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

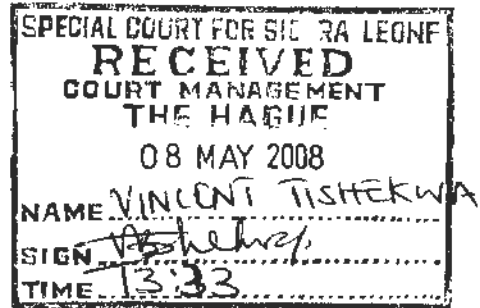
TRIAL CHAMBER II

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

Registrar: Herman von Hebel

Case No.: SCSL-03-1-T

Date: 7 May 2008



PROSECUTOR

v.

Charles Ghankay TAYLOR

Public

DECISION ON CONFIDENTIAL AND URGENT
PROSECUTION MOTION FOR ADDITIONAL PROTECTIVE MEASURES FOR
WITNESSES TF1-375, TF1-401, TF1-521, TF1-542, TF1-555, TF1-567, TF1-585 AND TF1-590
AND
ON PUBLIC AND CONFIDENTIAL PROSECUTION MOTION FOR LEAVE TO SUBSTITUTE
CONFIDENTIAL
URGENT PROSECUTION MOTION SCSL03-01-T-435 WITH AMENDED MOTION

Office of the Prosecutor:

Brenda J. Hollis
Kirsten Keith
Leigh Lawrie

Defence Counsel for Charles G. Taylor:

Courtenay Griffiths, Q.C.
Terry Munyard
Andrew Cayley
Morris Anyah

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

SEISED of the "Confidential and Urgent Prosecution Motion for Additional Protective Measures for Witnesses TF1-375, TF1-401, TF1-521, TF1-542, TF1-555, TF1-567, TF1-585 and TF1-590", filed on 12 March 2008 ("First Motion")¹, wherein the Prosecution requests an Order granting voice distortion and/or use of facial distortion, with a protective screen, as additional protective measures to be used during the testimonies of eight Prosecution witnesses as set out in Annex A to the Motion;²

SEISED ALSO of the "Public with Confidential Annex Prosecution Motion for Leave to Substitute Confidential Urgent Prosecution Motion SCSL-03-01-T-435 with Amended Motion", filed on 14 March 2008 ("Second Motion"),³ wherein the Prosecution seeks to withdraw the First Motion and substitute it with the amended motion in the annex ("Amended Motion")⁴ on the grounds that witness TF1-567 should not be included in the First Motion, having been granted the requested protected measures in a previous decision of the Trial Chamber;⁵

NOTING the "Defence Response to Prosecution Motion for Leave to Substitute Confidential Urgent Prosecution Motion SCSL-03-01-T-435 with Amended Motion", filed on 31 March 2008 ("Response"),⁶ wherein the Defence does not oppose the substitution of the First Motion with the Second Motion,⁷ but rather opposes the protective measures sought for the witnesses named in Annex A of the Amended Motion;⁸

NOTING the "Prosecution Reply to the Defence Response to Prosecution Motion for Leave to Substitute Confidential Urgent Prosecution Motion SCSL-03-01-T-435 with Amended Motion", filed on 4 April 2008 ("Reply");⁹

CONSIDERING that the Defence does not oppose the substitution of the First Motion with the Amended Motion and that it is in the interests of justice to grant the substitution;¹⁰

NOTING in particular the submissions in the Amended Motion requesting protective measures sought in Annex A to be used during the testimony of witnesses TF1-375, TF1-401, TF1-521, TF1-542, TF1-555, TF1-585 and TF1-590 on the grounds:¹¹

- i. That the existing pre-trial protective measures, including the use of a pseudonym and delayed disclosure to the Defence,¹² are not sufficient to protect the identity of the

¹ SCSL-03-01-T-435 ("First Motion");

² First Motion, para. 18; Pursuant to Rule 7bis the Trial Chamber made an order for expedited filing due to the urgency, see "Order for Expedited Filing in Relation to Confidential Urgent Prosecution Motion SCSL-03-01-T-435", 12 March 2008 ("Order for Expedited Filing").

³ SCSL-03-01-T-440 ("Second Motion").

⁴ Annex to First Motion, Confidential Urgent Prosecution Motion for Additional Protective Measures for Witnesses TF1-375, TF1-401, TF1-521, TF1-542, TF1-555, TF1-585 & TF1-590 ("Amended Motion").

⁵ Second Motion, para. 5, referring to SCSL-03-01-T-404, Decision on Confidential Prosecution Motion for Additional Protective Measures for the Trial Proceedings of Witnesses TF1-515, TF1-516, TF1-385, TF1-539, TF1-567, TF1-388 and TF1-390, 13 March 2008.

⁶ SCSL-03-01-T-448 ("Response").

⁷ Response, para. 3.

⁸ Response, para. 4.

⁹ SCSL-03-01-T-454 ("Reply").

¹⁰ Response, para. 3.

¹¹ Amended Motion, para. 13.

¹² Amended Motion, para. 5.

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- witnesses during the trial phase, as under the current protection the witnesses would testify in full public view;¹³
- ii. That all witnesses have expressed fears that they or their family members will suffer retribution and harm if they testify "openly" in view of the general security situation in Sierra Leone and Liberia;¹⁴
 - iii. That the request for use of facial and/or voice distortion is consistent with the rights of the accused and in no way impinges upon the Accused's right to a fair hearing as provided for in Article 17(2) of the Statute since the Accused will be able to observe the demeanour of the witness and to cross-examine each witness.¹⁵

NOTING the Defence submissions:

- i. that protective measures have to be balanced with the rights of the accused to a public trial on a case-by-case basis and in the absence of specific evidence of the risks that particular witnesses will be interfered with, the requested orders sought are not justified;¹⁶
- ii. that the Prosecution's affidavit is inadequate and insufficient as it only provides a personal assessment of an Office of the Prosecutor investigation commander and does not refer to explicit fears or concerns of any individual witnesses, does not provide declarations of any of those witnesses or refer to specific events or examples of threats made and mostly relies on information from unidentified sources, thereby leaving the assessment of their credibility and reliability to the Prosecution, not the Trial Chamber;¹⁷
- iii. that a determination for additional protective measures must be made on a case-by-case basis and that the applicant has to make out a reasonable case for each witness whose protection they seek, specifically pointing to the nature of the alleged threats or fear and specifically linking those fears to specific witnesses;¹⁸
- iv. that the protective measures have to be balanced with the Accused's right to a public trial and that the requested use of facial and voice distortion will result in an impression of "in camera" justice for the Accused;¹⁹

RECALLING the various decisions of the Trial Chamber granting the above witnesses various pre-trial protective measures;²⁰

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

¹³ Amended Motion, para. 13.

¹⁴ Amended Motion, para. 14, 15 and Annex B.

¹⁵ Amended Motion, para. 10; referring to *Prosecutor v. Sesay et al.*, SCSL-04-15-T-180, Decision on Prosecution Motion Modification of Protective Measures for Witnesses, 5 July 2004, para. 33-34.

¹⁶ Response, paras 5, 6.

¹⁷ Response, paras 13, 14, 15.

¹⁸ Response, para. 17-20.

¹⁹ Response, paras 22-25.

²⁰ TF1-374, TF1-375, TF1-395 and TF1-401: *Prosecutor v. 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 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; TF1-542 and TF1-555: *Prosecutor v. 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; TF1-585: *Prosecutor v. Taylor*, SCSL-03-01-T-383, Decision on Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure, 10 January 2008.

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 Rule 26bis of the Rules of Procedure and Evidence (Rules") which provides:

The Trial Chamber and the Appeals Chamber shall ensure that a trial is fair and expeditious and that proceedings before the Special Court are conducted in accordance with the Agreement, the Statute and the Rules, with full respect for the rights of the accused and due regard for the protection of victims and witnesses;

MINDFUL ALSO of Rule 78 which provides:

All proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided;

MINDFUL ALSO of Rule 75(A) which provides:

A Judge or a Chamber may, on its own motion, or at the request of either party, or of the victim or witness concerned, or of the Witnesses and Victims Section, 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 ALSO of Rule 79(A) which provides:

- (A) The Trial Chamber may order that the press and the public be excluded from all or part of the proceedings for reasons of:
- (i) national security; or
 - (ii) protecting the privacy, security or non-disclosure of the identity of a victim or witness as provided in Rule 75; or
 - (iii) protecting the interests of justice;

RECALLING a previous decision wherein the Trial Chamber held that it was "[s]atisfied that the potential threats to the security of witnesses still exist";²¹

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

SATISFIED that the orders sought by the Prosecution adequately balance the rights of the Accused to a fair and public trial with due regard for the protection of the witnesses concerned;²²

FOR THE ABOVE REASONS

GRANTS the Second Motion to substitute the First Motion with the Amended Motion;

²¹ *Prosecutor v. Taylor*, SCSL03-01-T-383, Decision on Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure, 10 January 2008.

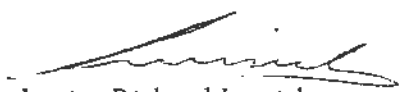
²² *Prosecutor v. Sesay et al.*, SCSL04-15-T-180, Decision on Prosecution Motion Modification of Protective Measures for Witnesses, 5 July 2004, para. 33-34; *Prosecutor v. Rwamakuba*, ICTR-98-44-T, Decision on the Prosecutor's Motion for Protective Measures for Witnesses, 22 September 2000, para. 14.

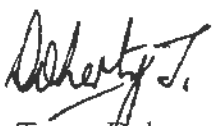
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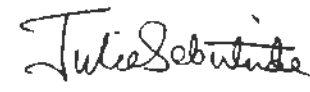
GRANTS the Amended Motion; and

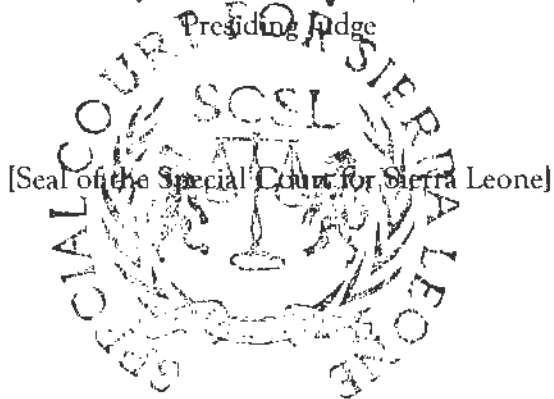
ORDERS additional protective measures to be used during the testimony of witnesses TF1-375, TF1-401, TF1-521, TF1-542, TF1-555, TF1-585 and TF1-590 as set out in Annex A to this Decision.

Done at The Hague, The Netherlands, this 7th day of May 2008.


Justice Richard Lussick


Justice Teresa Doherty
Presiding Judge


Justice Julia Sebutinde



Annex A

Additional Protective Measures required during the Giving of Testimony

Witness	Additional Protective Measures Requested for Testimony
TF1-375	Use of Image Distortion, Screen and Voice Distortion
TF1-401	Use of Image Distortion, Screen and Voice Distortion
TF1-521	Use of Image Distortion, Screen and Voice Distortion
TF1-542	Use of Image Distortion, Screen and Voice Distortion
TF1-555	Use of Image Distortion, Screen and Voice Distortion
TF1-585	Use of Image Distortion, Screen and Voice Distortion
TF1-590	Use of Image Distortion and Screen