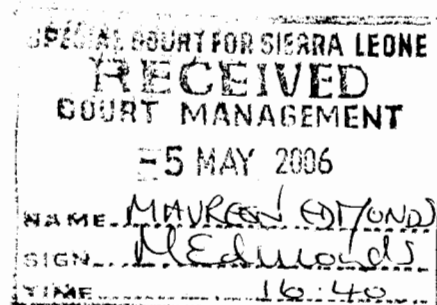
Date: 5 May 2006

PROSECUTOR Against 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

Office of the Prosecutor:
Desmond de Silva, QC
Christopher Staker

Defence Counsel for Charles G. Taylor:
Karim A. A. Khan



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

SEISED of the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures, filed on 4 April 2006 ("the first Motion") requesting various protective measures to safeguard the security and privacy of witnesses and victims and for non-public disclosure of identifying material;

SEISED ALSO of the Confidential Prosecution Motion for Leave to Substitute a Corrected and Supplementary Witness 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, filed on 25 April 2006 ("the second Motion");

NOTING the Confidential Defence Response to the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures, filed on 25 April 2006 ("the first Response") and the Confidential Defence Response to Prosecution Motion for Leave to Substitute a Corrected and Supplementary Witness 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, filed on the 27 April 2006 ("the second Response");

NOTING ALSO the Confidential Prosecution Reply to Defence Response to the Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures, filed on 28 April 2006 ("Reply");

RECALLING that protective measures have previously been ordered in respect of witnesses or victims in earlier proceedings before this Court¹ and that pursuant to Rule 75 (F) of the Rules such protective measures shall continue to have effect *mutatis mutandis* in these proceedings;

COGNISANT of the provisions of the Statute of the Special Court for Sierra Leone ("the Statute"), in particular Articles 16 (4) and 17 (2) and (4) thereof and of Rules 53, 54, 69 and 75 of the Rules of Procedure and Evidence of the Special Court ("Rules") concerning the protection of witnesses and victims as well as the rights of the Accused;

¹ These include the following orders, namely, *Prosecutor v. Brima*, SCSL-03-06-PT, Decision on the Prosecution's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003; *Prosecutor v. Kamara*, SCSL-03-10-PT, Decision on the Prosecution's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 October 2003; *Prosecutor v. Kanu*, SCSL-2003-13-PT, Decision on the Prosecution's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 24 November 2003; *Prosecutor v. Sesay*, Case No. SCSL-03-05-PT, Decision on the Prosecution's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003; *Prosecutor v. Kallon*, Case No. SCSL-03-07-PT, Decision on the Prosecution's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003; *Prosecutor v. Gbao*, Case No. SCSL-03-09-PT, Decision on the Prosecution's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 10 October 2003; *Prosecution v. Sesay et al.*, Decision on Prosecution Motion for Modifications of Protective Measures for Witnesses, 5 July 2004; *Prosecutor v. Brima et al.*, Decision on Confidential Prosecution Motion for Protective Measures for Witness TF1-272, 11 May 2005; *Prosecutor v. Sesay et al and Brima et al.*, Decision on the Urgent and Confidential Application to vary Protective Measures Regarding Witnesses TF1-104 and TF1-081, 11 May 2005; Ruling on the Oral Application of the Prosecution to Vary the Protective Measures of Witness TF1-141, 6 April 2005; *Prosecutor v. Sesay et al.*, Order on Protective Measures for Additional Witnesses, 24 November 2004.

CONVINCED that, in the specific context of this case, there is clear and convincing evidence submitted by the Prosecution for protective measures for witnesses and victims and for non-public disclosure of identifying material in this case at the pre-trial stage;

CONSIDERING FURTHER that the Trial Chamber is concerned for the safety, protection and welfare of witnesses and victims in these proceedings and is obligated under Articles 16(4) and 17(2) of the Statute and Rule 75 (A) of the Rules, to take all appropriate protective measures to safeguard their privacy and protection and to safeguard non-public materials disclosed to the Accused in order to enable him to prepare for trial, where the interests of justice so demand;

MINDFUL that under Rule 75 (A) of the Rules, the Trial Chamber may “*order appropriate protective measures to safeguard the privacy and protection of victims and witnesses, provided that the measures are consistent with the rights of the Accused*”;

HAVING CAREFULLY EXAMINED the merits of the Defence in response to the first Motion and sought to balance the need to safeguard the privacy and protection of witnesses and victims with the rights of the Accused to a fair trial in the context of the specific measures sought;

CONSIDERING carefully all the issues raised by the parties in their submissions, in particular that

- (i) the Defence does not oppose the orders sought by the Prosecution in the second Motion for leave to substitute the attached corrected and supplemented Witness List ‘Annex A’ for the list filed with the first Motion on 4 April 2006;
- (ii) the Defence does not oppose the protective orders sought by the Prosecution in paragraph 6 of the first Motion, save for proposed modifications to paragraphs 6 (a), (h), (i), (j) (l) and (m);
- (iii) the Prosecution agrees with the modifications proposed by the Defence to the orders sought in paragraph 6 (h) and (j) of the first Motion;

CONSIDERING FURTHER that the jurisprudence relating to the protective measures sought by the Prosecution is settled in previous proceedings before this Court² and that the measures sought are consistent with previous practice of this Court;

HEREBY GRANTS the first Motion in part and the second Motion in full and **ORDERS** as follows:

1. The following protective measures shall apply to witnesses listed in the corrected and supplemented Annex A to the Motion who are not covered by any existing order for protective measures and who have not waived their right to protection in these proceedings; namely-

- (a) That the Prosecution may withhold identifying data of a witness for whom the Prosecution is seeking protection as set forth in paragraph 6 of the first Motion or any other information which could reveal the identity of such witness until 42 days before the witness is due to testify at trial;

² See all cases referred to under footnote 1.

- (b) That the Prosecution disclose the material envisaged in Rule 66(A)(i) of the Rules in redacted form omitting identifying data until 42 days before the witness is due to testify at trial;
- (c) That the names and any other identifying information concerning all protected witnesses be sealed by the Registry and are not included in any existing or future records of the Court;
- (d) That Prosecution may designate a pseudonym for each protected witness that will be used for pre-trial disclosure and whenever reference is made to such witness in court proceedings, communications and discussions between the parties;
- (e) That the Defence shall not make an independent determination of the identity of a protected witness or encourage or otherwise aid any person to attempt to determine the identity of any such person;
- (f) That the names and any other identifying information concerning all protected witnesses shall be communicated only to the Victims and Witnesses Unit personnel by the Registry or the Prosecution in accordance with established procedure and only in order to implement protective measures for these individuals;
- (g) That the names of protected witnesses and any other identifying data or information on file with the Registry, or any other information which could reveal the identity of such witnesses, shall not under any circumstances be disclosed to the public or the media and this order shall remain in effect after the termination of the proceedings in this case;
- (h) That the Defence is prohibited from providing, sharing, discussing or revealing, directly or indirectly, any disclosed non-public materials of any sort, specifically including witness statements, or any information contained in any such documents, to the public or media, except where such disclosure to a member of the public is absolutely necessary to the preparation of their defence. In such a case the information disclosed shall strictly be kept to the minimum necessary for the preparation of such defence;
- (i) That the Defence shall maintain a log indicating the name, address and position of each person or entity which receives a copy of, or information from, a witness statement, or any other non-public material, as well as the date of disclosure; and that the Defence shall ensure that the person to whom such information is disclosed is put on notice of the protective measures orders and follows those orders including the order for non-disclosure;
- (j) That the Defence shall provide to the Registrar and the Defence Office a designation of all persons working on the Defence Team who have access to any information from a witness statement or any other non-public material, and that the Defence shall advise the Registrar and the Defence Office in writing of any changes in the composition of this Defence Team; Such list shall be filed *ex parte* and confidentially;
- (k) That the Defence shall ensure that any member leaving the Defence Team remits to the Defence Team all disclosed materials entrusted to him or her;
- (l) That the Defence shall at the conclusion of the proceedings in this case, return to the Registry all disclosed materials and copies thereof, which have not become part of the public record.
- (m) That the Defence Counsel shall not directly or indirectly contact any protected Prosecution witness except with the written consent of the Prosecution or leave of court.


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2. The corrected and supplemented Witness List attached to the second Motion as 'Annex A' be substituted for the witness list filed with the first Motion on 4 April 2006;
3. In light of this Decision, the interim measures sought by the Prosecution in paragraph 4 of the first Motion are unnecessary and are denied.

Done at Freetown, Sierra Leone, this 5th day of May 2006.


Justice Teresa Doherty


Justice Richard Lussick
Presiding Judge


Justice Julia Seburinde

