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SCSL-03-01-T
(17292-17299)

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THE SPECIAL COURT FOR SIERRA LEONE

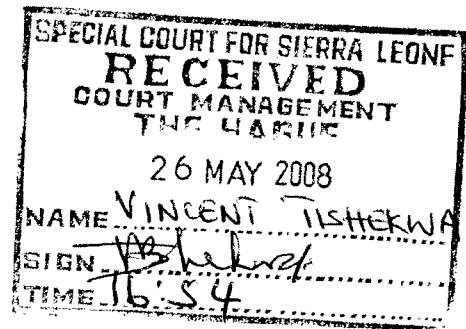
In Trial Chamber II

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

Registrar: Mr. Herman von Hebel

Date: 26 May 2008

Case No.: SCSL-2003-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**DEFENCE REPLY TO PROSECUTION RESPONSE TO
DEFENCE MOTION FOR DISCLOSURE OF EVIDENCE
UNDERLYING PREJUDICIAL STATEMENTS
MADE BY THE CHIEF PROSECUTOR, MR. STEPHEN RAPP,
TO THE MEDIA**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Ms. Kirsten Keith

Counsel for Charles G. Taylor:

Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Andrew Cayley
Mr. Morris Anyah

I. Introduction

1. On 19 May 2008, the Prosecution filed its *Response to Defence Motion for Disclosure of Evidence Underlying Prejudicial Statements Made by the Chief Prosecutor, Mr. Stephen Rapp, to the Media*.¹
2. In its Response, the Prosecution argues that the information requested by the Defence is not disclosable under Rules 66 or 68 of the Special Court Rules of Procedure and Evidence (“Rules”), as the evidence is not exculpatory and as the Prosecution does not intend *at this time*, to offer such information into evidence.² Additionally, the Prosecution argues that the Prosecutor Rapp’s comments do not relate to matters that are *sub judice*, as they relate to an independent investigation in cooperation with a UN Panel of Experts.³
3. These arguments put forth by the Prosecution do not alleviate or ameliorate the concerns raised and the requests made by the Defence in its Motion,⁴ and therefore, the Defence still urgently seeks an order from the Trial Chamber:
 - a) Based on Rule 66(A), compelling the Office of the Prosecutor to disclose to the Defence and the Office of the Principal Defender any and all evidence underlying recent prejudicial and unsubstantiated comments made publicly by Prosecutor Rapp regarding allegations of privately held funds that the Accused is said to have had or still has under his control, and
 - b) Under Rule 54, barring Prosecutor Rapp from commenting on matters that are *sub judice* and which tend to prejudice and heighten public condemnation of the Accused unless and until the Prosecution can make a showing, supported by legally-sufficient evidence, that the Accused is no longer indigent as determined by the Special Court for Sierra Leone.

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-511, Response to Defence Motion for Disclosure of Evidence Underlying Prejudicial Statements Made by the Chief Prosecutor, Mr. Stephen Rapp, to the Media, 19 May 2008 (“Response”).

² Response, paras. 4-6.

³ Response, paras. 3, 9, and 14.

⁴ *Prosecutor v. Taylor*, SCSL-03-01-T-500, Defence Motion for Disclosure of Evidence Underlying Prejudicial Statements Made by the Chief Prosecutor, Mr. Stephen Rapp, to the Media, 9 May 2008 (“Motion”).

II. Submissions

Disclosure Under Rules 66 and 68 is Warranted

4. There is nothing “tortured”⁵ about the Defence’s definition of what must be disclosed under Rules 66(A) and 68. The Defence’s point is simply as follows. Prosecutor Rapp has said publicly, on numerous occasions, that information relating to Mr. Taylor’s alleged wealth is relevant to Count 11, the crime of Pillage. Strangely, the Prosecution does not set out its definition of Pillage in its Pre-Trial Brief,⁶ but it seems as if the Prosecution would consider evidence of money made through diamond transactions or otherwise as an element of Pillage.
5. For instance, as recently as 30 April 2008, in an interview with Power TV in Monrovia, Prosecutor Rapp stated,

“There is however evidence in our case that tens of millions of dollars worth in diamonds were brought to Taylor and now all of that was bounded up in the rebel war and we have the ability in our case to get a judgment against him for that ... the value of those diamonds if he is convicted for pillage of diamonds, which is one of the counts in the Indictment. So we will be working on that, but fundamentally, we want those monies to come back to the people who deserve to have it.”⁷
6. If this is the case, the Defence does not understand why the Prosecution would not intend to introduce this evidence at trial. Just because the information may also be garnered from and related to a separate and on-going investigation into assets held by the Accused as part of the UN freeze on Mr. Taylor’s assets, this does not preclude the information from being presented as evidence at trial. The Prosecution themselves concede that they may seek to introduce documentary evidence of the material referenced by the Defence at trial, and at such time the Prosecution would then disclose the evidence under Rule 66(A).⁸ But surely the Prosecution would not seek to introduce evidence that is not relevant to one of the charges, at any stage in the trial.
7. The Defence submits that if the Prosecution is even considering the introduction of such evidence at trial, then out of respect for the rights of the accused and the need for general

⁵ Response, para. 4.

⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-218, Rule 73bis Pre-Trial Conference Materials Pre-Trial Brief, 4 April 2007 (“Pre-Trial Brief”).

⁷ See Annex A for relevant portions of an unofficial transcript of Prosecutor Rapp’s interview on Power TV in Monrovia on 30 April 2008. A DVD copy of the interview is available from the Defence upon request.

⁸ Response, para. 5.

preparation of the Defence case, it should disclose relevant information and evidence now, as opposed to later. There are a number of witness statements and other documentary evidence that the Prosecution has disclosed to the Defence, that it no longer seems interested in seeking to rely on in trial. Therefore, to avoid possible prejudice to the Defence case due to late disclosure, the Defence requests immediate disclosure of this information.

8. Additionally, the absence of evidence of privately-held funds would tend to negate the charge of Pillage, and should thus be disclosed under Rule 68 as exculpatory. Exculpatory information is nothing other than information which is favourable to the accused in the preparation of his defence, regardless of the nature and type of the material.⁹

Prosecutor's Comments are Prejudicial to the Accused – Right to Secure Witnesses

9. The Prosecution cites Mr. Munyard and suggests that the Judges in this case will not be prejudiced by comments made publicly by Prosecutor Rapp.¹⁰ The Defence never suggested that the Judges in this case would be prejudiced. Instead, the Defence is concerned about the substantial prejudicial effect such comments have on its potential pool of witnesses.
10. Witnesses are less likely to come forward in defence of someone that the international community, due to extensive propaganda on the part of Prosecutor Rapp, is publicly condemning of illegally acquiring and possession billions of dollars. The Prosecution insinuates that the Defence could just subpoena unwilling witnesses; however, the Prosecution should appreciate, especially after their recent experience regarding the subpoena of TF1-561, that this is not the most effective or efficient way to bring witnesses to court. The Defence is highly prejudiced in its ability to prepare its own case, due to comments made by Prosecutor Rapp.
11. Furthermore, when local tabloids present stories regarding Mr. Taylor's alleged wealth in a sensationalized fashion, it is highly likely that victims who may see themselves in line for compensation following a conviction, do not understand the difference between

⁹ *Prosecutor v. Bizimungu et al*, ICTR-99-50-T, Decision on Prosper Mugiraneza's Motion Pursuant to Rule 68 for Exculpatory Evidence Related to Witness GKI, 14 September 2004. para. 8.

¹⁰ Response, paras. 20 and 21.

what is required in Liberia and what is required in Sierra Leone in order to recover money.¹¹

III. Conclusion

27. For all of the reasons emphasized above and as stated in its Motion, the Defence requests for disclosure should be granted.

Respectfully submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 26 Day of May 2008,
The Hague, The Netherlands

¹¹ Response, para. 12.

List of Authorities

Prosecutor v. Taylor, SCSL-03-01-T-218, Rule 73bis Pre-Trial Conference Materials Pre-Trial Brief, 4 April 2007

Prosecutor v. Taylor, SCSL-03-01-T-500, Defence Motion for Disclosure of Evidence Underlying Prejudicial Statements Made by the Chief Prosecutor, Mr. Stephen Rapp, to the Media, 9 May 2008

Prosecutor v. Taylor, SCSL-03-01-T-511, Response to Defence Motion for Disclosure of Evidence Underlying Prejudicial Statements Made by the Chief Prosecutor, Mr. Stephen Rapp, to the Media, 19 May 2008

Prosecutor v. Bizimungu et al, ICTR-99-50-T, Decision on Prosper Mugiraneza's Motion Pursuant to Rule 68 for Exculpatory Evidence Related to Witness GKI, 14 September 2004

Annex A

Portions of Interview of Stephen Rapp by Power TV, Monrovia Liberia

30 April 2008

Question:

39: 20

“This question has to do with the Taylor wealth that you are tracing. Just recently you claim that investigators have pointed to off shore funds totalling in sum to 375 million dollars traceable to Mr. Taylor. How strong is this especially when Mr. Taylor has said that he is indigent meaning he do not have money, are you going to find that money and give it back to the Liberian people and every penny for the rebuilding of the country?”

Answer:

“We wanna get most of that money back to Liberia absolutely yea! The evidence that being presented and this came out when the timber industry is being reviewed here is that em, the Taylor presidency took hundreds of millions of dollars which belong to the people from the concessions regarding the timber or whether it was the ship money or whether it was other resources coming into the Treasury at least the timber industry and the fact from our report was that 84% of that money went to Taylor’s pocket and so that money , we have financial accounts showing money that ended up in banks in New York that is under his own name during his presidency in New York hundreds of millions of dollars worth of his money, of the Liberian people money given through under his name some have been spent on things as family and a lot of it about 75 million has been transferred to other bank accounts. So we are working with international partners to try to trace that money in the hope that that money can get back to the victims. Most of that money we think will belong to the people of Liberia because of the money that came in that should have gone to the tax coffer that should have been available for the people of this country for education, roads, development or anything else. That what it should have been and that what it should go back to.”

41:10

“There is however evidence in our case that tens of millions of dollars worth in diamonds were brought to Taylor and now all of it bounded up in the rebel war and we have the ability in our case to get a judgement against him for that, the value of those diamonds if he is convicted for pillage of diamonds, which is one of the counts in the indictment. So we will be working on that but fundamentally we want those monies to come back to the people who deserve to have it.”