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SPECIAL COURT FOR SIERRA LEONE

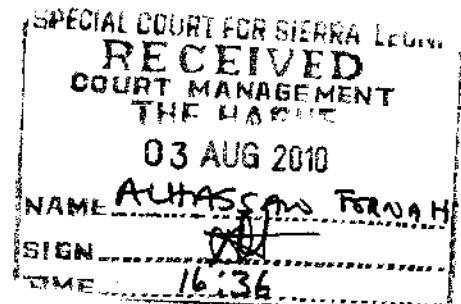
TRIAL CHAMBER II

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

Registrar: Binta Mansaray

Case No.: SCSL-03-1-T

Date: 3 August 2010



PROSECUTOR

v.

Charles Ghankay TAYLOR

PUBLIC

**DECISION ON CONFIDENTIAL REQUEST FOR PROTECTIVE
MEASURES FOR NAOMI CAMPBELL'S TESTIMONY**

Office of the Prosecutor:

Brenda J. Hollis
Nicholas Koumjian
Sigall Horovitz

Legal Representatives for Naomi Campbell

Lord Ken Macdonald, Q.C.
Michelle Butler
Gideon Benaim

Counsel for the Accused:

Courtenay Griffiths, Q.C.
Terry Munyard
Morris Anyah
Silas Chekera
James Supuwood

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

RECALLING the “Decision on Confidential Application for Leave to File a Request for Protective Measures for Naomi Campbell’s Testimony”, filed on 29 July 2009,¹ wherein the Trial Chamber granted the legal representatives of Ms. Campbell leave to file such a request, and ordered an expedited filing schedule in respect of any responses thereto;

SEISED of the “Confidential Request for Protective Measures for Naomi Campbell”, filed on 29 July 2010 (“Request”),² wherein the witness, Ms. Naomi Campbell, requests the Trial Chamber to grant her the following protective measures:

- (a) That Ms. Campbell’s legal representatives be granted rights of appearance and audience during her testimony;
- (b) That members of the public, the media, the parties and court staff not follow, photograph, video record, or sketch Ms. Campbell’s transit to the court within the Netherlands and that the government of the Netherlands be respectfully invited to assist in the enforcement of this protective measure;
- (c) That apart from the live feed from the courtroom of her testimony, the public, the media and court staff shall not photograph, video record, or sketch Ms. Campbell while entering the Tribunal building, exiting from the Tribunal building, or while she is in the Tribunal building, without the leave of the Trial Chamber and Ms. Campbell;
- (d) That the parties and court staff shall not share or reveal any materials or information gleaned about her stay at the Court apart from that revealed during her public testimony in court. Namely that all persons are prohibited from providing, sharing, discussing or revealing, directly or indirectly, any non-public materials or information of any sort to the public or media;
- (e) That the parties and court staff shall maintain a log indicating the name, address and position of each person or entity which receives a copy of, or information from, Ms. Campbell or any other non-public material about her and shall ensure that the person or entity 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;

¹ SCSL03-01-T-1018.

² SCSL03-01-T-1019.

- (f) That the parties shall, at the conclusion of proceedings, destroy or return to the Registry all materials relating to Ms. Campbell which have not become part of the public record;
- (g) That wilful breach of these protective measures constitutes contempt of the Special Court pursuant to Rule 77;³

NOTING that Ms. Campbell requests such protective measures on the basis, *inter alia*, that they are necessary to safeguard her privacy and security;⁴

NOTING ALSO Ms. Campbell’s submission that it is in the interests of justice to allow her legal representatives to have a right of appearance and audience during her testimony in order to protect her privacy and safety;⁵

NOTING FURTHER Ms. Campbell’s submission that rights of appearance and audience are implied in various provisions of the Code of Professional Conduct for Counsel with the Right of Audience Before the Special Court of Sierra Leone (“Code”),⁶ and have been granted to witnesses both by the Special Court and other international tribunals;⁷

NOTING the “Confidential Submission of the Registrar Pursuant to Rule 33(B) Regarding the Request by Witness Naomi Campbell for Protective Measures in Anticipation of Testimony”, filed on 29 July 2010 (“Registrar’s Submission”),⁸ wherein the Registrar does not oppose the Request;⁹

³ Request, para 16.

⁴ Request, paras 12-16.

⁵ Request, paras 20-21.

⁶ Request, para. 18, referring to Code of Professional Conduct for Counsel with the Right of Audience Before the Special Court of Sierra Leone, adopted on 14 May 2005, amended on 13 May 2006. Ms. Campbell submits that Article 1(A) of the Code defines “Counsel” as including “[. . .] counsel representing a witness or any other person before the Special Court of Sierra Leone”, that “Client” is defined as “[. . .] witness or other person who has engaged [. . .] counsel [. . .] for the purposes of his or her legal representation before the Special Court”. Further, she observes that Article 2 of the Code provides that “This code shall apply to all counsel who appear or have appeared before the Special Court or who otherwise act or have acted on behalf of the Prosecutor, a suspect, an accused, a witness or any other person before the Special Court, and who thereby have the right of audience before the Special Court”.

⁷ Request, para. 19, referring to *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Transcript 16 May 2008, pp. 2-6, where Trial Chamber I granted a right of appearance to counsel during the testimony of former President Kabbah; *Prosecutor v. Limaj*, IT-03-66-T, Transcript, 13 January 2005, p. 1852, *Prosecutor v. Halilović*, IT-01-58-T, Decision on Parties Requests Regarding Deposition Evidence of One Witness, 12 May 2005; *Prosecutor v. Milosević*, IT-02-54-T, Public Version of the Confidential Decision on the Prosecution’s Motion to Grant Specific Protection Pursuant to Rule 70, 25 July 2002, para. 20, where counsel was granted the right of appearance; *Prosecutor v. Milutinović*, IT-05-87-T, Procedural Matters Hearing, 16 April 2007, p. 12126.

⁸ SCSL-03-01-T-1020.

⁹ Registrar’s Submission, paras 13-15.

NOTING the “Confidential Prosecution Response to Confidential Request for Protective Measures for Naomi Campbell’s Testimony” filed on 30 July 2010 (“Prosecution Response”),¹⁰ wherein the Prosecution:

- (i) does not object to, and supports, the protective measures sought in (d), (e) and (f) above;¹¹
- (ii) supports that portion of the relief sought in (c) above, that there be no photographing, video recording or sketching of Ms. Campbell while in the Tribunal building, without the leave of the Trial Chamber or Ms. Campbell, on the basis that this will ensure that the dignity of the proceedings is maintained;¹²
- (iii) takes no position regarding the protective measures sought in (b) and the additional protective measures sought in (c) above, although it notes that some of the measures may be beyond the jurisdiction of the Court;¹³
- (iv) considers as unnecessary and therefore objects to, the protective measure sought in (g) above, as Rule 77 of the Rules of Procedure and Evidence (“Rules”) sufficiently regulates the consequences of a breach of the Chamber’s order;¹⁴
- (v) has no objection to one of Ms. Campbell’s legal representatives being granted the right of appearance and a limited right of audience,¹⁵ on the basis that such measures would contribute to the privacy and security of the witness, and would be in the interests of justice;¹⁶

NOTING the “Confidential Defence Response to Request for Protective Measures for Naomi Campbell’s Testimony” filed on 2 August 2010 (“Defence Response”);¹⁷ wherein the Defence:

- (i) opposes the measures sought in (a) above on the grounds, *inter alia*, that they are unnecessary;¹⁸
- (ii) opposes the measures sought in (b) above on the ground that they are *ultra vires* the Court’s powers and wholly without foundation;¹⁹

¹⁰ SCSL03-01-T-1024.

¹¹ Prosecution Response, paras 4, 13.

¹² Prosecution Response, paras 4, 13.

¹³ Prosecution Response, paras 4, 13.

¹⁴ Prosecution Response, paras 6, 13.

¹⁵ Prosecution Response, paras 5, 13.

¹⁶ Prosecution Response, paras 10-12.

¹⁷ SCSL03-01-T-1027.

¹⁸ Defence Response, paras 8-13.

¹⁹ Defence Response, para. 14.

- (iii) opposes the measures sought in (c) to (f) above on the grounds, *inter alia*, that they are unnecessary in that they impose no sensible restriction which is not already covered in the Rules of Procedure and Evidence and the Code of Conduct;²⁰ and,
- (iv) opposes the measure sought in (g) above on the ground that it is inappropriate and seeks to fetter the discretion of the Court to regulate its own proceedings;²¹

MINDFUL that Ms. Campbell will be a witness in this trial and is entitled to request protective measures pursuant to Rule 75(A), which provides that:

A Judge or 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 such measures are in accordance with the rights of the Accused;

MINDFUL ALSO that Rule 26*bis* obliges the Trial 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”;

FINDING

- (i) that there are legitimate grounds of concern for Ms. Campbell’s security and privacy by virtue of her public *persona* and the extremely intense media scrutiny relating to her anticipated testimony and that these concerns justify the granting of most of the measures sought in (c) above;
- (ii) with regard to the measures sought in (a) above that it is in the interests of justice to grant the right of appearance to one (1) of Ms. Campbell’s legal representatives and to grant the said legal representative a limited right to be heard solely on the admissibility of any questions asked of Ms. Campbell which go to possible self-incrimination;²²
- (iii) that the measures sought in (b) above are not within the jurisdiction of this Trial Chamber to grant;

²⁰ Defence Response, paras. 15-16.

²¹ Defence Response, para. 17.

²² See Code of Conduct for Counsel with the Right of Audience before the Special Court for Sierra Leone, as amended 13 May 2006, (“Code of Conduct for Counsel”), Article 1(A); *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-2004-15-T, Transcript 16 May 2008, pp. 2-7; *Prosecutor v. Perisić*, ICTY-IT-04-81-T, Transcript 15 June 2009, pp. 7091-7098; *Prosecutor v. Blaskić*, ICTY-IT-95-14-T, Decision on the Prosecutor’s Motion for Protective Measures, 16 July 1998.

- (iv) that the measures sought in (d) to (g) above are unnecessary as such measures are already provided for in the Rules of Procedure and Evidence, the Code of Conduct for Counsel and the established practices of the Special Court for Sierra Leone.²³

CONSIDERING that the enforcement of the measures ordered below warrants a public filing of the present decision;

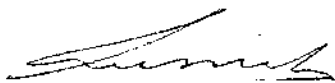
FOR THE ABOVE REASONS, THE TRIAL CHAMBER

GRANTS THE REQUEST in part; and

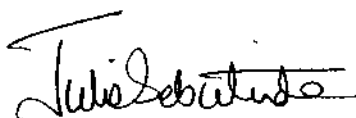
ORDERS as follows:

- (a) One (1) of Ms. Campbell's legal representatives is granted a right of appearance and a limited right to be heard solely on the admissibility of any questions put to Ms. Campbell which go to possible self-incrimination;
- (b) The Registrar is directed to liaise with the Special Tribunal for Lebanon to ensure that no person shall photograph, or video record Ms. Campbell while entering the Tribunal building, exiting from the Tribunal building, or while she is in the Tribunal building, without leave of the Trial Chamber or Ms. Campbell.

Done at The Hague, The Netherlands, this 3rd day of August 2010.



Justice Richard Lussick



Justice Julia Sebutinde
Presiding Judge



Justice Teresa Doherty

[Seal of the Special Court for Sierra Leone]



²³ See only Article 16(4) of the Statute; Rules 7(A), 5(B), 76; Article 1(A), 2/ 10(A), 17(A) of the Code of Professional Conduct for Counsel with the Right of Audience before the Special Court for Sierra Leone; Article 6 of the Code of Ethics for Interpreters and Translators Employed by the Special Court for Sierra Leone; Paragraphs 7(d) of the Code of Conduct for Staff Members; Rule 301.1(q) of the Staff Rules and Regulations.