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SCSL-03-01-T
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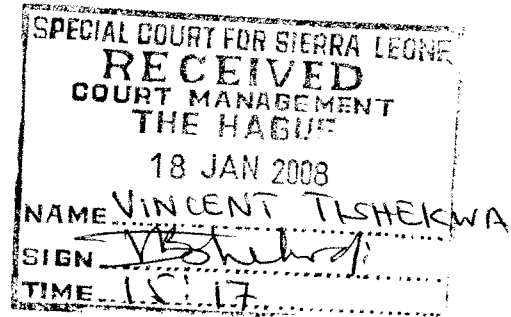
14441

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

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

Registrar: Mr. Herman von Hebel

Date filed: 18 January 2008



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

**PROSECUTION REPLY TO DEFENCE REPLY TO PROSECUTION MOTION FOR THE TESTIMONY OF
WITNESSES TF1-548, TF1-555 & TF1-561 TO BE HELD IN CLOSED SESSION**

Office of the Prosecutor:

Ms. Brenda J. Hollis

Ms. Kirsten Keith

Counsel for the Accused:

Mr. Courtenay Griffiths

Mr. Andrew Cayley

Mr. Terry Munyard

Mr. Morris Anyah

I. INTRODUCTION

1. The Prosecution files this Reply to the Defence Reply (*sic*) (“Response”) to the *Prosecution Motion for the testimony of Witnesses TF1-548, TF1-555 and TF1-561 to be Held in Closed Session*, dated 13 December 2007.¹
2. The Defence opposes the request for closed session testimony. They submit that:
 - (i) the measure requested is a modification to the trial stage of measures previously ordered by this Trial Chamber and an appeal of the existing measures;²
 - (ii) that the Prosecution has not demonstrated a substantial change in circumstances that would demonstrate that additional measures are required³; and
 - (iii) the request for closed session is extremely restrictive and, absent a demonstration of correlative risks of threat by the Prosecution, would not strike the proper balance between the right of the Accused to a fair and public hearing.⁴

II. SUBMISSIONS

Modification to the trial stage of measures previously ordered by this Trial Chamber

3. The Defence are mis-informed as to the nature of the existing protective measures governing these witnesses. As noted in the Prosecution Motion,⁵ Witnesses TF1-548, TF1-555 and TF1-561 are subject to protective measures previously ordered by this Chamber in January and March 2007. The protective measures ordered are the same set of protective measures that were ordered in the Trial Chamber’s First Protective

¹ *Prosecutor v Charles Taylor*, SCSL-03-01-389, “Defence Reply to Prosecution Motion for the Testimony of Witnesses TF1-548, TF1-555 & TF1-561 to be Held in Closed Session,” 14 January 2008 (“**Response**”).

² Response, paras. 1 and 9

³ Response, paras. 8 and 12

⁴ Response, para. 6

⁵ *Prosecutor v Charles Taylor*, SCSL-03-01-372, “Prosecution Motion for the Testimony of Witnesses TF1-548, TF1-555 & TF1-561 to be Held in Closed Session,” 13 December 2007 (“**Motion**”), para. 4.

Measures Decision, dated 5 May 2006.⁶ They are orders that were sought during the *pre-trial* stage to protect the witnesses' identities, notably during the disclosure process. Accordingly, such Orders were not intended to preclude additional protective measures required for the giving of testimony during the *trial* stage of proceedings.

4. The Prosecution, has consequently refrained from seeking protective measures for the trial stage until closer in time to the date of anticipated testimony. Doing so enables the Prosecution to assess the witnesses' current security situation and to establish whether protective measures specific to the giving of testimony are needed.
5. Accordingly, the request for closed session testimony is an *additional* protective measure that is sought in accordance with Rules 75 (B) (ii) and Rule 79 (A) (ii) of the Rules of Procedure and Evidence ("**Rules**") and is not a request to modify the existing protective measures.
6. The Defence also suggest that the Prosecution, by way of its Motion⁷, is appealing the decision of the Trial Chamber regarding protective measures for these witnesses. The Prosecution rejects this suggestion, reiterating that the request is for additional protective measures, pursuant to the provisions of the Rules. The Prosecution has not requested, and does not request, that any existing protective measures be modified or rescinded.

Substantial Change in Circumstances

7. The Defence state that there exists no substantial change in the circumstances that would justify reconsidering the protective measures previously granted by the Trial Chamber.
8. There is no requirement to show a substantial change in circumstances where the protective measures sought are *additional* and intended for use during testimony at trial

⁶ *Prosecutor v Charles 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.

⁷ Response, at para. 9

as opposed to those granted in the pre-trial stage of proceedings. With reference to the submissions above, the Defence have misconstrued the existing request as a *modification* of existing protective measures when the measures sought are specifically *additional* measures to be used during the giving of testimony.

- 9. The issue regarding a substantial change in circumstances was considered by the Trial Chamber in the RUF case.⁸ In that decision, the Trial Chamber considered the Prosecution’s motion that sought a *modification* of existing protective measures at the trial stage. The Trial Chamber found that there were no substantial changes in the security circumstances of the witnesses to justify any modification to the existing protective measures. However, in the same Decision, the Trial Chamber then considered the Prosecution’s request for *additional* protective measures for the same set of witnesses during testimony at trial, including the use of closed circuit television. The Prosecution’s Motion for *additional* protective measures was granted.

The Rights of the Accused

- 10. With respect to the rights of the Accused, Article 17 (2) of the Statute clearly states that the rights of the Accused to a fair and public hearing are subject to protective measures ordered by the Court. The pertinent issue is, thus, striking the correct balance between the rights of the Accused and the requirement to guarantee the protection of victims and witnesses.
- 11. The Prosecution submits that, consistent with the jurisprudence of the Special Court for Sierra Leone, closed session testimony does not prejudice the Accused’s rights:

“[...] the right of the accused to a fair and public hearing, having regard to the provisions of Article 17 (2), will not be prejudiced by permitting the witness to testify in closed session.[...]”⁹

⁸ *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-180, “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses”, 5 July 2004 at paras. 19-21

⁹ *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-277, Order to Hear the Evidence of Witness TF1-235 in Closed Session”, 8 November 2004, at para. 15. In that case, the Prosecution maintained that the testimony in itself would reveal the identity of the witness and the Chamber held it was satisfied that unless the witness testified in closed session, there was a real risk the witness’s privacy will be threatened and his identity revealed.

The protective measures sought apply only to the public; they do not preclude the Accused from seeing and observing the demeanour of witnesses, nor do they prevent the witnesses from being cross examined. Consequently, they will not infringe on the rights of the Accused.¹⁰

12. The Rules that govern the protection of witnesses are prospective in their application so as to ensure the protection of witnesses. The Prosecution underlines that simply because some witnesses conclude they will give testimony openly does not negate the existence of a real and substantial threat to those witnesses, and certainly does not negate the existence of a real and substantial threat to other witnesses who determine they are unable to testify in open session. In the current proceedings, the family of one witness who gave testimony in open session had their house stoned, as detailed in Annex A. These facts underscore the nature and extent of the real and significant risks facing Prosecution witnesses in this case.
13. Unlike other cases, the witnesses being called to testify are predominantly linkage or “insider” witnesses. Accordingly, they face even greater security risks from persons loyal to the Accused, the AFRC/RUF and the NPFL. Further, this is a high profile case receiving considerable media attention, with the trial proceedings being broadcast all over the world via the internet and television. Such wide dissemination of the content of witnesses testimony further increases the vulnerability of witnesses and the security risks they and their families face.
14. The Defence contend that an order for closed session is extremely restrictive and “absent a demonstration of correlative risks of threat on the part of the Prosecution”, would not “strike a proper balance with the right of the Accused to a fair and public hearing.”¹¹

¹⁰ *Prosecutor v Sesay, Kallon, Gbao*, SCSL-04-15-T-180, “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses”, 5 July 2004 at para. 31 referring to a Prosecution request for closed circuit television for child witnesses.

¹¹ Response, para. 6.

15. The Defence relies on the RUF Protective Measures decision dated 14 June 2006¹² in reference to the term “demonstration of correlative risks of threat.” However a review of this Decision indicates that the Defence has misconstrued the standard applied by the Trial Chamber in granting closed session testimony. There is no reference to a “correlative risk of threat” in the Decision; rather the standard applied is that closed session testimonies will only be granted where “there is a real risk to the witness and / or his family that their privacy or security will be threatened.”¹³
16. In the same RUF decision, the Trial Chamber was “mindful [...] that insider witnesses and their families were particularly vulnerable to acts of retaliation and potential harm if their identities were to be known to the public” and the Trial Chamber, satisfied that it was in the interests of justice, ordered that the testimonies of three witnesses be heard entirely in closed session.¹⁴
17. The Prosecution has demonstrated that there is a real risk to these witnesses and their families. In its Motion, the Prosecution provided information regarding both the objective and subjective threats facing these witnesses, including details of those threats that were annexed to a previous motion regarding attempts to identify and interfere with persons perceived to be Prosecution witnesses.¹⁵
18. Finally, in their submissions, the Defence rely upon the Dissenting Opinion by Hon. Justice Bankole Thompson in the CDF case. The Dissenting Judge predicated his judgement on the Prosecution mounting their application based on Rule 79 (A) (iii) which he refers to as “protecting the interests of justice from prejudicial publicity.” This is an entirely different basis for seeking protective measures than that in the instant case,

¹² *Prosecutor v Sesay, Kallon, Gbao*, 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, p.5

¹³ *Ibid.*

¹⁴ *Ibid.* pp. 4-5

¹⁵ See para. 8 of the Motion which referred the Trial Chamber to the threats detailed in *Prosecutor v. Taylor*, SCSL-03-01-T-356, “Confidential Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure”, 6 November 2007, paras. 8-13 and Annex B and *Prosecutor v. Taylor*, SCSL-03-01-T-360, “Defence Response to Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure”, 16 November 2007, Annex A.

which is based on the protection of the privacy and security of the Witnesses and their families.


19. The Prosecution further reiterates the details of the general security situation specified in its Motion at paragraphs 7-8 and again draws the Trial Chamber's attention to the specific factors regarding each witness that are detailed in the Motion in paragraphs 9-13. As noted above, the additional protective measures are necessary on the basis that the proceedings have moved from the pre-trial stage to the trial stage. Consequently, whereas the witnesses' were previously protected by the ordered protective measures such as the use of pseudonym and delayed disclosure, such measures do not provide adequate protection during the giving of testimony. The witnesses, therefore, now face a real risk to their privacy and security if the content of their testimony is revealed.

III. CONCLUSION

20. Accordingly, for the reasons given above, the submissions made by Defence are without merit and the Motion by the Prosecution for closed session for Witnesses TF1-548, TF1-555 & TF1-561 should be ordered pursuant to Rules 75 (B) (ii) and 79.

Filed in The Hague,
18 January 2008

For the Prosecution,



Brenda J. Hollis
Senior Trial Attorney

LIST OF AUTHORITIES

SCSL Cases

Prosecutor v. Taylor, Case No. SCSL-03-01-T

Prosecutor v Charles Taylor, SCSL-03-01-389, “Defence Reply to Prosecution motion for the Testimony of Witnesses TF1-548, TF1-555 & TF1-561 to be Held in Closed Session,” 14 January 2008

Prosecutor v Charles Taylor, SCSL-03-01-372, “Prosecution Motion for the Testimony of Witnesses TF1-548, TF1-555 & TF1-561 to be Held in Closed Session,” 13 December 2007

Prosecutor v Charles Taylor, SCSL-03-01-372, “Prosecution motion for the Testimony of Witnesses TF1-548, TF1-555 & Tf1-561 to be Held in Closed Session”, 13 December 2007

Prosecutor v. Taylor, SCSL-03-01-T-356, “Confidential Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure”, 6 November 2007

Prosecutor v. Taylor, SCSL-03-01-T-360, “Defence Response to Urgent Prosecution Motion for Immediate Protective Measures for Witnesses and for Non-Public Disclosure”, 16 November 2007, Annex A.

Prosecutor v Charles 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.

Prosecutor v Sesay, Kallon, Gbao, SCSL-04-15-T

Prosecutor v Sesay, Kallon, Gbao, 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.

Prosecutor v Sesay, Kallon, Gbao, SCSL-04-15-T-277, Order to Hear the Evidence of Witness TF1-235 in Closed Session”, 8 November 2004

Prosecutor v Sesay, Kallon, Gbao, SCSL-04-15-T-180, “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses”, 5 July 2004

Annex A

Article in the New Democrat, published on 17 January 2008 in Liberia, detailing the threats made against the family of Prosecution Witness TF1-406 and the stoning of their family home.



Witness' Family "Besieged"

For Testifying Against Taylor

Several family members of prosecution witness Varmuyan Sheriff, who has completed his testimony against former President Charles Taylor, say their Free Way home has

Varmuyan Sheriff's home in Monrovia



been stored by unknown individuals, and that threats continue to be made against them in retaliation for the testimony. Family members of the witness

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**Roberts International Airport
Expression of Interest (EOI)**

Management of the Roberts International Airport is seeking Expression of Interest from suitable Firms/Organizations to handle its advertising services or serve as Advertising consultant.

It wishes to shortlist qualified Firms/Organizations that can provide the above services in line with acceptable standards, quality and market value.

In order to qualify as a potential Firm/Company, interested parties should submit their expression of interest, as well as the following documents:

- A Brief presentation of the company including financial details
- Business registration document and recent tax clearance
- A reference list of similar works done over the past years with names, addresses and contact numbers
- Curriculum Vitae of key personnel

Expression of Interest and accompanying documents must be signed and made in three copies placed in an envelope marked "CONFIDENTIAL" EXPRESSION OF INTEREST FOR ADVERTISEMENT AT RIA addressed to:

Enoch Bestman
Top Manager/Administration
Roberts International Airport
06-5 16-251
all robertsinternationalairport2003@yahoo.com

Deadline for submission is February 8, 2008 12 noon.


Management

Sheriff's Family "Besieged"

mostly women and children, were seen sitting around the house helpless with no knowledge as to what steps to take.

Family members said since the testimony started last week, "they (the anonymous callers) call us every night and threaten to attack us and burn our brother's house down."

A brother of Varmuyan Sheriff, Dauda Sheriff, left in charge of the house, said they do not sleep at night.

dence last night, the only girl left in the house to cook for the boys was seen running through the back door thinking that her perceived attackers had entered the house.

The source of the stone throwing and attacks is not known, but Mr. Sheriff, in his testimony this week, said Mr. Roland Duo and other members of the erstwhile National Patriotic Fronts had threatened him before to dissuade from testifying. He said Mr Duo, who he said



"We keep guard the whole night. We change shifts. We are expecting them any time."

"When they (unknown callers) are passing by our house in the night they can say be expecting us anytime because your brother has gone and lied on the former president even though all of these things were true.

He said Sheriff left his sim card with them before leaving the country, thus enabling those familiar to him to have access to the number and issue threats.

"Since Varmuyan has given testimony in The Hague, they say they will get rid of us in the area.

"We want government to come to our rescue. They should give us security or they relocate us, since they say they will kill somebody amongst us before they will be satisfied, too" Dauda said.

When the New Democrat visited the resi-

was also a commander in Foya, Lofa County, told him and others that the Sierra Leone would jail them.

Mr Sheriff: "From 2004, and when I was being interviewed by the Special Court, I told them I fear for my life and my family. Until 2007, when my family was threatened by Roland Duo and NPFL supporters, and that if I was going to testify, they needed to get me out of there first..."

"Roland Duo was headquartered in Foya; he also operated in Buchanan (Grand Bassa County) and Monrovia. The commander of the Marine Division was Fassu. In 2001-2002 the marine division was operating in Voinjama. It had a mandate to operate inside and outside, to attack Guinea and defend Voinjama..."

- A. Abbas Dulleh