

S27)

SCSL-03-01-T
(17330 - 17335)

17330



THE SPECIAL COURT FOR SIERRA LEONE

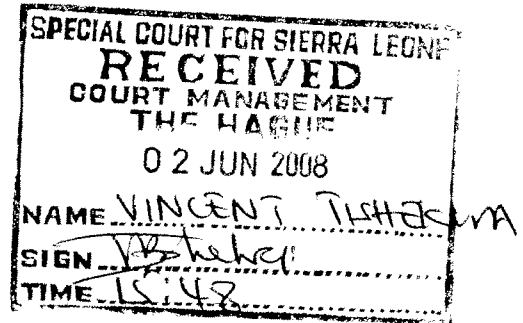
In Trial Chamber II

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

Registrar: Mr. Herman von Hebel

Date: 2 June 2008

Case No.: SCSL-2003-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**DEFENCE REPLY TO PROSECUTION RESPONSE TO DEFENCE MOTION
PURSUANT TO RULE 75(G) TO RESCIND
CLOSED SESSION PROTECTIVE MEASURES GRANTED ORALLY
IN OTHER PROCEEDINGS FOR WITNESS TF1-366**

Office of the Prosecutor

Ms. Brenda J. Hollis

Ms. Leigh Lawrie

Counsel for Charles G. Taylor

Mr. Courtenay Griffiths Q.C.

Mr. Terry Munyard

Mr. Andrew Cayley

Mr. Morris Anyah

I. Introduction and Procedural History

1. The Defence files this Reply to the *Prosecution Response to the Defence Motion Pursuant to Rule 75(G) to Rescind Closed Session Protective Measures Granted Orally in Other Proceedings for Witness TF1-366* of 26 May 2008.¹ The initial Defence Motion² requested that Trial Chamber II, pursuant to Rule 75 of the Rules of Procedure and Evidence (“Rules”), rescind the closed session protective measures orally granted to witness TF1-366 (“the witness”) in a prior proceeding more than two and a half years ago, on the grounds that the Prosecution had not met the standard set forth in the three-prong test adopted by this Trial Chamber when evaluating whether the extraordinary measure of closed session testimony should be used for a witness.
2. The Defence welcomes the Prosecution’s request to rescind protective measures to allow witness TF1-366 to testify in open session (i.e., without the use of a screen, a pseudonym, or closed session).³ However, the Defence does not see any reason why all non-public materials relating to the witness should not also become part of the public record, as they will presumably form the basis of, or be significantly related to, the witness’ public testimony.
3. The Defence notes that at the time of filing its Motion, the Defence did not have the benefit of the 23 May 2008 Appeals Chamber Decision.⁴ However, despite the now clarified standard for the rescission of protective measures at the Special Court as specified therein (namely, that the moving party must show by a preponderance of the probabilities

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-518, Prosecution Response to the Defence Motion Pursuant to Rule 75(G) to Rescind Closed Session Protective Measures Granted Orally in Other Proceedings for Witness TF1-366, 26 May 2008 (“Response”).

² *Prosecutor v. Taylor*, SCSL-03-01-T-507, Prosecution Response to the Defence Motion Pursuant to Rule 75(G) to Rescind Closed Session Protective Measures Granted Orally in Other Proceedings for Witness TF1-366, 16 May 2008 (“Motion”).

³ Response, para. 9.

⁴ *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-1146, Decision on Prosecution Appeal of Decision on the Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses, 23 May 2008 (“Appeals Chamber Decision”).

that the witness is no longer in need of such protection),⁵ the Defence stands by the logic of its initial request.

4. The Defence sees no need to file this Reply confidentially, as the provisions of Rule 75(J)⁶ do not require the fact that a witness called TF1-366 testified in the RUF trial and that the same witness will testify again in the Taylor trial, to be kept a secret.
5. The Defence appreciates that while TF1-366 is no longer listed as one of the immediately upcoming witnesses, it appears that the Prosecution still intends to call the witness to give evidence later in the trial.⁷ Thus, the Motion is still timely.⁸

II. Submissions

6. The Defence still does not know the specific basis upon which closed session protective measures were granted to witness TF1-366, other than information contained in an arguably vague pronouncement by Trial Chamber I on 7 November 2005, wherein it stated:

“This exceptional procedure [closed session] is required for this witness primarily because, as submitted by the Prosecution, if the whole of the witness’s testimony is given in public, his identity will thereby be disclosed with the possibility of his personal security and that of his family be jeopardised. The Trial Chamber therefore holds that if the whole of this witness’s testimony is given in public it would reveal his identity, thereby putting his personal security and that of his family at grave risk. The application, as already indicated, is granted.”⁹

7. Yet the Appeals Chamber Decision requires the Defence, as the requesting party, to present supporting evidence capable of establishing on a preponderance of the probabilities that the witness is no longer in need of such protection.¹⁰ If the only security information that the Defence has in regard to TF1-366 is the general risk assessment contained in this

⁵ Appeals Chamber Decision, para. 37.

⁶ See Response, para. 3.

⁷ Response, para. 6.

⁸ Motion, para. 1.

⁹ *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-4-15-T, Trial Transcript, Open Session, 7 November 2005, pg. 68, ln. 24 – pg. 69, ln. 4.

¹⁰ Response, para. 7; Appeals Chamber Decision, para. 37.

pronouncement, then the Defence is not in a position to posit anything other than a general rebuttal regarding the obviously improved security situation in Sierra Leone since November 2005 in support of its request for rescission.

8. For instance, Sierra Leone has undergone a peaceful democratic transition, resulting in the installation of an opposition party. All UNAMSIL peacekeepers have left the country and the resulting UNIOSIL peace-building mission is slated to draw down completely in September, leaving only a political mission. A recent UNIOSIL security statement indicates that ex-combatants as a whole do not pose a threat to the upcoming local government elections.¹¹ These are all signs that the security and stability of the country are improving, and that domestically, the capacity of the rule of law in Sierra Leone is more capable of protecting its citizens, including those coming to testify in the Taylor trial who might fear retaliation.
9. The Defence submits that the extended length of time that has passed since the initial grant of protective measures and the overall improved stability and security of the country is sufficient to establish by a preponderance of probabilities that witness TF1-366 is no longer in need of protection. Whilst the Defence does not know what risks were allegedly faced by TF1-366 previously, the Defence is not aware of the existence of any current, real, and specific risk to witness TF1-366 and/or his family.
10. Given this, and given that witness TF1-366 has apparently made a personal decision to testify in open court,¹² the Defence sees no legitimate reason to continue the restriction that all non-public materials related to the witness, such as witness statements, remain confidential. The Defence can only assume that the Prosecution make this request solely to keep the substance of TF1-366's witness statements away from pre-testimony investigative scrutiny. This should not be permissible.

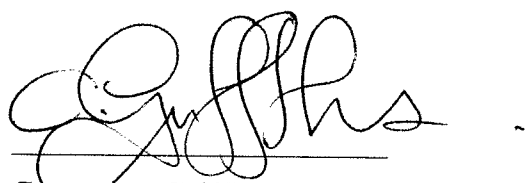
¹¹ Confidential Annex A.

¹² Response, para. 9.

III. Conclusion

11. Consequently, the Defence requests that the Trial Chamber rescind all protective measures previously granted to witness TF1-366, such that he testifies openly and all related non-public documents lose their confidential status.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 2nd Day of June 2008
The Hague, The Netherlands.

Table of Authorities

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T-507, Prosecution Response to the Defence Motion Pursuant to Rule 75(G) to Rescind Closed Session Protective Measures Granted Orally in Other Proceedings for Witness TF1-366, 16 May 2008

Prosecutor v. Taylor, SCSL-03-01-T-518, Prosecution Response to the Defence Motion Pursuant to Rule 75(G) to Rescind Closed Session Protective Measures Granted Orally in Other Proceedings for Witness TF1-366, 26 May 2008

Prosecutor v. Sesay, Kallon, Gbao

Prosecutor v. Sesay, Kallon, Gbao, SCSL-4-15-T, Trial Transcript, Open Session, 7 November 2005

Prosecutor v. Sesay, Kallon, Gbao, SCSL-04-15-T-1146, Decision on Prosecution Appeal of Decision on the Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses, 23 May 2008