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SCSL-03-01-T
(25233-25247)

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SPECIAL COURT FOR SIERRA LEONE

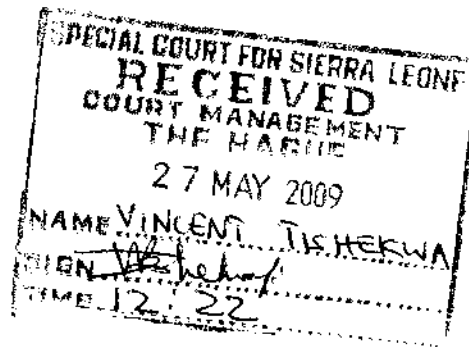
TRIAL CHAMBER II

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

Registrar: Herman von Hebel

Case No.: SCSL-03-1-T

Date: 27 May 2009



PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON URGENT DEFENCE APPLICATION FOR PROTECTIVE MEASURES FOR
WITNESSES AND FOR NON-PUBLIC MATERIALS

Office of the Prosecutor:

Brenda J. Hollis
Kathryn Howarth

Defence Counsel for Charles G. Taylor:

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

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

SEISED of the “Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials”, filed on 6 May 2009 (“Motion”);¹

NOTING the “Prosecution Response to Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials”, filed on 12 May 2009 (“Response”);²

NOTING ALSO the “Defence Reply to Prosecution Response to Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials”, filed on 15 May 2009 (“Reply”);³

COGNISANT of the provisions of Articles 16(4) and 17 of the Statute of the Special Court for Sierra Leone (“Statute”) and Rules 26bis, 69 and 75 of the Rules of Procedure and Evidence (“Rules”);

HEREBY DECIDES AS FOLLOWS based solely on the written submissions of the parties pursuant to Rule 73(A);

I. SUBMISSIONS

A) Motion

1. The Defence seeks an order for protective measures for two categories of defence witnesses and potential defence witnesses (“witnesses”) and an order for non-public disclosure of confidential material pursuant to Rules 69 and 75.⁴
2. The two categories of witnesses for whom the Defence seeks protective measures are:
 - a. Insiders or ex-combatants who fought for or who were closely associated with factions including the AFL, AFRC, CDF, LURD, NPFL, RUF, SLA, STF and ULIMO during the conflicts in Sierra Leone and/or Liberia; and,

¹ SCSL03-01-T-776.

² SCSL03-01-T-778.

³ SCSL03-01-T-779.

⁴ Motion, para. 1.

b. Former or current political or other high-ranking officials involved diplomatically or otherwise in the conflicts that took place in Sierra Leone and/or Liberia.⁵

3. At paragraph 12 of its Motion, the Defence sets out a list of ten requested protective measures ((a) through (j)) which it asserts are similar to those granted to the Prosecution in this case and to Defence teams in other cases before the Special Court.⁶ The Defence submits that the principle of equal protection for Prosecution and Defence witnesses is clearly established in the Rules and practice of the Special Court and that the integrity of the proceedings depends on the Court’s ability to secure and protect witnesses for both Parties.⁷

4. The Defence submits that in the instant case there is clear and convincing evidence forming both a subjective and objective basis for granting protective measures.⁸ Evidence supporting both bases is provided in the Motion itself⁹ and in Annexes A through E of the Motion.

B) Response

5. The Prosecution opposes the Application in part.¹⁰

6. With regard to the categories of witnesses proposed by the Defence, the Prosecution does not generally oppose the granting of protective measures to ex-combatant or insider witnesses residing in West Africa; however, it submits that the Defence has not sufficiently justified the extension of such measures to members of this category of witnesses who reside outside West Africa. The Prosecution also submits that the Defence has failed to justify the granting of protective measures to the second category of witnesses proposed, that is, “former or current political or other high-ranking officials” involved in the conflicts in Sierra Leone.¹¹

7. With regard to the specific protective measures sought by the Defence, the Prosecution does not oppose those sought in paragraph 12 (a), (d), (g), (h), (i) and (j). Further it does not oppose the substance of paragraph 12 (b) and (f) with the exception of certain language which, according to the Prosecution, is inconsistent with prior protective measures orders, there being no justification for

⁵ Motion, para. 9.

⁶ Motion, paras 10-12.

⁷ Motion, para. 10.

⁸ Motion, paras 13-14.

⁹ Motion, paras 14-20.

¹⁰ Response, para. 3.

such deviation.¹² The Prosecution opposes paragraph 12 (c) and, in part, paragraph 12 (e) on the ground that the Defence has not made the requisite showing to justify these protective measures.¹³

C) Reply

8. The Defence submits that the protective measures it seeks are minimal in nature, are non-testimonial and do not affect the public nature of the proceedings, and therefore the evidentiary burden on the Defence “should not be onerous”.¹⁴ It reiterates its submission that the same protection should be provided to Defence witnesses as to Prosecution witnesses.¹⁵

9. The Defence suggests that the Prosecution’s opposition to the extension of the protective measures sought to insider and ex-combatant witnesses living outside of West Africa is short-sighted, noting that some Special Court protective measures decisions have specifically included international witnesses.¹⁶ It also submits that contrary to the Prosecution assessment, it has presented ample objective and subjective evidence to justify a blanket request for protective measures for political and high-ranking officials.¹⁷

10. Detailed Defence arguments in relation to the specific protective measures sought are dealt with below.

II. APPLICABLE LAW

11. Rule 69 states,

- (A) In exceptional circumstances, either of the parties may apply to a Judge of the Trial Chamber or the Trial Chamber to order the non-disclosure of the identity of a victim or witness who may be in danger or at risk, until the Judge or Chamber decides otherwise.
- (B) In the determination of protective measures for victims and witnesses, the Judge or Trial Chamber may consult the Witnesses and Victims Section.

¹¹ Response, para 3.

¹² Response, paras 4, 14, 23.

¹³ Response, paras 4, 15-22.

¹⁴ Reply, para. 6.

¹⁵ Reply, para. 7.

¹⁶ Reply, paras 8-9.

¹⁷ Reply, para. 10.

- (C) Subject to Rule 75, the identity of the victim or witness shall be disclosed in sufficient time before a witness is to be called to allow adequate time for preparation of the prosecution and the defence.

12. Rule 75 states, *inter alia*,

- (A) 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.

13. Furthermore, Rule 26bis obliges the Trial Chamber and the Appeals Chamber to “ensure that a trial is fair and expeditious and that proceedings before the Special Court are conducted in accordance 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.”

III. DELIBERATIONS

A) Categories of Protected Witnesses proposed by the Defence

1) *Category One: Insiders and Ex-Combatants*

14. The Defence submits that the protective measures requested should be extended to insider and ex-combatant witnesses as they are vulnerable to reprisals and discrimination, especially those who are viewed as sympathetic to the Accused.¹⁸ While the Prosecution does not generally object to protective measures for this category of witnesses, it submits that the Defence has not sufficiently justified the extension of protective measures to those who reside outside of West Africa. It argues that the Motion and supporting materials refer only to witnesses within Sierra Leone and Liberia and that therefore, there is neither an objective nor a subjective basis for this part of the application. It also notes that other protective measures Decisions before the Special Court have excluded from protection potential witnesses residing outside West Africa.¹⁹ The Defence maintains that former fighters and insiders from within the former Taylor government(s) may be temporarily residing outside the sub-region precisely on account of a fear of reprisals and risks to their security and may

¹⁸ Motion, paras 14-15.

choose to come back to the sub-region at any time. It identifies certain decisions of the Special Court on protective measures that included international witnesses.²⁰

15. The Trial Chamber recalls its Decision of 5 May 2006 in which it granted protective measures for Prosecution witnesses and victims at the pre-trial stage of the Taylor trial on the basis of evidence provided by the Prosecution of potential threats to such witnesses and victims living in Sierra Leone and West Africa as well as “for people living outside the African continent who have *special reason* to feel threatened and therefore have requested protective measures”.²¹ [emphasis added] The Trial Chamber notes the jurisprudence cited by the Prosecution wherein Trial Chamber I denied the extension of protective measures to Sesay and Gbao defence witnesses living outside of West Africa on the basis that both defence teams had failed to show evidence of threats facing such witnesses.²² Finally, the Trial Chamber notes that the jurisprudence of Trial Chamber I cited by the Defence supports the granting of protective measures to insider witnesses in general²³ and to *certain* witnesses resident or working outside of West Africa, namely officers of national Armed Forces and other prominent international witnesses, who indicated their willingness to testify for the Defence.²⁴ The Trial Chamber considers that the current geographical residency of a witness in and of itself is not necessarily a decisive factor in whether to grant protective measures or not. Residence outside West

¹⁹ Response, paras 3, 10-11.

²⁰ Reply, paras 8-9.

²¹ *Prosecutor v. Taylor*, Case No. 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, SCSL-03-1-PT, 5 May 2006 with reference to Confidential Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure and Urgent Request for Interim Measures, SCSL-03-01-PT-86, 4 April 2006, para. 18.

²² *Prosecutor v. Sesay et al*, SCSL-04-15-T-668, Decision on Sesay Defence Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure, 30 November 2006, para. 24(ii), wherein Trial Chamber I found that no *prima facie* showing had been made by the Sesay Defence for the issuing of protective measures in respect of potential witnesses resident outside West Africa; *Prosecutor v. Sesay et al*, SCSL-04-15-T-716, Decision on Gbao Defence Motion for Immediate Protective Measures and Confidential Motion for Delayed Disclosure and Related Measures for Witnesses, 1 March 2007, paras 34 and 42(ii) wherein Trial Chamber I referred to its previous Decision and held that the Gbao Defence had not submitted any evidence in addition to that filed by the Sesay Defence about threats facing potential witnesses residing outside West Africa and found no merit in the application in respect of potential witnesses residing outside of West Africa.

²³ *Prosecutor v. Sesay et al*, SCSL-2004-15-T-180, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004, para. 33, wherein Trial Chamber I found that Prosecution insider witnesses and their families in the RUF case were particularly vulnerable to acts of retaliation and potential harm “due to their important testimony implicating directly the Accused”.

²⁴ *Prosecutor v. Sesay et al*, SCSL-04-15-T-788, Decision on the Second Sesay Defence Motion for Immediate Protective Measures for Witnesses, 17 May 2007, paras 1, 18-20.

Africa does not preclude a risk or threat to a potential witness. Further a witness may choose to move to Sierra Leone or Liberia in the future and may then face security risks.

16. Turning to the basis of support provided by the Defence in its Motion, the Trial Chamber finds that the Defence has provided a sufficient objective and subjective basis for the extension of the protective measures sought to insider and ex-combatant witnesses residing within and outside West Africa. The Defence cites evidence that ex-combatants are viewed with fear, suspicion and resentment by the “general civilian population” and that reintegration to their home communities is difficult for ex-RUF, ex-AFRC and ex-NPFL members in Sierra Leone and Liberia, in particular for those who held high ranks.²⁵ The Defence also provides a statement of a Witness Management Officer and an Investigator who attest to the subjective fear of reprisals on the part of potential witnesses including former and serving SLAs, and RUF, CDF and Liberian ex-combatants.²⁶

2) Category Two: Former or Current Political or other High-Ranking Officials

17. The Defence seeks protective measures for high-ranking or high-profile political figures who it asserts are vulnerable “since a politician’s entire livelihood depends on reputation, favourable public opinion and goodwill of the populace.” It argues that political figures who are willing to risk association with the Accused open themselves to severe criticism and detrimental opposition. The Defence also argues that high-level ex-combatants and high-profile public figures risk being added to the “Travel Ban” pursuant to Security Council Resolution 1521 (2003) and/or “Assets Freeze” pursuant to Security Council Resolution 1534 (2004) if they are found to “retain links” to the Accused or to be “close allies or associates” of the Accused.²⁷ It suggests that subjectively, high profile political figures are concerned about general stigmatization, loss of employment opportunities, threats to their safety and well-being of their families, and disfavour with the national and international communities.²⁸

18. The Prosecution opposes a blanket application of protective measures to this category of witnesses. It argues that the Defence submissions are tenuous and unrelated to the “privacy and security” of witnesses or to a “danger or [...] risk” to witnesses, and are not legally capable of meeting

²⁵ Motion, para. 15, Annexes A-C.

²⁶ Annexes D & E.

²⁷ Motion, paras 17-18.

²⁸ Motion, para. 20.

the test required under the Rules. The Prosecution avers that the Defence does not establish an *objective* basis for these fears and suggests that the Defence characterization of the attitude of Liberians towards Charles Taylor is unsophisticated and inaccurate.²⁹ The Prosecution submits that the Defence argument that high-level ex-combatants and high-profile political figures face a threat from the UN because they risk being banned from travelling or having their assets frozen pursuant to the terms of Security Council Resolutions 1521 (2003) and 1534 (2004) is without objective basis.³⁰

19. The Defence replies that the Travel Ban and Assets Freeze are evidence of objective risks facing the alleged associates of former President Charles Taylor. It explains that its concern does not relate to the ability of these witnesses to travel to The Hague for the purpose of giving testimony. Rather, by giving testimony such witnesses fear that they will never be removed from the lists or, for those who are not already on the lists, fear that they will be added to either or both of the lists. The Defence argues that the subjective fear of such witnesses is “particularly poignant” because of the secrecy surrounding additions to the lists and the relative difficulty in petitioning removal from the lists as compared to being put on the lists.³¹ The Defence asserts that while Mr. Taylor may be popular among certain factions in Liberia, it is well-known that the administration of President Ellen Johnson-Sirleaf is anti-Taylor and her government’s policies have a detrimental impact on the livelihoods of many former political figures and government employees from the Taylor era.³²

20. The Trial Chamber finds that the Defence argument that defence witnesses fear a travel ban or asset freeze as a result of Security Council Resolutions 1521 (2003) and 1534 (2204) does not satisfy the legal requirements necessary to grant protective measures. Rule 69(A) states that the Trial Chamber may “order the non-disclosure of the identity of a victim or witness who may be *in danger or at risk*” [emphasis added]. Rule 75(A) states that a Chamber may order “appropriate measures to safeguard the *privacy and security* of victims and witnesses” [emphasis added]. The Defence has neither demonstrated a clear link between the potential testimony of a Defence witness and the Security Council actions in question, nor has it demonstrated that even if this link were established, that any potential Defence witnesses would be “in danger or at risk” or that their “privacy and security” would be harmed as a result.

²⁹ Response, paras 3, 12.

³⁰ Response, para. 13.

³¹ Reply, paras 10-12.

³² Reply, para. 13.

21. However, having carefully reviewed the evidence provided by the Defence, the Trial Chamber finds that the Defence has satisfied on a objective and subjective basis the fears of high profile political figures vis-à-vis stigmatization, loss of employment opportunities, threats, and disfavour.

B) Specific protective measures Orders sought by the Defence

1) Paragraph 12 (a), (d), (g), (h), (i) and (j):

22. The Prosecution does not oppose Protective Measures (a), (d), (g), (h), (i) and (j) sought by the Defence.³³ The Trial Chamber finds these measures to be consistent with others previously ordered in relation to Prosecution witnesses in this case and is satisfied that the Defence has demonstrated both objective and subjective bases for the orders.

2) Paragraph 12 (b):

23. Paragraph 12 (b) as proposed by the Defence states:

That the names or identifying information shall not be disclosed to the public or the media until the witness testifies (unless otherwise ordered) or indefinitely if the witness is not called to testify;

24. The Prosecution does not oppose the substance of this paragraph, but submits that the Defence has not provided a basis for deviating from the wording that has been consistently used by the Trial Chambers of the Special Court in granting non-testimonial protective measures, namely,

[That] the names or any other identifying information of these witnesses shall not be disclosed to the public or the media, *and this order shall remain in effect after the conclusion of proceedings.* [emphasis added by Prosecution]³⁴

25. The Defence submits that it deliberately chose the language used in paragraph 12(b) and stresses that the measures it seeks are purely for pre-testimonial purposes which would remain in effect (other than for the purposes of disclosure to the Prosecution) until the witness testifies or until protective measures are sought on an individual basis for trial. It states that in choosing this phrasing, it seeks to protect the identity of persons who are not called to testify.³⁵

³³ Response, para. 4.

³⁴ Response, para. 14.

³⁵ Reply, paras 14-15.

26. The Trial Chamber notes that there is no real dispute by the parties over the substance of this specific measure, it is rather a question of semantics. The Trial Chamber finds that the relief the Defence seeks, namely, to prevent the release of the name and identifying information to the public and media of all Defence witnesses during the pre-trial phase and of those Defence witnesses who are not ultimately called to testify during and after the trial, is fully provided for in the language proposed by the Prosecution and previously used by the Trial Chamber in relation to Prosecution witnesses. The Trial Chamber finds merit in the consistent phrasing of identical orders and finds no justification to deviate from the language previously adopted.

3) *Paragraph 12 (c):*

27. Paragraph 12(c) as proposed by the Defence states,

That the Defence may withhold from the Prosecution identifying data of a protected witness or any information which could reveal the identity of such witnesses until 21 days before the witness is due to testify at trial.

28. The Prosecution opposes this order. It argues that there are no “exceptional circumstances” or any “objective basis” whatsoever upon which to conclude that any Defence witness is “in danger or at risk” from the Prosecution, nor that any privacy right is jeopardised by the Prosecution and that therefore the Defence has not satisfied the requirements of Rules 69 or 75.³⁶ It submits that withholding the names and identifying information of protected Prosecution witnesses from the Defence until 42 days prior to the anticipated date of the witnesses’ testimony was justified on the basis of potential threats from the Accused and persons associated with him. It suggests there is no similar objective basis upon which withholding such information from the Prosecution can be justified. It notes that according to paragraph 12(e), the substance of which it does not oppose, it would be required to contact any witness through the Witnesses and Victims Section (WVS) and could only do so having first obtained the consent of the witness to be so contacted.³⁷

29. Nevertheless, the Prosecution submits that should the Trial Chamber be minded to grant the Defence request on this point, such information should be provided to the Prosecution not less than 42 days before the witness is due to testify at trial, which is the minimum period consistent with the

³⁶ Response, paras 15-18.

³⁷ Response, paras 19-20.

fair trial rights of both parties. It submits there is “no principled reason” why the Prosecution, who face the same logistical issues as the Defence, would require less time than was granted the Defence in this case.³⁸

30. The Defence replies that its application is consistent with the 21 day disclosure granted to the Defence by this Chamber in the AFRC case. It points to a report by the Berkeley War Crimes Study Center which details irregularities within the Investigations division of the Office of the Prosecutor which it argues, together with statements of harassment reported by Defence witnesses, provide a basis for the delayed disclosure to the Prosecution.³⁹

31. The Trial Chamber recalls its Decision in the AFRC case wherein it found it permissible for the Defence in that case to withhold identifying data of a witness for whom the Defence is seeking protection or any other information which could reveal the identity of such witnesses until 21 days before the witness is due to testify at trial.⁴⁰ The Trial Chamber finds paragraph 12(c) requested by the Defence is consistent with this Decision and with the previous practice of this Court and is an appropriate period to permit the withholding of identifying data or other information in the instant case.

4) *Paragraph 12(e):*

32. Paragraph 12(e) as proposed by the Defence states,

Upon disclosure of a witness’ name or other identifying data by the Defence, that the Prosecution shall not directly or indirectly contact any protected witness unless informed consent is obtained from the witness by the Witness and Victims Session (WVS) and the Defence is notified of such contact. Except under exceptional circumstances, any such contact shall not take place before the witness’ testimony in court.

33. The Prosecution does not oppose this order in substance, but objects to the requirement that the Defence be notified of such contact and requests that this language be struck out. It notes that this requirement was not ordered for the Defence vis-à-vis prosecution witnesses in the Taylor case,

³⁸ Response, para. 21.

³⁹ Reply, paras 16-18.

⁴⁰ *Prosecutor v. Brima et al.*, SCSL-04-16-T488, Decision on Joint Defence Application for Protective Measures for Defence Witnesses, 9 May 2006.

nor was it required of the Prosecution or another Defence team in the RUF case. It submits that the Defence has not provided any justification for this requirement.⁴¹ The Prosecution also opposes any requirement that “under exceptional circumstances, any such contact shall not take place before the witness’ testimony in court,” arguing that the Defence has failed to justify why the Prosecution ought to be so restricted.⁴²

34. The Defence argues that these requirements are “in line with orders and jurisprudence from the RUF Defence case.”⁴³

35. The Trial Chamber recalls its Decision of 5 May 2006 on Protective Measures granted to Prosecution witnesses in this case wherein it ordered, “that the Defence Counsel shall not directly or indirectly contact any protected Prosecution witness except with the written consent of the Prosecution or leave of court.”⁴⁴ This phrasing is also consistent with the protective measures ordered for Defence witnesses by this Chamber in the AFRC case.⁴⁵ Absent any justification by the Defence for its alternative wording, the Trial Chamber finds no reason to apply a different standard to the Prosecution than it has previously held. In addition the Trial Chamber finds that the wording chosen in the AFRC case is clear and concise and emphasises that it falls within the prerogative of the Trial Chamber to grant leave if the Prosecution wishes to contact a witness in cases where the Defence declines its consent. Therefore the Trial Chamber considers that the wording of this specific measure should be formulated as follows:

Upon disclosure of a witness’ name or other identifying data by the Defence, that the Prosecution shall not directly or indirectly contact any protected witness unless informed consent is obtained from the witness by the Witness and Victims Section (WVS) and the Defence is notified of such contact. Except with the written consent of the Defence or leave of the Court, any such contact shall not take place before the witness’ testimony in court.

⁴¹ Response, para. 22.

⁴² Response, para. 22.

⁴³ Reply, para. 19.

⁴⁴ *Prosecutor v. Taylor*, Case No. 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, protective measure (m).

5) *Paragraph 12(f):*

36. The Defence does not oppose the Prosecution suggested amendment of paragraph 12(f) to include “cross-examination and any rebuttal case” or “language that encompasses both”.⁴⁶ The Trial Chamber is satisfied that the Defence has demonstrated both a subjective and objective basis for paragraph 12(f), as amended,

That the Prosecution shall not share or reveal any disclosed witness-related non-public materials; namely that the Prosecution is prohibited from providing, sharing, discussing or revealing, directly or indirectly, any disclosed witness-related non-public materials of any sort, specifically including witness statements or summaries, or any information contained in any such documents, to the public or media, except where such disclosure to a member of the public is absolutely necessary to the preparation of cross-examination and any rebuttal case. In such a case, the information disclosed shall strictly be kept to the minimum necessary for the preparation of the cross-examination;

FOR THE ABOVE REASONS

GRANTS THE MOTION IN PART and

ORDERS that any Defence witness who falls within the following categories of witnesses, that is:

- (i) insiders or ex-combatants who fought for or were closely associated with any faction (including AFL, AFRC, CDF, LURD, NPFL, RUF, SLA, STF and ULIMO) during the conflicts that took place in Sierra Leone and/or Liberia; or
- (ii) former or current political or other high-ranking officials involved diplomatically or otherwise in the conflicts that took place in Sierra Leone and/or Liberia;

and who has not expressly or affirmatively waived his or her right to protection, shall be granted the following protective measures:

⁴⁵ *Prosecutor v. Brima et al.*, SCSL-04-16-T-488, Decision on Joint Defence Application for Protective Measures for Defence Witnesses, 9 May 2006, protective measure (i).

⁴⁶ Reply, para. 5.

- a) That the Defence may designate a pseudonym for each protected witness that will be used for pre-defence case disclosure of witness summaries or other materials and whenever reference is made to such witness in communication or discussions between the parties;
- b) That the names or any other identifying information of these witnesses shall not be disclosed to the public or the media, and this order shall remain in effect after the conclusion of proceedings.
- c) That the Defence may withhold from the Prosecution identifying data of a protected witness or any information which could reveal the identity of such witnesses until 21 days before the witness is due to testify at trial.
- d) That the Prosecution shall not make an independent determination of the identity of a protected witness or encourage or otherwise aid any person to attempt to determine the identity of any such person;
- e) Upon disclosure of a witness' name or other identifying data by the Defence, that the Prosecution shall not directly or indirectly contact any protected witness unless informed consent is obtained from the witness by the Witness and Victims Section (WVS) and the Defence is notified of such contact. Except with the written consent of the Defence or leave of the Court, any such contact shall not take place before the witness' testimony in court.
- f) That the Prosecution shall not share or reveal any disclosed witness-related non-public materials; namely that the Prosecution is prohibited from providing, sharing, discussing or revealing, directly or indirectly, any disclosed witness-related non-public materials of any sort, specifically including witness statements or summaries, or any information contained in any such documents, to the public or media, except where such disclosure to a member of the public is absolutely necessary to the preparation of cross-examination and any rebuttal case. In such a case, the information disclosed shall strictly be kept to the minimum necessary for the preparation of the cross-examination;
- g) That the Prosecution shall maintain a log indicating the name, address and position of each person or entity which receives a copy of, or information from, a witness statement, or any other non-public material, as well as the date of

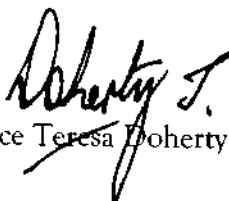
disclosure; and that the Prosecution shall ensure that the person to whom such information is disclosed is put on notice of the protective measures orders and follows those orders including the order for non-disclosure;


h) That the Prosecution shall, at the conclusion of the proceedings, return to the Registry all disclosed witness-related materials and copies thereof which have not become part of the public record;


i) That the Registry shall, at the conclusion of the proceedings, seal the names or any other identifying data of these witnesses as well as disclosed witness-related materials that has not become part of the public record; and

j) That none of the above requested measures should be interpreted to serve as a bar to the Defence's preparation for its case, in as much as the Defence may be required to liaise with WVS and various governments or authorities in facilitating the travel arrangements and related issues in preparation for the witness's travel to The Hague to give testimony.

Done at The Hague, The Netherlands, this 27th day of May 2009.


Justice Teresa Doherty


Justice Richard Lussick
Presiding Judge


Justice Julia Sebutinde

