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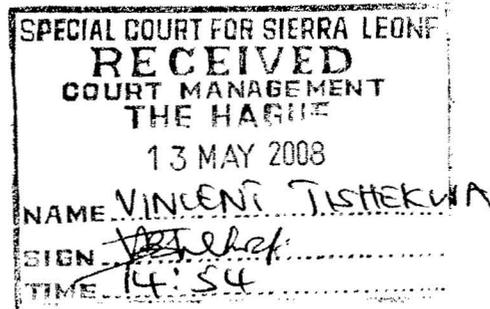
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**SPECIAL COURT FOR SIERRA LEONE**  
**OFFICE OF THE PROSECUTOR**  
Freetown – Sierra Leone

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

Registrar: Mr. Herman von Hebel

Date filed: 13 May 2008



**THE PROSECUTOR**

**Against**

**Charles Ghankay Taylor**

Case No. SCSL-03-01-T

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***PUBLIC***

**PROSECUTION REPLY TO DEFENCE RESPONSE TO URGENT PROSECUTION APPLICATION FOR  
LEAVE TO APPEAL ORAL DECISIONS REGARDING ALLOWING QUESTIONS CONCERNING THE  
LOCATION OF THE FAMILY OF A WITNESS AND FAILING TO ORDER REDACTION OF THE  
LOCATIONS**

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Office of the Prosecutor:

Ms. Brenda J. Hollis  
Ms. Julia Baly  
Ms. Kirsten Keith

Counsel for the Accused:

Mr. Courtenay Griffiths  
Mr. Terry Munyard  
Mr. Andrew Cayley  
Mr. Morris Anyah

## I. INTRODUCTION

1. The Prosecution files this Reply to the Defence "*Response To Urgent Prosecution Application For Leave To Appeal Oral Decisions Regarding Allowing Questions Concerning The Location Of The Family Of A Witness And Failing To Order Redaction Of The Locations*", dated 8 May 2008.<sup>1</sup>
2. The Response is without merit for the reasons considered below.

## II. ARGUMENT

### Applicable test

3. The Defence propound the incorrect test used to grant leave of appeal. The test is not, as the Defence suggests,<sup>2</sup> whether the decision would result in a "grossly unfair outcome" or a "flagrant injustice." Nor is the test for leave to appeal whether the issue on appeal is without merit.<sup>3</sup> Rather the test for leave to appeal, as clearly articulated in Rule 73 (B), is exceptional circumstances and irreparable prejudice. The test that the Defence seek to rely on concerns the standard of review required for appeal against findings of fact made by the Trial Chamber on trial judgement. In the instant case, this Trial Chamber has made no findings of fact that the Prosecution seeks leave to appeal. The submissions by the Defence on this point are therefore of no assistance to the Trial Chamber.

### Misstatement of Arguments

4. The Defence misstate the argument of the Prosecution by limiting the issue to one of discretion.<sup>4</sup> The Prosecution's argument is essentially three pronged. First it concerns the exercise of discretion regarding questions asked on cross-examination. Second it concerns the erroneous decision of the Trial Chamber in denying the redaction of the

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<sup>1</sup> *Prosecutor v Taylor*, SCSL-03-01-T-499, "Response To Urgent Prosecution Application For Leave To Appeal Oral Decisions Regarding Allowing Questions Concerning The Location Of The Family Of A Witness And Failing To Order Redaction Of The Locations", dated 8 May 2008

<sup>2</sup> Response, para. 13

<sup>3</sup> Response, para. 8

<sup>4</sup> Response, para. 11 and 12.

locations of TF1-334's family members on a basis contrary to the evidence before it. Third, the Trial Chamber further erred in not considering the extent of their obligations towards witnesses and victims under the Statute of the Special Court for Sierra Leone ("Court") and the Rules of Procedure and Evidence ("Rules"). While Rule 75 (A) is discretionary in nature, the obligation towards victims and witnesses under the Statute, as recognised by this Trial Chamber, is mandatory;<sup>5</sup> Trial Chambers have an obligation to guarantee the utmost protection and respect for the rights of victims and witnesses. This obligation concerns not only the security of witnesses and victims but also their privacy.

#### Exceptional Circumstances

5. The assertion that the disputed issue does not involve a point of law is misconstrued.<sup>6</sup> The exceptional circumstance being addressed is whether the questions raise serious issues of fundamental legal importance to the Court. The issues raised by the Application are of fundamental legal importance to the Court, namely: the relevance of information that infringes on the privacy and security of a witness and their family, including their current locations, and the extent of the Trial Chamber's obligation to take affirmative steps to protect victims and witnesses. The issues raised are on points of law. In any event, there is no requirement in the Rules that leave to appeal be limited only to points of law. Thus the Defence assertion is misdirected.
6. Moreover, contrary to the Defence's position, the issues raised are ones of general principle for which there is little jurisprudence. The matter being raised here is the extent to which a witness who testifies in open session may be forced to reveal the whereabouts of his family, and to reveal this information in open court, and the extent to which this

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<sup>5</sup> *Prosecutor v Brima et al*, SCSL-04-16-T-488, "Decision on Joint Application for Protective Measures for Witnesses", 9 May 2006, p.2 stating that the Trial Chamber is obligated under Articles 16 and 17 of the Statute and Rule 75 of the Rules to "take all appropriate protective measures to safeguard their privacy and protection." See also *Prosecutor v Norman et al*, SCSL-04-14-T-237, "Order on an Application by the Prosecution to hold Closed Session Hearing of Witness TF2-223", 27 October 2004 where the Trial Chamber found that when Rules 75 and 79, both of which are discretionary in nature, were read together and in conformity with Article 17(2) of the Statute, "Rule 79 must be understood to reflect the affirmative obligation of the Court to afford protection to victims and witnesses where their privacy or security may be threatened." Thus Trial Chamber I found there to be an affirmative obligation notwithstanding the fact that Rule 79 is discretionary. Such findings by both Trial Chambers are consistent with the spirit of the Statute which recognises the need to protect witnesses.

<sup>6</sup> Response, para. 15.

information can be maintained on the public record of the witness' testimony. This matter is an issue which is of fundamental legal importance to the Court and is an issue that will likely confront the Trial Chamber again.

7. As conceded by the Defence, the fact that the witness testified in open session, having relinquished the protective measures in place, does not mean that the witness waived his rights to the protection of his privacy and that of his family.<sup>7</sup> The Trial Chamber still has an obligation under the Statute and Rules to ensure that proceedings are conducted with due regard for the protection of the security and privacy of witnesses. The Defence suggest that as the witness testified openly, the identity of the witness' relatives was, by reasonable extension, public knowledge. There is no basis for this proposition and it is a misconstruction of the ruling by the Trial Chamber, which did not refer to the identity of family members being public knowledge. Because a witness testifies openly, it does not mean that the identity and location of that witness' family member(s) should be exposed to the public. Due regard must still be given to the privacy of witnesses and their families and such information should not be adduced unless it is clearly relevant. Where the evidence is determined to be relevant, the evidence should be adduced only in private or closed session, or via other means such as writing the information on a piece of paper which is then filed confidentially. In the instant case, the Defence failed to show how such information was relevant to the issue of credit. Nor was there any indication why such information, if relevant, could not have been elicited in private or closed session or in another manner that protects the privacy and security of the witness and his family.
8. The Prosecution has not argued that the discretion to take measures to minimise the risk of compromising the privacy and security of a witnesses translates to a peremptory norm. This is a misconstruction of the Prosecution's position. Rather the issue concerns the extent to which the Trial Chamber's discretion vis-à-vis questions of cross examination and implementation of protective measures is tempered by their obligation, as prescribed by Statute and the Rules, to ensure the protection of witnesses. Although Rule 75 (A) is discretionary, Rule 75 (C) mandates the Trial Chamber to control the manner of questioning to avoid any harassment or intimidation.

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<sup>7</sup> Response para. 23

### Irreparable Prejudice

9. In order to establish irreparable prejudice there is no requirement, as the Defence seems to suggest, that such prejudice actually occur. The standard, as adopted by this Trial Chamber, is “may be capable of irreparable prejudice”<sup>9</sup> whereas Trial Chamber I refers to the “likelihood of irreparable prejudice.”<sup>10</sup> The expression “irreparable prejudice” refers to prejudice that “may not be remediable by appropriate means within the final disposition of trial.”<sup>11</sup> Thus, the likelihood that future witnesses may be deterred from testifying is sufficient to constitute irreparable prejudice as the Prosecution would be unable to call the witnesses and present its best evidence.
10. The Prosecution arguments do not overlook the fact that the witness testified openly. However, in doing so, the witness did not waive his right to have his and his family’s privacy and security respected, including protecting the location of his family. If such information is deemed relevant there are numerous steps that can be taken, including private or closed session, to ensure the witness’ privacy and security are still maintained and respected.
11. The Defence misstate the Prosecution argument regarding the curtailment of cross-examination. The Prosecution did not argue that cross-examination should be curtailed on the basis of witness’ security and privacy. Rather the Prosecution objected to the line of cross-examination on the basis of relevance. Having found the evidence to be relevant, the Prosecution further argued in its Application that the Trial Chamber erred by failing to direct that the evidence be given in closed or private session and erred in denying the application for redaction of the public record.

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<sup>9</sup> *Prosecutor v Brima et al*, SCSL-04-16-T-414, “Decision on Prosecution leave to Appeal Decision on Oral Application for Witness TF1-150 to testify without being Compelled to Answer Questions on Grounds of Confidentiality”, 12 October 2005.

<sup>10</sup> *Prosecutor v Sesay et al*, SCSL-04-15-T, “Decision On Prosecution’s Application For Leave To Appeal Majority Decision Regarding The Objection To The Admissibility Of Portions Of The Evidence Of Witness TF1-371”, 15 October 2007.

<sup>11</sup> *Prosecutor v Sesay et al*, SCSL-04-15-T-793, “Decision on Defence Application for Leave to Appeal 2<sup>nd</sup> March 2007 Decision”, 4 June 2007, para. 23. See too: 14, “Decision on Sesay Defence Application for Leave to Appeal Decision on Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure”, 28 February 2007, para. 11.

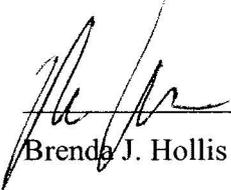
**VI. CONCLUSION**

30. For the reasons given above, the Response is without merit. Accordingly the Prosecution respectfully requests the Trial Chamber to urgently grant the Application for Leave to Appeal and to issue the requested interim measures.

Filed in The Hague,

13 May 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 Taylor*, SCSL-03-01-T-499, “Response To Urgent Prosecution Application For Leave To Appeal Oral Decisions Regarding Allowing Questions Concerning The Location Of The Family Of A Witness And Failing To Order Redaction Of The Locations”, 8 May 2008

***Prosecutor v Brima et al, SCSL-04-16-T***

*Prosecutor v Brima et al*, SCSL-04-16-T-414, “Decision on Prosecution leave to Appeal Decision on Oral Application for Witness TF1-150 to testify without being Compelled to Answer Questions on Grounds of Confidentiality”, 12 October 2005

*Prosecutor v Brima et al*, SCSL-04-16-T-488, “Decision on Joint Application for Protective Measures for Witnesses”, 9 May 2006

***Prosecutor v. Norman, Fofana and Kondewa, SCSL-04-14-T***

*Prosecutor v Norman et al*, SCSL-04-14-T-237, “Order on an Application by the Prosecution to hold Closed Session Hearing of Witness TF2-223”, 27 October 2004

***Prosecutor v. Sesay, Kallon and Gbao, SCSL-04-15-T***

*Prosecutor v Sesay et al*, SCSL-04-15-T-793, “Decision on Defence Application for Leave to Appeal 2<sup>nd</sup> March 2007 Decision”, 4 June 2007, para. 23. See too: 14, “Decision on Sesay Defence Application for Leave to Appeal Decision on Motion for Immediate Protective Measures for Witnesses and Victims and for Non-Public Disclosure”, 28 February 2007

*Prosecutor v Sesay et al*, SCSL-04-15-T, “Decision On Prosecution’s Application For Leave To Appeal Majority Decision Regarding The Objection To The Admissibility Of Portions Of The Evidence Of Witness TF1-371”, 15 October 2007