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SCSL-03-01-T
(29529-29540)

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THE SPECIAL COURT FOR SIERRA LEONE

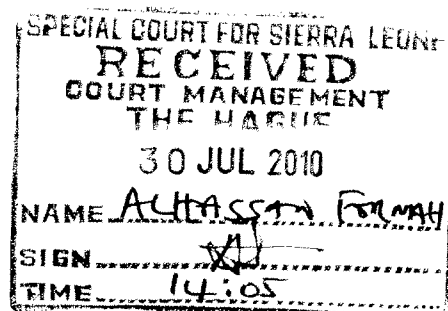
Trial Chamber II

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

Registrar: Ms. Binta Mansaray

Date: 30 July 2010

Case No.: SCSL-03-01-T



THE PROSECUTOR

—v—

CHARLES GHANKAY TAYLOR

PUBLIC, WITH CONFIDENTIAL ANNEX A

**DEFENCE MOTION FOR ADDITIONAL PROTECTIVE MEASURES
IN RELATION TO WITNESS DCT-192**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Nick Koumjian

Counsel for Charles G. Taylor:

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

I. INTRODUCTION

1. The Defence files this motion (“Motion”) pursuant to Rules 73, 75 and 79 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“Rules”) requesting additional protective measures in respect of the evidence of witness DCT-192. The requested additional protective measures are: image and voice distortion and private session whenever the particulars of the witness’ testimony would heighten the prospect of disclosing the witness’ identity.
2. The Defence has disclosed the identity of the witness to the Prosecution¹ but in order to protect the witness’ identity from the public, all identifying information is contained in the Confidential Annex A attached.
3. The witness has informed the Defence that he will not testify without the additional protective measures. The Defence submits that it is vital that the requested protective measures be granted so as to facilitate the attendance and participation of this witness at trial. Indeed this would uphold the Accused’s right to obtain the attendance and examination of witnesses on his behalf as is guaranteed by Article 17(4)(e) of the Statute of the Special Court of Sierra Leone (“Statute”).

II. BACKGROUND

4. Witness DCT-192 is subject to protective measures granted by this Trial Chamber on 27 May 2009.² DCT-192 is protected as “an insider witness who is closely associated with the warring factions during the conflicts in Sierra Leone and Liberia”.³ This witness has never waived his right to the previously granted protective measures which include the assignment of a pseudonym, delayed

¹ The name of DCT-192 was disclosed on 10 May 2010.

² *Prosecutor v. Taylor*, SCSL-03-01-T-782, Decision on Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials, 27 May 2009.

³ *Prosecutor v. Taylor*, SCSL-03-01-T-776, Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials, 6 May 2009.

disclosure of the witness' identity to the Prosecution, and non-disclosure of the witnesses' identity to the public.⁴

5. In regard to his anticipated testimony, DCT-192 has expressed significant security concerns and insists that he does not want his identity to be disclosed to the public. Thus the Defence request that the additional protective measures of image and voice distortion be applied throughout his testimony and that where necessary, the Court move in to private session.

III. APPLICABLE LAW & LEGAL BASIS

6. Article 17(2) and 16(4) of the Statute recognise the need for, and importance of, protective measures for victims and witnesses, and provides for the use of protective measures during proceedings.⁵
7. Rule 75(A) states that:

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.
8. Rule 75(B) gives the Trial Chamber the discretion to order that a witness may testify through image- or voice-altering devices or in closed session, in accordance with Rule 79.
9. Rule 79(A) gives the Trial Chamber discretion to exclude the press and the public from all or part of the proceedings in order to protect the privacy, security or non-disclosure of the identity of a witness.
10. Additionally, this Trial Chamber has set forth a clear test for granting protective measures to witnesses. The Trial Chamber has a duty to balance the protection of the witnesses with the rights of the Accused to a fair and public trial.⁶

⁴ *Prosecutor v. Taylor*, SCSL-03-01-T-782, Decision on Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials, 27 May 2009 ("**Defence Protective Measures Decision**").

⁵ *Prosecutor v. Norman et al.*, SCSL-04-14-T-194, Order for an Application by the Prosecution to Hold a Closed Session Hearing of Witnesses TF2-082 and TF2-032, 13 September 2004.

⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-427, Decision on Confidential Prosecution Motions SCSL-03-01-T-372 and SCSL-03-01-T-385 for the Testimonies of Witnesses to be Held in Closed Session, 26 February 2008, pg. 6. This Chamber has set forth a clear test: "...[I]n granting protective measures to witnesses and victims, the Trial Chamber has a duty to balance the protection of those victims and

Furthermore, in *Prosecutor v. Tadić*, the International Criminal Tribunal for the former Yugoslavia stated that a balancing test exists, weighing the defendant's ability to establish facts and the witness' interest in anonymity.⁷

11. An order permitting the testimony to be given with the requested protection would be an "appropriate measure" to "safeguard the privacy and security" of witness DCT-192. Such an order would also be "consistent with the rights of the accused" and would satisfy the Accused's right to "a fair hearing" as provided for in Article 17(2) of the Statute.
12. The Defence recognises that there is a preference for testimony to be given in open session. In fact, the Defence has gone to great lengths throughout its case to ensure that the testimony of defence witnesses is given in public as far as possible. However, in this instance, the Defence appreciates that this witness has unique and understandable security concerns that justify additional protective measures. The Defence submits that its request for face and voice distortion, with an occasional private session, are the least restrictive measures possible to protect the security of this witness and ensure his cooperation with the Court.

IV. APPLICATION AND SUBMISSION

Significance of the Evidence and Witness' Personal Concerns

13. In short, DCT-192 was a high-ranking member of ULIMO and LURD. He is prepared to give evidence in relation to the genesis and operation of these organizations as well as explain who supported the organizations financially and tactically. DCT-192 does not want to expose himself as an ex-combatant to his current employers. DCT-192 also fears reprisals from those governments and organizations implicated by his testimony.
14. In order to protect the identity of DCT-192 from the public, but in order to still provide the Trial Chamber and Prosecution with an explanation of the significance

witnesses with the rights of the Accused to a fair and public trial and that the extraordinary measure of closed session testimony will only be granted where it is clearly demonstrated (a) that there is a real and specific risk to the witness and/or his family, (b) that the right of the Accused to a fair and public trial is not violated, and (c) that no less restrictive measures can adequately deal with the witness's legitimate concerns."

⁷ *Prosecutor v. Tadić*, IT-94-1, Decision on the Prosecution's Motion Requesting Protective Measures for Victims and Witnesses, 10 August 1995, para. 55.

of this witness' evidence, as well as to specifically relay the subjective concern the witness has expressed, the Defence has included this explanation in the attached Confidential Annex A.

15. This Trial Chamber has previously relied on the ICTR case *Muvunyi*, where evidence in support of a protective measures decision included information on the general security situation, the background of the proposed witness, and how the safety situation impacted on the potential witnesses.⁸ Notably, the ICTY Trial Chamber in *Delalic* determined that the subjective fear of a witness is a "sufficient ground on which to base a decision in favour of the granting of protective measures".⁹ The Defence submits that DCT-192 has made clear his subjective concern that his safety, security, and welfare would be impacted if he testified openly, and that the Trial Chamber should grant the additional protective measures requested on his behalf.

General Security Situation

16. The Defence acknowledge that DCT-192 has not specifically been threatened in regard to his anticipated testimony, but during the AFRC Trial, this Trial Chamber established "that protective measures can be ordered on the basis of a current security situation even where the existence of threats or fears as regards specific witnesses has not been demonstrated."¹⁰ Instead, protective measures orders may be grounded in a showing of the existence of an objective risk to the security or welfare of the witness if it becomes publicly known that the witness testified.¹¹
17. The general security situation in which the witnesses are expected to testify is of understandable concern and has been previously found to justify the use of protective measures. In its Defence Protective Measures Decision, the Trial Chamber determined that the Defence had provided a sufficient objective basis

⁸ *Prosecutor v. Brima et al.*, SCSL-2004-16-T, Decision on the Joint Defence Application for Protective Measures for Defence Witnesses, 9 May 2006, relying on *Prosecutor v. Muvunyi*, ICTR-2000-55A-T, Decision on the Tharcisse Muvunyi's Motion for Protection of Defence Witnesses, 20 October 2005, para. 10.

⁹ *Prosecutor v. Delalic et al.*, IT-96-21, Decision on Confidential Motion for Protective Measures for Defence Witnesses, 25 September 1997, para. 10.

¹⁰ *Prosecutor v. Brima et al.*, SCSL-2004-16-T, Decision on Joint Defence Application for Protective Measures for Defence Witnesses, 9 May 2006, page 2.

¹¹ *Prosecutor v. Milutinović et al.*, IT-05-87-T, Decision on Lazarević Motion for Protective Measures for Witness SD3, 28 November 2007.

for protective measures for ex-combatant and insider witnesses, citing Defence evidence that ex-combatants are viewed with fear, suspicion and resentment and that reintegration can be difficult.¹² The uniquely vulnerable situation of insider witnesses has been amply noted in Special Court jurisprudence.¹³ Thus the subjective privacy and security concerns stated by DCT-192 can also be seen to have an objective basis.

Less Restrictive Measures Not Wholly Adequate

18. The Defence submits that during some portions of the witness' testimony, less-restrictive measures would be inadequate to ameliorate the threats to the security of DCT-192. If relayed in open session, the unique nature of the witnesses' positions or relationship with key personalities would disclose his identity to the public. Thus, during these portions of the testimony, the Defence requests permission to move into private session, leaving the bulk of the evidence to be heard openly, subject to the protection of image and voice distortion.
19. The Special Court for Sierra Leone has previously established that "the permissibility of closed session testimonies, as opposed to testimonies heard in public, is an extraordinary measure that will only be granted where it is shown that there is a real risk to the witness and/ or his family that their privacy or security will be threatened."¹⁴
20. The Defence is cognisant of the Trial Chamber's determination that a full and exhaustive exploration shall be given to the use of less-restrictive witness protection measures available under Rule 75(B)(i)(c) before a witness is allowed to testify in closed-session as a means of protecting the witness' testimony under Rule 79.¹⁵ However, this Trial Chamber has also established that where the unique nature of the positions held by a witness and the specific information a

¹² Defence Protective Measures Decision, para. 16.

¹³ See, ex. *Prosecutor v. Sesay, Kallon, and Gbao*, SCSL-04-15-T-180, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 05 July 2004, para. 33 and the subsequent order granting voice distortion during testimony of insider witnesses.

¹⁴ *Prosecutor v. Sesay et al.*, SCSL-04-15-T-577, Decision on Prosecution Motion for the Testimony of Witnesses TF1-367, TF1-369, and TF1-371 to be Held in Closed Session and for Other Relief for Witness TF1-369, 14 June 2006.

¹⁵ *Prosecutor v. Taylor*, SCSL-03-01-T-427, Decision on Confidential Prosecution Motions SCSL-03-01-T-372 and SCSL-03-01-T-385 for the Testimonies of Witnesses to be Held in Closed Session, 26 February 2008, p. 6.

witness possesses, as well as ongoing privacy and security concerns (both objective and subjective), may expose the witnesses to greater risk and are not addressed by less-restrictive measures, such as image and voice distortion, the witnesses should be allowed to testify, if necessary, in closed-session.¹⁶

V. CONCLUSION

21. In closing, the Defence respectfully requests that the Trial Chamber order that DCT-192 be granted the following additional protective measures while testifying at trial: image distortion, voice distortion and private session as necessary.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 30th day of July 2010
The Hague, The Netherlands

¹⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-427, Decision on Confidential Prosecution Motions SCSL-03-01-T-372 and SCSL-03-01-T-385 for the Testimonies of Witnesses to be Held in Closed Session, 26 February 2008, p. 6.

LIST OF AUTHORITIES

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Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T-427, Decision on Confidential Prosecution Motions SCSL-03-01-T-372 and SCSL-03-01-T-385 for the Testimonies of Witnesses to be Held in Closed Session, 26 February 2008

Prosecutor v. Taylor, SCSL-03-1-T-776, Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials, 6 May 2009.

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Prosecutor v. Norman et al., SCSL-04-14-T-194, Order for an Application by the Prosecution to Hold a Closed Session Hearing of Witnesses TF2-082 and TF2-032, 13 September 2004

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ICTY

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Prosecutor v Simic et al., IT-95-9, Decision on (1) application by Steven Todorovic to re-open the decision of 27 July 1999, (2) motion by ICRC to re-open scheduling order of 18 November 1999, and (3) conditions for access to material, 28 February 2002.

<http://sim.law.uu.nl/sim/caselaw/tribunalen.nsf/41bcf2c89e69d10bc12571b500329d64/6bc5c9eed152c177c12571fe004d3122?OpenDocument>



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Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the Confidential Case File.

Case Name: **The Prosecutor – v- Charles Ghankay Taylor**

Case Number: **SCSL-03-01-T**

Document Index Number: **1021**

Document Date: **30 July 2010**

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Number of Pages: **3** Numbers from: **29538-29540**

☐ Application

☐ Order

☐ Indictment

☐ Response

☐ **Motion**

☐ Correspondence

Document Title:

Public with confidential Annex A Defence motion for additional protective Measures in relation to witness DCT-192

Name of Officer:

Alhassan Fornah

Signed: