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SCSL-04-16-T
(19070 - 19072)

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SPECIAL COURT FOR SIERRA LEONE

JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE

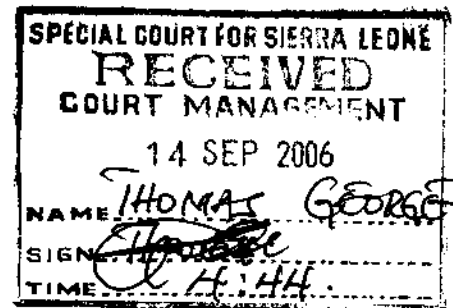
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TRIAL CHAMBER II

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

Registrar: Lovemore G. Munlo, SC

Date: 14 September 2006



PROSECUTOR Against **Alex Tamba Brima**
Brima Bazy Kamara
Santigie Borbor Kanu
(Case No.SCSL-04-16-T)

**DECISION ON PROSECUTION MOTION FOR RELIEF IN
RESPECT OF VIOLATIONS OF THE TRIAL CHAMBER'S DECISION OF 9 MAY 2006**

Office of the Prosecutor:

James C. Johnson
Karim Agha
Charles Hardaway

Defence Counsel for Alex Tamba Brima:

Kojo Graham
Glenna Thompson

Defence Counsel for Brima Bazy Kamara:

Andrew Daniels
Mohamed Pa-Momo Fofanah

Defence Counsel for Santigie Borbor Kanu:

Geert-Jan Alexander Knoops
Carry Knoops
Abibola E. Manly-Spain

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 Prosecution Motion for Relief in Respect of Violations of the Trial Chamber's Decision of 9 May 2006, filed on 2 August 2006 ("Motion"), in which the Prosecution seeks an order for the immediate disclosure of the identities of all remaining protected Defence witnesses, submitting that the Defence has repeatedly failed to disclose identifying data of protected witnesses 21 days prior to the testimony of the witnesses as ordered by the Trial Chamber in its "Decision on Joint Defence Application for Protective Measures for Defence Witnesses" of 9 May 2006¹ ("Protective Measures Decision") and that such delayed disclosure has occasioned prejudice to the Prosecution and is an impediment to an expeditious trial;

NOTING the Joint Defence Response to the Prosecution Motion, filed on 21 August 2006 ("Response"), in which the Defence concedes that the identifying data of some of the Defence witnesses was not disclosed 21 days prior to the testimony of the witnesses due to unforeseen circumstances beyond their control, but submits that the breach has not unduly prejudiced the Prosecution nor caused undue delay of the trial;

NOTING the Prosecution Reply to the Defence Response, filed on 28 August 2006 ("Reply"), in which the Prosecution submits that the Defence should in addition to disclosing the names of the witnesses, also disclose further identifying data including date of birth and occupation of each witness as envisaged in the Trial Chamber's Order for Disclosure of 26 April 2006² and paragraph (d) of the Protective Measures Decision;

RECALLING the Order for Disclosure Pursuant to Rule 73 *ter* and the Start of the Defence Case, dated 26 April 2006 in which the Trial Chamber, *inter alia*, ordered:

- "1. That the Defence shall file the following materials on or before 10 May 2006
- (a) A list of witnesses which each Defence Team intends to call, including:
 - (ii) the name and/ or nickname, date of birth (if known) and occupation of each witness;"

RECALLING ALSO the Decision on Joint Defence Application for Protective Measures for Defence Witnesses, dated 9 May 2006, in which the Trial Chamber *inter alia*, ordered:

"(d) That the Defence may withhold identifying data of a witness for whom the Defence is seeking protection as set forth in paragraph 13 of the Motion or any other information which could reveal the identity of such witness until 21 days before the witness is due to testify at trial;"

NOTING that the Trial Chamber had to adjourn the proceedings on 1 August 2006³, because of the late disclosure of identifying data of a particular witness and in order to provide the Prosecution with sufficient time to investigate and prepare for cross-examination of that witness;

¹ *Prosecutor vs. Alex Tamba Brima, et al.*, Case No. SCSL-04-16-T, Decision on Joint Defence Application for Protective Measures for Defence Witnesses, 9 May 2006

² *Prosecutor vs. Alex Tamba Brima, et al.*, Case No. SCSL-04-16-T, Order for Disclosure Pursuant to Rule 73 *ter* and the Start of the Defence Case, 26 April 2006.

³ Transcript 1 August 2006, pages 9 - 18.




NOTING that the Defence disclosed to the Prosecution by email on 8 September 2006 the identity of all witnesses mentioned on Annex B to the Confidential Kanu Defence Filing of Witness List Pursuant to Trial Chamber Order of 17 May 2006, but that this list does not include the necessary identifying data concerning the individual witness list of all three Accused;

MINDFUL of the provisions of Article 17, in particular (4) (c) which entitle the accused persons to be tried without undue delay;

FINDING that the Defence has repeatedly failed⁴ to comply with the timeframe for disclosure of identifying data of Defence witnesses contained in the Trial Chamber's Order in its Protective Measure Decision and that this breach has a negative impact on the expeditious and smooth conduct of the trial;

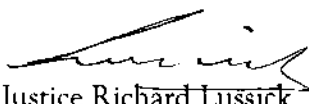
EMPHASISING that the Trial Chamber will not tolerate any further delays and adjournments resulting from any non compliance of its orders;

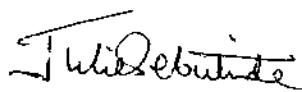
FOR THE ABOVE REASONS

GRANTS THE MOTION AND ORDERS that the Defence discloses the identity of all remaining protected Defence witnesses to the Prosecution not later than 4.00 p.m. on Wednesday, 20 September 2006.

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


Justice Teresa Doherty


Justice Richard Lussick
Presiding Judge


Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]



⁴ The identifying data of DAB-025, DAB-023 and DBK-088 was disclosed on 21 July 2006 and they were called on 28 July 2006, 31 July 2006 and 1 August 2006 respectively; the identifying data of most witnesses called after the recess was only disclosed on 1 September 2006, i.e. DAB-018, DAB-043, DAB-115, DAB-114, DAB-092-, DAB-040, DAB-039, DAB-107, DAB-113, DAB-084, DAB-129, DAB-130, DAB-135, DAB-131, DAB-128.