

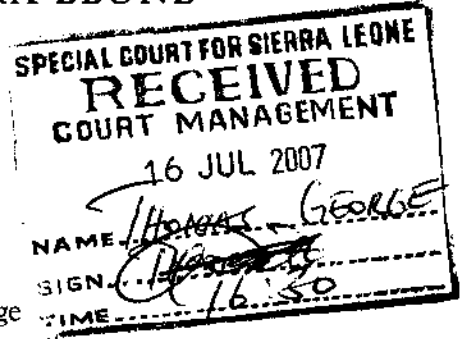
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SCSL-03-01-T
(11271 - 11273)



11271

SPECIAL COURT FOR SIERRA LEONE



TRIAL CHAMBER II

Before: Justice Julia Sebutinde, Presiding Judge
Justice Richard Lussick
Justice Teresa Doherty
Justice El Hadji Malick Sow, Alternate Judge

Registrar: Herman von Hebel

Case No.: SCSL03-01-T

Date: 16 July 2007

PROSECUTOR

Against

CHARLES GHANKAY TAYLOR

DECISION ON THE CONFIDENTIAL PROSECUTION MOTION TO
RESCIND AND AUGMENT PROTECTIVE MEASURES FOR WITNESSES

Office of the Prosecutor:

Brenda Hollis
Leigh Lawrie

Defence Counsel for Charles G. Taylor:

Charles Jalloh, Duty Counsel

TRIAL CHAMBER II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court");

SEISED of the "Confidential Prosecution Motion to Rescind and Augment Protective Measures for Witnesses", filed on 3 May 2007 ("Motion"), wherein the Prosecution requests that the Trial Chamber to-

- (i) rescind protective measures currently in place for Witnesses TF1-114¹ and TF1-358²;
- (ii) partially rescind protective measures currently in place for Witness TF1-235³ by permitting the witness to testify in open court rather than closed session; and
- (iii) augment protective measures currently in place for Witnesses TF1-406⁴, TF1-546 and TF1-548⁵, specifically to allow the three witnesses to testify entirely in closed session in order to safeguard their privacy and security;

NOTING the "Defence Response to 'Confidential Prosecution Motion to Rescind and Augment Protective Measures for Witnesses'", filed on 14 May 2007 ("Response"), wherein the Defence does not oppose the requested rescissions, but submits that the Prosecution has not provided sufficient concrete details in support of their request for augmentation, and suggests that protective measures could be augmented with less drastic measures;

MINDFUL of Article 17(2) of the Statute of the Special Court ("Statute") which provides that-

the Accused shall be entitled to a fair and public hearing subject to measures ordered by the Special Court for the protection of victims and witnesses;

MINDFUL also of Rules 75, 78 and 79 of the Rules of Procedure and Evidence ("Rules") in particular Rule 75(G) which provides that-

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;

CONSIDERING that it is in the interests of a fair trial to balance the preference for a public hearing with the duty to protect victims and witnesses, in accordance with Article 17(2) of the Statute;

¹ Witness TF1-114 was granted protective measures in the case of the *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-180, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004.

² Witness TF1-358 was granted protective measures in the case of the *Prosecutor v. 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.

³ Witness TF1-235 is a protected Category 1 witness who gave evidence entirely in closed session in the case of the *Prosecutor v. Sesay Kallon, Gbao*, supra, Transcript 29 July 2004.

⁴ Witness TF1-406 was granted protective measures in the case of the *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-01-PT-99, 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 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, 5 May 2006.

⁵ Witnesses TF1-546 and TF1-548 were granted protective measures in the case of the *Prosecutor v. Charles Ghankay Taylor*, SCSL-03-01-PT-163, 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, 22 January 2007

NOTING the Prosecution submission that this application is made following informed discussions in which both witnesses TF1-114 and TF1-358 verbally indicated their willingness to testify in open court and have waived their rights to protective measures related to the release of their identity;

SATISFIED that since witnesses TF1-114 and TF1-358 have waived all protective measures currently in place, this is an appropriate case for rescission of the existing protective measures;

NOTING the Prosecution submission that although witness TF1-235 is a protected Category 1 witness who gave evidence in closed session in the RUF case in 2004, the witness has indicated a willingness to testify in open court under a pseudonym and has verbally waived the right to testify in closed session but remains subject to all other protective measures in place;

SATISFIED that with regard to TF1-235 it is appropriate to partially rescind the protective measures currently in place by permitting the witness to testify in open court in this case in order to ensure a public trial; but that the original protective measures granted in the "Decision on Prosecution for Modification of Protective Measures for Witnesses" dated 5 July 2004 ("RUF Decision") for TF1-235, which include, *inter alia*, the use of pseudonym and a screening device, are applicable to the present proceedings;

CONSIDERING that while the Prosecution's submission is classified as "confidential", it does not provide sufficient detail about Witnesses TF1-406, TF1-546 and TF1-548 and their prospective testimonies, to allow the Trial Chamber to determine whether protective measures short of those proposed by the Prosecution – such as partial testimony in closed session – would ensure a better balance between the rights of the Accused and the duty to protect witnesses.

FOR THE ABOVE REASONS

PARTLY GRANTS the Prosecution Motion and orders that-

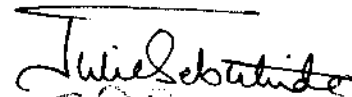
- (i) the protective measures formerly ordered in respect of witnesses TF1-114 and TF1-358 are rescinded with respect to the present proceedings;
- (ii) the protective measures formerly ordered in respect of witness TF1-235 are partly rescinded by permitting the witness to testify in open court but with the use of pseudonym and a screening device; and

REFUSES the Motion requesting augmented protective measures for Witnesses TF1-406, TF1-546 and TF1-548.

Done at Freetown, Sierra Leone, this 16th day of July 2007.



Justice Richard Lussick



Justice Julia Sebutinde
Presiding Judge



Justice Teresa Doherty

[Seal of the Special Court for Sierra Leone]