

SCSL-04-16-T
(19307 - 19310)

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SPECIAL COURT FOR 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: 15 November 2006

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

DECISION ON CONFIDENTIAL MOTION TO VARY PROTECTIVE MEASURES

Office of the Prosecutor:

James C. Johnson
Karim Agha
Charles Hardaway

Defence Counsel for Alex Tamba Brima:

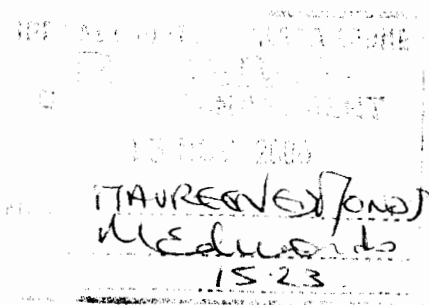
Kojo Graham
Glenna Thompson

Defence Counsel for Brima Bazy Kamara:

Andrew Daniels
Mohamed Pa-Momo Fofanah

Defence Counsel for Santigie Borbor Kanu:

Geert-Jan Alexander Knoop
Cary Knoop
Agibola E. Manly-Spain



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

SEISED of the Confidential Prosecution Motion to Vary Protective Measures, filed on 18 October 2006 (“Motion”);

NOTING the Joint Defence Response to the Motion, filed on 20 October 2006 (“the Response”), wherein the Defence submits that they do not oppose the Prosecution Motion;

NOTING FURTHER that the Motion was filed confidentially, even though no identifying data of any witness was disclosed;

RECALLING the Order Changing Venue of Proceedings dated 19 June 2006¹ in which the President of the Special Court found, inter alia, that “the proceedings against Mr. Taylor should be conducted by the Special Court for Sierra Leone sitting at The Hague, the Netherlands and using facilities provided by the International Criminal Court”² and authorised Trial Chamber II and the Appeals Chamber “to exercise their functions away from the seat of the Special Court for the purposes of conducting the pre-trial proceedings, trial and any appeal of Charles Ghankay Taylor at the International Criminal Court facilities in The Hague, The Netherlands”;³

NOTING that the Motion seeks to vary the protective measures ordered in respect of all the Prosecution witnesses set to testify in the case of *The Prosecutor v. Charles Ghankay Taylor* in order to permit the Office of the Prosecutor (“OTP”) and the Witnesses and Victims Section of the Special Court (“WVS”) to provide documents and information that may reveal the names and other identifying data of a protected witness to government or other authorities for the purposes of facilitating his or her travel to and appearance before the Special Court sitting in The Hague, Netherlands;⁴

NOTING the Prosecution submissions that “in view of the transfer of the Accused Charles Taylor, to stand trial in The Hague, Prosecution witnesses may be required to travel to the Netherlands to testify, most likely via third countries. In order for WVS to be able to book tickets and obtain passports and visas for witnesses, it will be necessary for the identities of protected witnesses to be disclosed to airlines and governmental authorities of the various States including immigration authorities”⁵ and that “in order to put appropriate protective measures in place to enhance or alter the specific measures required by a witness, it may be necessary for the Prosecution and WVS to reveal the identity of a protected witness or his or her dependants to government or other authorities, or to provide to government or other authorities documents or other materials that may reveal the identity of a protected witness or his or her dependants” (sic);⁶

¹ Document SCSL-03-01-PT-108.

² *Ibid.*, paragraph 11.

³ *Ibid.*, paragraph 14.

⁴ Motion, paras. 7, 8, 9, 10, 11.

⁵ Motion, para. 7.

⁶ Motion, para. 8.





NOTING Rules 75 (G) and (H) of the Rules of Procedure and Evidence (“the Rules”) which provide:

- (G) A party to the second proceedings seeking to rescind, vary or augment protective measures ordered in the first proceedings shall apply to the Chamber seized of the second proceedings.
- (H) Before determining an application under Sub-Rule (G) above, if the effect of the change serves to decrease the protective measures granted to the victim or witness by the Chamber in the first proceedings, the Chamber seized of the second proceedings shall obtain all relevant information from the first proceedings, and may consult with any Judge who ordered the protective measures in the first proceedings, or the relevant Chamber.

RECALLING that protective measures have previously been ordered in respect of witnesses or victims in earlier proceedings (“the first proceedings”) before this court⁷ and that pursuant to Rule 75 (F) of the Rules of Procedure and Evidence of the Special Court (“Rules”), such protective measures shall continue to have effect *mutatis mutandis* with respect to the same witnesses or victims testifying in the case of *The Prosecutor vs. Charles Ghankay Taylor* (“the second proceedings”);

RECALLING ALSO the protective measures ordered by the Trial Chamber in the second proceedings;⁸

CONSIDERING therefore that this motion is wrongly filed in this case, since the present proceedings are not “the second proceedings” within the meaning of Rule 75 (G) of the Rules;

CONSIDERING FURTHER that the Trial Chamber has, in any event, issued its Decision on the Confidential Prosecution Motion to Vary Protective Measures,⁹ varying the existing protective measures for all witnesses set to testify at the trial of Charles Ghankay Taylor;

⁷ These include the following orders, namely, *Prosecutor v. Brima*, SCSL-03-06-PT-36, 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-40, 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-37, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 24 November 2003; *Prosecutor v. Sesay*, SCSL-03-05-PT-38, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003; *Prosecutor v. Kallon*, SCSL-03-07-PT-33, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 23 May 2003; *Prosecutor v. Gbao*, SCSL-03-09-PT-48, Decision on the Prosecutor's Motion for Immediate Protective Measures for Witnesses and Victims and for Non-public Disclosure, 10 October 2003; *Prosecutor v. Sesay et al.*, SCSL-04-15-T-180, Decision on Prosecution Motion for Modifications of Protective Measures for Witnesses, 6 July 2004; *Prosecutor v. Brima et al.*, SCSL-04-16-T-259, Decision on the Urgent and Confidential Application to Vary Protective Measures Regarding Witnesses TF1-104 and TF1-081, 11 May 2005; *Prosecutor v. Sesay et al.*, SCSL-04-15-T-286, Order on Protective Measures for Additional Witnesses, 24 November 2004.

⁸ *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-01-PT-9, 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, 5 May 2006; *Prosecutor vs. Charles Ghankay Taylor*, SCSL-03-01-PT-120, Decision on Urgent Prosecution Motion for Immediate Protective measures for Witnesses and for Non-Public Disclosure, 15 September 2006 and *Prosecutor vs. Charles Ghankay Taylor*, SCSL-03-01-PT-125, Decision on Defence Motion to set Aside and/or Reconsider Trial Chamber's Decision on Urgent Prosecution Motion for Immediate Protective measures for Witnesses and for Non-Public Disclosure, 5 October 2006.

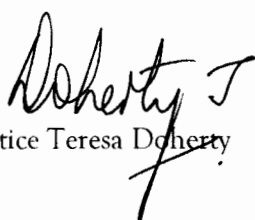





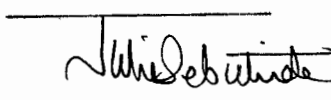
PURSUANT to Rules 54, 75 of the Rules and Article 4(B) of the Practice Direction on Filing Documents before the Special Court for Sierra Leone;

DISMISSES the Motion and ORDERS that it be classified as "public" by the Court Management Section.

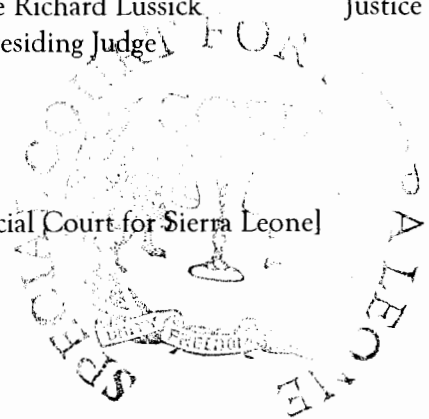
Done at Freetown, Sierra Leone, this 15th day of November 2006.


Justice Teresa Doherty


Justice Richard Lussick
Presiding Judge


Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]



⁹ *The Prosecutor v. Charles Ghankay Taylor*, Case No. SCSL-03-1-PT, Decision on Confidential Prosecution Motion to Vary Protective Measures, 15 November 2006.