

# 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:** 28 October 2008

### PROSECUTOR

v.

Charles Ghankay TAYLOR

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DECISION ON DEFENCE MOTION PURSUANT TO RULE 75(G)  
TO MODIFY KALLON AND GBAO DEFENCE PROTECTIVE MEASURES DECISIONS OF  
19 MARCH 2007 AND 1 MARCH 2007 FOR ACCESS TO CLOSED SESSION DEFENCE  
WITNESS TESTIMONY AND LIMITED DISCLOSURE OF DEFENCE WITNESS NAMES  
AND RELATED EXCULPATORY MATERIAL

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**Office of the Prosecutor:**

Brenda J. Hollis  
Leigh Lawrie

**Defence Counsel for Charles G. Taylor:**

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

**SEISED** of the “Public with Annexes A and B Defence Motion Pursuant to Rule 75(G) to Modify Kallon & Gbao Defence Protective Measures Decisions of 19 March 2007 and 1 March 2007 for Access to Closed Session Defence Witness Testimony and Limited Disclosure of Defence Witness Names and Related Exculpatory Material”, filed on 15 May 2008 (“Motion”),<sup>1</sup> wherein the Defence requests that previous protective measures granted to witnesses in the case of the *Prosecution v. Sesay, Kallon, Gbao* (SCSL-04-15-T) (“RUF Case”) by Trial Chamber I, in particular the decisions rendered on 19 March 2007<sup>2</sup> and 1 March 2007<sup>3</sup> in that case, be varied pursuant to Rule 75(G) and (F) to allow the Defence:

- (i) Service of copies of unredacted transcripts from the Kallon and Gbao Defence cases by Court Management on an ongoing basis;
- (ii) Disclosure of the witnesses’ names and identifying data of witnesses subject to the Kallon and Gbao’s Protective Measures Decisions; and
- (iii) Disclosure of statements taken by the Kallon and Gbao Defence teams;<sup>4</sup>

on the grounds (1) that the respective indictments and allegations against Mr. Taylor and against Mr. Kallon and Mr. Gbao are closely linked;<sup>5</sup> (2) that based on preliminary statements made by numerous potential witnesses who have already testified in the Kallon and Gbao Defence cases, or are preparing to testify later in the trial session, the exculpatory nature of the requested transcripts, exhibits and statements has become evident;<sup>6</sup> (3) that the variation of the Kallon and Gbao Protective Measures Decisions will not adversely impact the safety and/or protection of the protected Defence witnesses inasmuch as the limited disclosure requested is to the Defence team alone and not to the public;<sup>7</sup>

**NOTING** the “Public Prosecution Response to ‘Public with Annexes A and B Defence Motion Pursuant to Rule 75(G) to Modify Kallon and Gbao Defence Protective Measures Decisions of 19 March 2007 and 1 March 2007 for Access to Closed Session Defence Witness Testimony and Limited Disclosure of Defence Witness Names and Related Exculpatory Material”, filed on 19 May 2008 (“Response”),<sup>8</sup> wherein the Prosecution “adopts and incorporates by reference the arguments which it made in its response to the December Motion<sup>9</sup> save that such arguments should now:

- (i) refer to the Kallon and Gbao defence teams rather than the Sesay defence team;
- (ii) refer to the Kallon and Gbao Protective Measures Decisions rather than the Sesay Protective Measures Decision; and

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<sup>1</sup> SCSL-03-01-T-506 (“Motion”).

<sup>2</sup> *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T, Decision on Kallon Defence Motion for Immediate Protective Measures Kallon Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 19 March 2007 (“Kallon Protective Measures Decision”).

<sup>3</sup> *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T, Decision on Gbao Defence Motion for Immediate Protective Measures And Confidential Motion for Delayed Disclosure and Related Measures for Witnesses, 1 March 2007 (“Gbao Protective Measures Decision”).

<sup>4</sup> Motion, para. 19.

<sup>5</sup> Motion, paras 10, 11.

<sup>6</sup> Motion, para. 12.

<sup>7</sup> Motion, para. 15.

<sup>8</sup> SCSL-03-01-T-508 (“Response”).

<sup>9</sup> SCSL-03-01-T-381, “Public with Ex Parte Annex Prosecution Response to ‘Defence Motion Pursuant to Rule 75(G) to Modify Sesay Defence Protective Measures Decision of 30 November 2006 for Access to Closed Session Defence Witness Testimony and Limited Disclosure of Defence Witness Names and Related Exculpatory Material”, filed 7 January 2008.

- (iii) exclude the confidential and *ex parte* submissions”;<sup>10</sup>

and accordingly the Prosecution does not oppose a modification to the Kallon and Gbao Protective Measures Decisions<sup>11</sup> provided that:

- (i) such modification only permits the Defence access to redacted copies of closed session transcripts from the Kallon and Gbao Defence cases;
- (ii) the Defence are only served with those parts of such closed session transcripts which consists of Kallon and Gbao Defence witness testimony;
- (iii) the transcripts of testimony are redacted to remove:
  - (a) the names and identifying data of the witness testifying in closed session in the Kallon or Gbao Defence cases; and
  - (b) any information covered by protective measures orders imposed by decisions other than the Kallon and Gbao Protective Measures Decisions (including decisions in the current proceedings) such as the names of Prosecution witnesses;<sup>12</sup>

**NOTING** the “Public Defence Reply to Prosecution Response to Defence Motion Pursuant to Rule 75(G) to Modify Kallon & Gbao Defence Protective Measures Decisions of 19 March 2007 and 1 March 2007 for Access to Closed Session Defence Witness Testimony and Limited Disclosure of Defence Witness Names and Related Exculpatory Material”, filed on 23 May 2008 (“Reply”),<sup>13</sup> where the Defence reiterates its requests in the Motion and affirms its willingness to abide with similar restrictions to those placed by the Trial Chamber in the Sesay Modification Decision should the Trial Chamber grant the Motion;<sup>14</sup>

**NOTING** the Defence submission that Lead Counsel for Mr. Kallon and for Mr. Gbao do not oppose the Defence request;<sup>15</sup>

**HOLDING** that a Party is entitled to seek material from any source, including from another case before the Court, to assist in the preparation of its case and that a Party may be granted access to material provided that it is able to identify the material sought or describe it by its general nature and to show a legitimate forensic purpose for such access;<sup>16</sup>

**COGNISANT** of the criteria for determining when access to confidential material from another case should be granted, namely:

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<sup>10</sup> Response, para 4.

<sup>11</sup> Response, para 5.

<sup>12</sup> Response, paras 5 and 6, referring to *Prosecutor v. Taylor*, SCSL-03-01-T-381, Public with *ex parte* Annex Prosecution Response to the Defence Motion Pursuant to Rule 75(G) to Modify Sesay Defence Protective Measure Decision of 30 November 2006 for Access to Closed Session Defence Witness Testimony and Limited Disclosure of Defence Witness Names and Related Exculpatory Material, 7 January 2008.

<sup>13</sup> SCSL-03-01-T-517 (“Reply”).

<sup>14</sup> Reply, para. 3.

<sup>15</sup> Annex A, E-mail from Mr. Charles Taku, to the Taylor Defence Team, dated 14 May 2008; Annex B, Email from Mr. Scott Martin to the Taylor Defence Team, dated 9 May 2008.

<sup>16</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-439, Decision on Defence Motion Pursuant to Rule 75(G) to Modify Sesay Defence Protective Measures Decision of 30 November 2006 for Access to Closed Session Witness Testimony and Limited Disclosure of Defence Witness Names and Related Exculpatory Material, 14 March 2008, pp. 5-6.

- (a) when the party seeking the material can establish that it may be of material assistance<sup>17</sup> to its case;
- (b) when the relevance of the material is determined by showing the existence of a nexus between the applicant's case and the cases from which such material is sought, i.e. if the cases stem from events alleged to have occurred in the same geographic area and at the same time;<sup>18</sup>

**RECOGNISING** that the Prosecution and the Defence have both acknowledged that there is a geographical and temporal overlap between the two cases, on which the latter has relied to establish that the information requested will be of material assistance in preparation of its case;<sup>19</sup>

**SATISFIED** that the Defence has established that there is a good chance that the information sought will be of material assistance in the preparation of its case,<sup>20</sup> based on the statements of the witnesses who have already testified in the Kallon and Gbao cases;<sup>21</sup>

**HAVING** consulted with Trial Chamber I of the Special Court pursuant to Rule 75(H) of the Rules;<sup>22</sup>

**PURSUANT** to Rules 75(D), (F), and (G) of the Rules;

**HEREBY GRANTS** the Motion and **ORDERS** that the protective measures in the *Kallon Protective Measures Decision and Gbao Protective Measures Decision* be varied so as to permit the following:

1. Court Management Section shall serve copies of the unredacted transcripts of all closed session testimony and related exhibits from the Kallon and Gbao Defence cases to the Taylor Defence Team;
2. Disclosure to the Taylor Defence team of the names and identifying data of witnesses that are subject to the Kallon and Gbao's Protective Measures Decisions;
3. Disclosure to the Taylor Defence team of statements taken by Kallon and Gbao Defence teams during the course of the investigations and in preparation for the trial;

**ORDERING FURTHER** that:

1. the Taylor Defence team shall comply with all other aspects of the Kallon Protective Measures Decision and the Gbao Protective Measures Decision; and
2. the aforesaid orders shall apply to the present proceedings only.

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<sup>17</sup> *Prosecutor v. Nahimana et al.*, Decision on Joseph Nzirorera's Motion for Access to Appeals Briefs, 9 September 2005, p.3; *Prosecutor v. Bagosora et al.*, Case No. ICTR-9841-T, Decision on Nzirorera Request for Access to Protected Material, 19 May 2006, para. 2.

<sup>18</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-381, Public with ex parte Annex Prosecution Response to the Defence Motion Pursuant to Rule 75(G) to Modify Sesay Defence Protective Measure Decision of 30 November 2006 for Access to Closed Session Defence Witness Testimony and Limited Disclosure of Defence Witness Names and Related Exculpatory Material, 7 January 2008.

<sup>19</sup> Response para. 4, referring to SCSL-03-01-T-381 ("Response"), para. 6; Reply, para. 6.

<sup>20</sup> Motion, para. 12.

<sup>21</sup> Motion, para. 12.

<sup>22</sup> Email correspondence on behalf of the Judges, between the Senior Legal Officer of Trial Chamber I and the Senior Legal Officer of Trial Chamber II, dated 9 July 2008.

Done at The Hague, The Netherlands, this 28<sup>th</sup> day of October 2008.

Justice Richard Lussick

Justice Teresa Doherty  
Presiding Judge

Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]