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SCSL-03-01-PT
(3927 — 3930)

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SPECIAL COURT FOR SIERRA LEONE
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TRIAL CHAMBER II

Before:	Justice Julia Sebutinde, Presiding Judge Justice Richard Lussick Justice Teresa Doherty
Registrar:	Lovemore G. Munlo, SC
Date:	22 January 2007

SPECIAL COURT FOR SIERRA LEONE
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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 WITH FOUR ANNEXES, ONE OF WHICH FILED EX PARTE

Office of the Prosecutor:
Stephen Rapp
Wendy van Tongeren

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

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 Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure with Four Annexes, One of which Filed Ex Parte" ("Motion"), filed on 8 December 2006, wherein the Prosecution requests an extension of the protective measures ordered in the Trial Chamber's "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 ("First Protective Measures Decision") to the witnesses listed in Annex A(3) of the Motion;[1]

NOTING the "Defence Response to 'Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure with Four Annexes, One of which Filed Ex Parte'" ("Response"), filed publicly on 8 January 2007, in which the Defence opposes the Motion[2] on the grounds that the Prosecution has not shown that exceptional circumstances exist justifying the protection of the identities of witnesses and victims[3] and seeks orders (i) that the Prosecution request for the extension of protective measures be denied; (ii) that Annex C be disclosed to the Defence and (iii) that the Motion be re-filed as 'public';[4]

NOTING the "Confidential Prosecution Reply to Defence Response to 'Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure with Four Annexes, One of which Filed Ex Parte'" ("Reply"), filed on 15 January 2007, wherein the Prosecution (i) maintains that the protective measures requested are justified,[5] (ii) submits that the confidential filing of the Motion is warranted due to the sensitivity of the information provided therein,[6] and (iii) contends that Annex C to the Motion was filed *ex parte* to protect the identities of the individuals mentioned therein[7];

RECALLING the protective measures granted in the Trial Chamber's First Protective Measures Decision;

RECALLING the Trial Chamber's Decision on Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure, dated 15 September 2006 ("Second Protective Measures Decision"),[8] wherein the Trial Chamber extended the protective measures granted in the First Protective Measures Decision to other witnesses;

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[1] Motion, para. 8.
[2] Motion, paras 1 and 27
[3] Response, para. 2.
[4] Response, para.27
[5] Reply, paras 2-23.
[6] Reply, paras 26-28.
[7] Reply, paras 24-25.
[8] Confirmed in *Prosecutor v. Charles Taylor*, Case No. SCSL-03-1-PT, "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 Dated 15 September 2006'", 5 October 2006.

MINDFUL that pursuant to Rule 69(A) of the Rules of Procedure and Evidence of the Special Court ("Rules"), a Trial Chamber may "[i]n exceptional circumstances [...] order the non-disclosure of the identity of a victim or witness who may be in danger or at risk", and under Rule 75(A) of the Rules, a Trial Chamber may "order appropriate measures to safeguard the privacy and security of victims and witnesses, provided that the measures are consistent with the rights of the Accused";

MINDFUL of the rights of the Accused as enshrined in Article 17 of the Special Court's Statute, in particular, his right to be allowed adequate time for the preparation of his defence, and to cross-examine witnesses testifying against him;

HAVING CAREFULLY EXAMINED and balanced the need to safeguard the privacy and security of witnesses and victims with the rights of the Accused to a fair trial;

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, and that the witnesses referred to in Annex A(3) to the Motion are subject to similar security threats;

SATISFIED that the filing of the Motion confidentially was justified by the sensitive nature of the information contained therein;

SATISFIED, BY A MAJORITY DECISION, that the filing of Confidential Annex C *ex parte* was justified by the sensitive nature of the information contained therein;

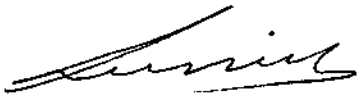
HEREBY GRANTS THE MOTION

and

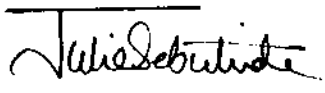
ORDERS that the protective measures ordered in the Trial Chamber's First Protective Measures Decision dated 5 May 2006 shall also apply to the witnesses referred to in Annex A(3) of the Motion.

Justice Teresa Doherty appends a Partially Dissenting Opinion.

Done at Freetown, Sierra Leone, this 22nd day of January 2007.



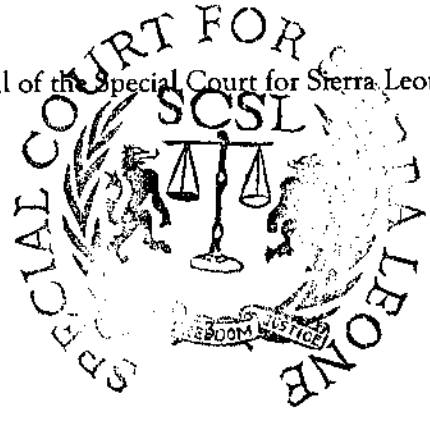
Justice Richard Lussick



Justice Julia Sebutinde
Presiding Judge

Justice Teresa Doherty

[Seal of the Special Court for Sierra Leone]



PARTIALLY DISSENTING OPINION OF JUSTICE DOHERTY

1. I agree with my colleagues in the majority decision with the sole exception of their decision on the application by the Defence to have Annex C made inter-party whilst remaining confidential.

2. The Prosecution submits that Annex C (detailing incidents of threats and intimidation), should not be made inter-party because "it cannot be excluded that protected information about these witnesses will be disclosed by the Defence contrary to the terms of the protected measures ordered by the Chamber, notwithstanding even the best good faith efforts of the Defence ..."[9].

3. There is no actual evidence to substantiate this concern; it is speculative. It carries an implication that someone in or associated with the Defence would deliberately or recklessly breach an order of the court. I am not prepared to accept such an implication without evidentiary foundation.

4. I am also of the view that a reading of Annex C would cause the Defence to more fully appreciate why the Trial Chamber concluded that prospective witnesses must be the subject of protective orders.

Done at Freetown, Sierra Leone, this 22nd day of January 2007.

Doherty J.

Justice Teresa Doherty

[9] Prosecution Reply, para. 5.