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SPECIAL COURT FOR SIERRA LEONE

In Trial Chamber II

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

Registrar: Mr Herman von Nebel

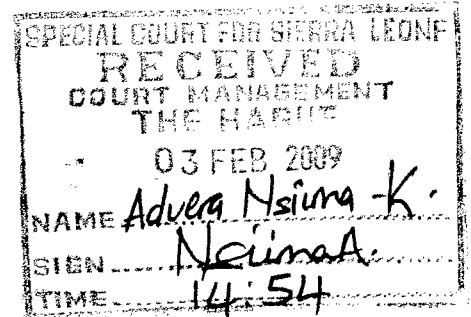
Date: 3 February 2009

Case No: SCSL-2003-01-T

THE PROSECUTOR

-v-

CHARLES GANKAY TAYLOR



PUBLIC

**APPLICATION FOR LEAVE TO FILE AN AMICUS BRIEF
ON CONFIDENTIAL SOURCE ISSUES RAISED DURING THE
CROSS-EXAMINATION OF WITNESS TF1-355**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Christopher Santora
Mr. Nicholas Koumjian

Counsel for the Accused:

Mr. Courtney Griffiths QC
Mr. Andrew Cayley
Mr. Terry Munyard
Mr. Morris Anyah

I. INTRODUCTION

1. This is an Application for Leave to File an Amicus Brief on issues concerning the protection of a confidential source raised during the cross-examination of Witness TF1-355 (the "Application").
2. This Application is filed pursuant to Rule 74 of the Rules of Procedure and Evidence and in accordance with the terms of the Practice Direction on filing Amicus Curiae applications adopted 20 October 2004.
3. The Application is made in response to the Defence Motion seeking an order compelling Witness TF1-355 (the "Witness") to disclose the identities of the persons who facilitated his trip to Sierra Leone in 1997¹, which information the Witness refused to disclose during cross-examination on 14 January 2009.

II. THE APPLICANTS

4. Application is made on behalf of ARTICLE 19, Privacy International and the Media Legal Defence Initiative.

ARTICLE 19

5. ARTICLE 19 is an international human rights organization which defends and promotes freedom of expression and freedom of information all over the world. Its name is taken from Article 19 of the Universal Declaration of Human Rights, which states that "[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." Article 19 believes that freedom of expression and access to

¹Defence Motion for the Disclosure of the Identity of a Confidential 'Source' Raised during Cross-Examination of TF1-355, 23 January 2009, SCSL-2003-01-T-714.

information is not a luxury but a fundamental human right, and campaigns against the widespread use of defamation laws, restrictions on media, and censorship to safeguard pluralism and diversity of views. Article 19 has great expertise regarding the protection of journalist's sources and has intervened in a number of such cases including *Goodwin v United Kingdom*² before the European Court of Human Rights.

Privacy International

6. Privacy International is a London-based NGO formed in 1990 as a civil liberties watchdog. PI has been at the forefront of research and public education on issues relating to information policy including privacy and freedom of expression and has organised campaigns and initiatives in more than fifty countries. The PI FOI Project has been active in promoting government transparency globally since 2000. It produces a variety of comparative reports of media laws including *Silencing Sources*, a 2007 global review of protection of sources laws and has conducted legal analyses of media and information laws and practices in dozens of countries.

Media Legal Defence Initiative

7. The Media Legal Defence Initiative operates globally to help media and journalists defend their rights. It offers both financial and substantive litigation support to small and independent media outlets as well as to individual journalists, and maintains close links with bar associations and media freedom organisations in Asia, Africa, Europe and Latin America. The issue at stake in the present case - the parameters of the journalistic privilege to protect confidential sources of information and other essential journalistic tools - is a recurring issue in many countries and of strong concern to MLDI.

² (1996) 22 E.H.R.R. 123.

III. CONTACT DETAILS

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IV. THE APPLICATION

8. This Application is submitted at the Applicants' own initiative.
9. The grounds for submitting the Application are that the Defence Motion seeking an order compelling Witness TF1-355 (the "Witness") to disclose the identities of the persons who facilitated his trip to Sierra Leone in 1997 raises important issues of legal principle regarding freedom of expression and the protection of a journalist's sources.
10. If leave to file an Amicus Brief is granted, the Applicants propose to address three issues that have arisen in this case:
 - (1) Whether the principles of source protection apply to persons who, on a confidential basis, help a journalist reporting on a conflict to discover information.
 - (2) Whether the principles of source protection apply to military, as well as non-military, sources.
 - (3) The appropriate legal tests to be applied where a journalist reporting on a conflict seeks to protect his sources and the Court is required to determine whether to order disclosure of the same having regard to the right of an accused to a fair trial.
11. The Applicants propose to file an Amicus Brief that:
 - (1) Sets out the legal principles relating to the protection of sources, drawing both upon human rights treaty obligations and relevant judgments as well as comparative international material;

- (2) Analyses the relevance and applicability of these principles to the issues set out at paragraph 10 above and to the facts of the present case.
12. The Applicants believe that the submissions will aid in the proper determination of the Defence Motion by ensuring that the Court's decision is informed by all the relevant human rights principles, case law and international guidance on the protection of sources and the expertise of the Applicants regarding source protection, investigative journalism and freedom of expression.
13. Pursuant to paragraph 1f of the Practice Direction, the Applicants make the following statement regarding their contact with any party to the case.
14. Guy Vassall-Adams became aware that the Office of the Prosecutor had made enquiries as to whether any non-governmental organisation was interested in applying to submit an amicus brief on any issues raised by the Defence Motion.
15. Mr Vassall-Adams emailed and spoke by telephone to Nick Koumjian and Chris Santora of the Office of the Prosecutor on a number of occasions during the week commencing Monday 26 January 2009. He was briefed about the evidence of Witness TF1-355 and provided with a copy of the Defence Motion, relevant transcripts and the Practice Direction to Rule 74. The decision to apply for leave to file an amicus brief was taken by the Applicants on Wednesday 28 January 2009. Further to that decision and the receipt of instructions, Mr Vassall-Adams contacted the Office of the Prosecutor to inform them that the Applicants had decided to file an application for leave to intervene.

V. TIMESCALE FOR THE AMICUS CURIAE SUBMISSIONS

16. The Applicants seek to minimise any delay to the proceedings resulting from their involvement and propose to file their amicus brief by no later than Friday 13 February 2009. To ensure that this deadline is met, unless the Applicants are

informed otherwise, the Applicants shall prepare the Amicus Brief without waiting for a decision on the leave application, on the basis that the Court will rule upon this application after receipt of the Amicus Brief.

VI. INSTRUCTING SOLICITOR

17. The Instructing Solicitor on behalf of the Applicants is Fiona Campbell of Finers Stephens Innocent LLP, whose contact details are provided below. All correspondence relating to this Application should be sent to her:

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Dated this 3rd day of February 2009

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