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SCSL-03-01-T
(27111-27116)

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**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR**

TRIAL CHAMBER II

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

Acting Registrar: Ms. Binta Mansaray

Date filed: 8 February 2010

SPECIAL COURT FOR SIERRA LEONE	
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THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

**PROSECUTION MOTION FOR ORDERS CONCERNING THE CONFIDENTIALITY OF THE DEFENCE
EXPERT WITNESS LIST**

Office of the Prosecutor:

Ms. Brenda J. Hollis
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Ms. Nina Jørgensen

Counsel for the Accused:

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

I. INTRODUCTION

1. The Prosecution files this Motion for a direction to the Defence to comply with the Trial Chamber's orders concerning protective measures for witnesses by filing publicly the names of unprotected expert witnesses. Further, the Prosecution applies for the reinstatement into the public transcript of redactions made and a private session held during proceedings on 2 December 2009.

II. BACKGROUND

2. On 27 May 2009, the Trial Chamber rendered its "Decision on Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials" ("**Protective Measures Decision**").¹ In this decision, the Trial Chamber granted protective measures to two specific categories of Defence witness, namely insiders or ex-combatants, and former or current political or other high-ranking officials.
3. The Defence proceeded to file its first Rule 73ter witness list on 29 May 2009² containing a public Annex C listing two proposed expert witnesses by DCT number only.
4. On 12 June 2009, the Defence filed its second Rule 73ter witness list³ in which the names of the two proposed expert witnesses were provided in a confidential Annex B.
5. At the Pre-Defence Conference on 6 July 2009, the Presiding Judge pointed out as a matter for the Defence to consider that the order for protective measures had been made in regard to two categories of witness, while pseudonyms had been given by the Defence to eight witnesses who did not appear to fall within either of those categories.⁴

¹ *Prosecutor v. Taylor*, SCSL-03-1-T-782, "Decision on Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials", 27 May 2009, ("**Protective Measures Decision**").

² *Prosecutor v. Taylor*, SCSL-2003-01-T-784, Public with Annexes A, B, C & Confidential Ex Parte Annex D, "Defence Rule 73ter Filing of Witness Summaries with a Summary of the Anticipated Testimony of the Accused, Charles Ghankay Taylor", 29 May 2009.

³ *Prosecutor v. Taylor*, SCSL-2003-01-T-793, Public with Annex A and Confidential Annex B, "Updated and Corrected Defence Rule 73ter Filing of Witness Summaries", 12 June 2009.

⁴ Transcript, 6 July 2009, 24282, referring to DCT-004, 119, 121, 145, 204, 216, 225 and 176.

6. On 10 July 2009, the Defence filed its third Rule 73ter witness list⁵ in which the names of the original two proposed expert witnesses plus the name of one additional expert witness were provided in a confidential Annex B (“**Third Witness List with Confidential Annex B**”). In response to the Presiding Judge’s query of 6 July 2009, the Defence dropped the eight mentioned witnesses from its witness list until such time as the consent of the witnesses to have their names publicly disclosed was secured or the necessary motion for protective measures was filed.⁶
7. In public proceedings on 2 December 2009, Prosecution Counsel mentioned the name of one Defence expert witness, understanding that no protective measure granted by the Trial Chamber applied to the witness. The name was subsequently redacted from the public record on the basis that the name was provided confidentially in the Third Witness List with Confidential Annex B.⁷ Later in the proceedings, Prosecution Counsel requested a private session in order to make an application to lift the confidentiality of the Confidential Annex B attached to the Third Witness List and to restore the redacted and private session portions of the transcript into the public record on the basis that there was no justification for the confidential filing of the names of the proposed expert witnesses by the Defence.⁸ The Trial Chamber invited the Prosecution to file a formal motion on this matter.⁹
8. On 11 December 2009, the Defence filed a motion to vary the third version of its witness list in which no changes were requested in relation to the three proposed expert witnesses.¹⁰ The Trial Chamber rendered its decision on the motion on 22 January 2009.¹¹

⁵ *Prosecutor v. Taylor*, SCSL-2003-01-T-809, Public with Annex A and Confidential Annex B, “Updated and Corrected Defence Rule 73ter Filing of Witness Summaries – Version Three”, 10 July 2009.

⁶ *Prosecutor v. Taylor*, SCSL-2003-01-T-809, Public with Annex A and Confidential Annex B, “Updated and Corrected Defence Rule 73ter Filing of Witness Summaries – Version Three”, 10 July 2009, para. 2(i).

⁷ Transcript, 2 December 2009, 32853-32855.

⁸ Transcript, 2 December 2009, 32938.

⁹ Transcript, 2 December 2009, 32940.

¹⁰ *Prosecutor v. Taylor*, SCSL-2003-01-T-869, Public with Annexes A and B and Confidential Annex C, “Defence Motion for Leave to Vary Version III of the Defence Rule 73ter Witness List and Summaries”, 11 December 2009.

¹¹ *Prosecutor v. Taylor*, SCSL-2003-01-T-885, “Decision on Defence Motion for Leave to Vary Version III of the Defence Rule 73ter Witness List and Summaries”, 22 January 2009.

9. On 29 January 2010, the Defence filed its fourth Rule 73ter witness list in which the names of the three proposed expert witnesses remained confidentially filed in Annex B (“**Fourth Witness List with Confidential Annex B**”).¹²

III. ARGUMENT

10. The Protective Measures Decision is clearly limited in its scope to two specific categories of witness:¹³
- a. Insiders or ex-combatants who fought for or who were closely associated with any faction (including AFL, AFRC, CDF, LURD, NPFL, RUF, SLA, STF and ULIMO) during the conflicts that took place in Sierra Leone and/or Liberia; and
 - b. Former or current political or other high-ranking officials involved diplomatically or otherwise in the conflicts that took place in Sierra Leone and/or Liberia.
11. Indeed, the Defence sought protective measures for these two categories of witness only and made no argument for any global protection that would cover expert witnesses.¹⁴ With respect to these two categories, protective measure (b) of the Protective Measures Decision provides that the “names or any other identifying information of these witnesses shall not be disclosed to the public or the media, and this order shall remain in effect after the conclusion of the proceedings.” Protective measure (b) clearly does not apply to the three proposed expert witnesses. The expert witnesses cannot be classified as either insiders or high-ranking officials. Rather, they are persons with particular knowledge of the politics or political history of Liberia and the region.
12. Placing names of witnesses in a confidential annex does not render those names confidential; only an order of the Court can do that. The proposed expert witnesses do not fall within the protective measures granted by the Trial Chamber. There is

¹² *Prosecutor v. Taylor*, SCSL-2003-01-T-897, Public with Annex A and Confidential Annex B “Defence Rule 73ter Filing of Witness Summaries – Version Four”, 29 January 2010.

¹³ Protective Measures Decision, p. 13.

¹⁴ *Prosecutor v. Taylor*, SCSL-2003-01-T-776, Public with Annexes A, B, C, D and E, “Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials”, 6 May 2009; see also *Prosecutor v. Taylor*, SCSL-2003-01-T-779, “Defence Reply to Prosecution Response to Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials”, 15 May 2009, paras 14-15.

therefore no justification for retaining the confidentiality of the names of the three experts. Indeed the Defence is acting outside the Protective Measures Decision in maintaining these names on a confidential listing.

13. Notwithstanding the absence of any such justification, the Defence has improperly persisted in filing the names of the three proposed expert witnesses confidentially, as demonstrated by the recent filing of its Fourth Witness List with Confidential Annex B. Again, in this filing the Defence provided absolutely no justification or even attempted justification for filing the names confidentially.


IV. CONCLUSION

14. For these reasons, the Prosecution requests that the Trial Chamber order the following:
 - a. That the Defence be ordered to comply with the Protective Measures Decision;
 - b. That the Defence be ordered to remove the names of the three expert witnesses from any confidential witness listing as such inclusion is beyond the scope of the protections granted;
 - c. That the Defence be ordered to include the names of the three expert witnesses in its public listing of witnesses;
 - d. That the redacted name of the expert witness at page 32853 of the transcript of 2 December 2009 be reinstated into the public transcript;
 - e. That the private session at pages 32938 to 32941 of the transcript of 2 December 2009 be reinstated into the public transcript.

Filed in The Hague,

8 February 2010,

For the Prosecution,



Brenda J. Hollis
Principal Trial Attorney

INDEX OF AUTHORITIES

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Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-1-T-782, “Decision on Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials”, 27 May 2009.

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Transcript, 6 July 2009, 24282.

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