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SCSL-03-01-T
(29631-29680)

29631



THE SPECIAL COURT FOR SIERRA LEONE

Trial Chamber II

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

Registrar: Ms. Binta Mansaray

Date: 4 August 2010

Case No.: SCSL-03-01-T

SPECIAL COURT FOR SIERRA LEONE	
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04 AUG 2010	
NAME	ALHASSAN Forewat
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TIME	14:12

THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC, WITH PUBLIC ANNEX F
AND CONFIDENTIAL ANNEXES A, B, C, D, E, G, H, I

**DEFENCE MOTION FOR DISCLOSURE OF STATEMENT
AND PROSECUTION PAYMENTS MADE TO DCT-097**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Nick Koumjian

Counsel for Charles G. Taylor:

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

I. INTRODUCTION

1. The Defence submits that the Prosecution has failed to comply with its Rule 68 obligations in regard to Witness DCT-097/TF1-354.¹
2. Despite repeated requests for disclosure of statements given by DCT-097 and records of money given to DCT-097 by the Prosecution, the Prosecution has failed to disclose information relating to the following:
 - i) the existence and substance of a statement given by DCT-097 to Global Witness, which the Prosecution is aware and which pre-dated Prosecution interviews with DCT-097 (“Statement”), and
 - ii) an accounting and explanation of money (estimated at almost \$30,000) paid to or benefits conferred on DCT-097 by the Prosecution from 2004 to 2006 (“Payments”).
3. The Defence have established on a *prima facie* basis that the Prosecution has failed to disclose the Statement and Payments which tend to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence. Thus the Defence request the Trial Chamber to compel the disclosure of the Statement and Payments forthwith.

II. BACKGROUND

4. On 12 May 2010 the Defence indicated that DCT-097 was on its Core Witness List.² DCT-097 is a protected defence witness according to the 27 May 2009 Defence Protective Measures Decision.³
5. On 19 May 2010, the Defence disclosed the name of DCT-097 to the Prosecution.⁴ In its First Disclosure Letter, the Defence specifically requested:

“[...] any material, within its possession, which is relevant to the named witnesses including, but not limited to, witness statements and/or disbursement records. The Defence have reason to believe that the Prosecution has previously been in contact with DCT-097 and thus asks specifically for unredacted copies of any statements

¹ The Prosecution have acknowledged that DCT-097 is the same as TF1-354. See Letter from Brenda Hollis to Courtenay Griffiths, QC, 14 June 2010 [Confidential Annex A] (“**Disclosure Receipt**”).

² *Prosecutor v. Taylor*, SCSL-03-01-T-957, Defence Rule 73ter Filing of Witness Summaries – Version Five, 12 May 2010, Annex C.

³ Any materials which may identify the witness are included in confidential annexes. *Prosecutor v. Taylor*, SCSL-03-01-T-782, Decision on Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials, 27 May 2010.

⁴ Letter from Courtenay Griffiths, QC, to Brenda Hollis, 19 May 2010 [Confidential Annex B] (“**First Disclosure Request**”).

taken as well [*sic*] records of any expenses paid to (or on behalf of) this witness through the Prosecution's Witness Management Unit".

6. The Prosecution did not disclose anything. So the Defence followed its First Disclosure Letter with a second, stating that the delay in disclosure was hindering the Defence's progress in preparation asking the Prosecution to clarify whether:

"[...] you do not have any of the requested material in your possession; you are in the process of disclosing it, and if so, when such disclosure would be made; or you have the requested material in your possession but are not inclined to disclose it".⁵

7. The Prosecution did not immediately disclose anything nor respond directly to the Second Disclosure Request.

8. On 10 June 2010, the Prosecution sent the Defence a letter (in relation to another witness) noting that:

"[...] when the Prosecution does not reply to your requests for the disclosure of all statements/disbursement records in relation to Defence witnesses, it indicates that there are neither statements nor disbursement records in the Prosecution's possession to be disclosed".⁶

9. On 14 June 2010, the Prosecution disclosed nine statements and/or correspondences in relation to DCT-097,⁷ dated: 27 May 2004, 28 May 2004, 11 October 2004, 14 February 2005, 22 February 2005, 28 November 2005, 15 January 2006. One disclosure was undated. The Prosecution did not disclose the existence or substance of the Global Witness Statement nor a record of Payments. The Prosecution has given no explanation to the Defence regarding its lack of disclosure in relation to DCT-097.

10. On 21 July 2010, a Defence lawyer and a Defence investigator met with DCT-097 and interviewed him, partially in respect to his interaction and cooperation with the Prosecution. On this occasion, DCT-097, *inter alia*, told the Defence the following:⁸

- i) That he was first approached by the Prosecution in 2004 through Alex Yearsley of Global Witness;⁹

⁵ Letter from Courtenay Griffiths, QC, to Brenda Hollis, 3 June 2010 [Confidential Annex C] ("**Second Disclosure Request**").

⁶ Letter from Brenda Hollis to Courtenay Griffiths, QC, 10 June 2010 [Confidential Annex D] ("**Disclosure Explanation**").

⁷ Confidential Annex A, Disclosure Receipt.

⁸ See Signed Statement by Logan Hambrick, Legal Assistant, 22 July 2010. [Confidential Annex E] ("**Interview Notes**").

⁹ See, FYI, www.globalwitness.org.

- ii) That Alex Yearsley of Global Witness had interviewed and taken a statement from him in Abidjan in 2001 or 2002;
- iii) That the person who put Alex Yearsley of Global Witness in touch with DCT-097 was [Prosecution Witness TF1-151];¹⁰
- iv) That the statement he (DCT-097) gave to Global Witness in 2001 or 2002 ~~related to DCT-097's involvement in trading diamonds for the RUF in Monrovia from 2000;~~
- v) That he told Global Witness that the RUF were not involved in trading diamonds with Charles Taylor or the Liberian Government, but that this was the story Global Witness wanted DCT-097 to confirm;
- vi) That Alex Yearsley of Global Witness called DCT-097 from the Congo in 2004 to say that a contact of his from the Special Court from Sierra Leone would be in touch with DCT-097 and that he should cooperate;
- vii) That a few days later, Gilbert Morissette of the Prosecution called DCT-097 and asked DCT-097 to meet with him in a location of his choice;
- viii) That the Prosecution wanted DCT-097 to confirm what they said they had heard from other sources – that DCT-097 was the main RUF person who carried diamonds to Charles Taylor;
- ix) That after meeting with and while being interviewed by various members of the Prosecution (including David Crane, Gilbert Morissette, John Berry, Maggie, and an Australian), the Prosecution paid DCT-097 a monthly “allowance” of approximately \$1200 a month from sometime in 2004 until sometime in 2006;
- x) That the Prosecution did not provide this allowance for any specific purpose, but for DCT-097’s general “upkeep”;
- xi) That this allowance would be given to DCT-097 in cash if he was in Freetown or would be sent to him via MoneyGram if he was travelling throughout the sub-region;

¹⁰ DCT-097 referred to the contact by his proper name, but the Defence knows him to be TF1-151.

- xii) That this allowance stopped when DCT-097 met with the Prosecution for a final time in Senegal in 2006 and the Prosecution told DCT-097 that they were not getting what they needed from him.
11. DCT-097 has given the Defence color copies of seventeen MoneyGram receipts showing payments being sent from five different Prosecution employees to DCT-097 in various West African countries, during the period of 8 April 2004 to 19 June 2006, in amounts such as \$2000, €1552, 8,989,200 Ghanaian Cedis, and 526,269 CFA Francs.¹¹

III. APPLICABLE LAW & LEGAL BASIS

12. The plain language of Rule 68(B) states:

The Prosecutor shall, within 30 days of the initial appearance of the accused, make a statement under this Rule disclosing to the defence the existence of evidence known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence. The Prosecutor shall be under a continuing obligation to disclose any such exculpatory material.

13. The ongoing nature of the Prosecution's Rule 68(B) disclosure obligations is indisputable.¹²
14. In order to comply with its Rule 68(B) obligations, the Prosecution must disclose to the Defence "the existence of exculpatory material known to the Prosecutor, but that such statement is not required to be in any particular form".¹³
15. This Trial Chamber has previously determined the Defence must satisfy the following before it will issue an order for further disclosure under Rule 68(B):
- i) identify the material sought with the requisite specificity;
 - ii) make a *prima facie* showing of the exculpatory or potentially exculpatory character of the materials requested;
 - iii) make a *prima facie* showing of the Prosecution's custody or control of the

¹¹ MoneyGram Receipts [Confidential Annex F]. A table summarizing the sender's name, the date the money was sent, the country in which DCT-097 received the money, and the amount and currency of money sent is included as Public Annex G.

¹² *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-246, Decision on Joint Defence Motion on Disclosure of All Original Witness Statements, Interview Notes and Investigators' Notes Pursuant to Rules 66 and/or 68, 4 May 2005, para. 16.

¹³ *Prosecutor v. Taylor*, SCSL-03-01-T-184, Decision on Defence Application for Service of a Disclosure Statement Pursuant to Rule 68, 19 February 2007.

- xii) That this allowance stopped when DCT-097 met with the Prosecution for a final time in Senegal in 2006 and the Prosecution told DCT-097 that they were not getting what they needed from him.
11. DCT-097 had previously given a Defence investigator color copies of seventeen MoneyGram receipts showing payments being sent from five different Prosecution employees to DCT-097 in various West African countries, during the period of 8 April 2004 to 9 June 2006, in amounts such as \$2000, €1552, 8,989,200 Ghanaian Cedis, and 526,269 CFA Francs.¹¹

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¹² *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-246, Decision on Joint Defence Motion on Disclosure of All Original Witness Statements, Interview Notes and Investigators' Notes Pursuant to Rules 66 and/or 68, 4 May 2005, para. 16.

¹³ *Prosecutor v. Taylor*, SCSL-03-01-T-184, Decision on Defence Application for Service of a Disclosure Statement Pursuant to Rule 68, 19 February 2007.

- materials requested; and
- iv) show that the Prosecution has in fact, failed to disclose the targeted exculpatory material.¹⁴

IV. SUBMISSIONS

Failure to disclose knowledge of the Global Witness Statement, which tends to suggest the innocence of the accused

16. The Trial Chamber should compel the Prosecution to disclose the extent of its knowledge in regard to the Statement DCT-097 gave to Global Witness in 2001 or 2002. The Trial Chamber should also compel disclosure of a copy of the Statement itself or Investigative Notes based on the lead Alex Yearsley gave to Gilbert Morissette in 2004. The Prosecution decided to contact and interview DCT-097 based on the information provided to them by Global Witness. Therefore, the Prosecution must have this Statement within its custody or control. At the very least, it must have been privy to the contents of the statement.
17. Based on information DCT-097 gave to the Defence, the Statement is exculpatory in that it states that Charles Taylor was not connected to the RUF diamond trading in Monrovia. This clearly suggests the innocence of the Accused and has not been disclosed by the Prosecution.

Failure to disclose tens of thousands of dollars of Payments to DCT-097, which may affect the credibility of Prosecution evidence

18. The Trial Chamber should compel the Prosecution to disclose the total amount of money paid to and benefits conferred on DCT-097 during the course of his cooperation with the Prosecution. On the basis of its interview with the witness, the Defence believes this period ranges from 2004 to 2006, but complete disclosure of any payments made or benefits conferred before, during or after this period should be compelled. The Defence has copies of seventeen such payments

¹⁴ *Prosecutor v. Taylor*, SCSL-03-01-T-770, Decision on Defence Motion Pursuant to Rules 66 and 68 for the Disclosure of Exculpatory Material in Redacted Witness Statements of Witnesses the Prosecution does not Intend to Call, 30 March 2009, para. 13; *Prosecutor v. Taylor*, SCSL-03-01-T-516, Decision on Confidential Defence Motion for the Disclosure of Exculpatory Material Pursuant to Rule 68 of the Rules of Procedure and Evidence, 22 May 2008, p. 4.

in the form of MoneyGram receipts, but based on the information DCT-097 gave to the Defence, this is not a complete collection and additional payments were also made in cash.

19. There are five Prosecution employees listed on the attached MoneyGram receipts as senders of the money to DCT-097: Mustapha Koroma, Aiah Komeh, Miatta Samba, Prince Sannah and Umaru Kamara. The Defence knows all five of these individuals to be former or current Prosecution employees.¹⁵ This is *prima facie* evidence that the Prosecution has paid money to DCT-097, an accounting of which it has failed to disclose to the Defence, despite being obviously within the Prosecution's custody or control.
20. In a letter to Lead Counsel, former Prosecutor Stephen Rapp has acknowledged that "information about payments made by the WMU [Witness Management Unit] for support of witnesses is evidence that 'may affect the credibility of prosecution evidence' under Rule 68(B)".¹⁶ Former Prosecutor Stephen Rapp further stated that "this information has been and will be disclosed to the Defence".¹⁷
21. The Defence has indicated its intention to call DCT-097 as a witness. The Prosecution have disclosed several statements taken from DCT-097 by the Prosecution. The fact that Payments were made to DCT-097 during this period of cooperation with the Prosecution necessarily impacts on the credibility and reliability of those statements.
22. The ICTR has ample case law to support the Defence position. In *Prosecutor v. Karemera et al*, the Trial Chamber stated that:

"Material or information within the Prosecutor's knowledge concerning any benefits paid to and/or promises made to witnesses and victims beyond that which is reasonably required [for the management of witnesses and victims] has a different character and should therefore be disclosed as evidence which may affect the credibility of witnesses under Rule 68".¹⁸

¹⁵ Two of the "senders" were still listed on the Special Court for Sierra Leone telephone directory under the Prosecution heading as recently as December 2009. [Confidential Annex H]

¹⁶ See Letter from Stephen Rapp to Courtenay Griffiths, QC, 19 December 2007 [Confidential Annex I] ("**Rapp Letter**").

¹⁷ Confidential Annex I, Rapp Letter.

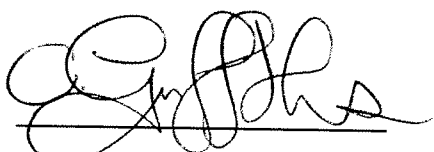
¹⁸ *Prosecutor v. Karemera, Nzirorera, Nzirorera*, ICTR-98-44-PT, Decision on Defence Motion for Full Disclosure of Payments to Witnesses and to Exclude Testimony from Paid Witnesses, 23 August 2005, para. 6. See also, *Prosecutor v. Nzirorera et al*, ICTR-98-44-I, Decision on the Defence Motion for Disclosure of Exculpatory Evidence, 7 October 2003, para. 16; and *Prosecutor v. Bizimungu, Mugeni, Bicamumpaka, and Mugiraneza*, ICTR-99-50-T, Decision on Prosper Mugiraneza's Motion for Records of All Payments Made Directly or Indirectly to Witness D, 28 September 2006, para. 13.

23. In *Prosecutor v. Zigiranyirazo*, the Trial Chamber determined that the disclosure of the total cost of such payments and benefits should be made in the interests of transparency and justice.¹⁹
24. Thus, the Defence submits that the exculpatory nature of the Payments to DCT-097 is incontrovertible and in the custody of the Prosecution and must be disclosed.

V. CONCLUSION

25. For the foregoing reasons, the Defence requests the Trial Chamber to compel the Prosecution to fulfil its Rule 68 obligations and order the immediate disclosure of the substance of a statement given by DCT-097 to Global Witness, of which the Prosecution is aware and which pre-dated Prosecution interviews with DCT-097 (“Statement”), and an accounting and explanation of money paid to or benefits conferred on DCT-097 by the Prosecution from 2004 to 2006, or at any time before or after.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 4th day of August 2010
The Hague, The Netherlands

¹⁹ *Prosecutor v. Zigiranyirazo*, ICTR-01-73-T, Decision on Defence and Prosecution Motions Related to Witness ADE, 31 January 2006, paras. 20 and 23.

LIST OF AUTHORITIES

SCSL*Prosecutor v. Taylor*

Prosecutor v. Taylor, SCSL-03-01-T-184, Decision on Defence Application for Service of a Disclosure Statement Pursuant to Rule 68, 19 February 2007

Prosecutor v. Taylor, SCSL-03-01-T-516, Decision on Confidential Defence Motion for the Disclosure of Exculpatory Material Pursuant to Rule 68 of the Rules of Procedure and Evidence, 22 May 2008

Prosecutor v. Taylor, SCSL-03-01-T-770, Decision on Defence Motion Pursuant to Rules 66 and 68 for the Disclosure of Exculpatory Material in Redacted Witness Statements of Witnesses the Prosecution does not Intend to Call, 30 March 2009

Prosecutor v. Taylor, SCSL-03-01-T-782, Decision on Urgent Defence Application for Protective Measures for Witnesses and for Non-Public Materials, 27 May 2010

Prosecutor v. Taylor, SCSL-03-01-T-957, Defence Rule 73ter Filing of Witness Summaries – Version Five, 12 May 2010, Annex C

Prosecutor v. Brima, Kamara, Kanu

Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-T-246, Decision on Joint Defence Motion on Disclosure of All Original Witness Statements, Interview Notes and Investigators' Notes Pursuant to Rules 66 and/or 68, 4 May 2005

ICTR

Prosecutor v. Karemera, Ngirumpatse, Nziroreza, ICTR-98-44-PT, Decision on Defence Motion for Full Disclosure of Payments to Witnesses and to Exclude Testimony from Paid Witnesses, 23 August 2005
<http://www.ictrcaselaw.org/docs/doc67526.pdf>

Prosecutor v. Nziroreza et al, ICTR-98-44-I, Decision on the Defence Motion for Disclosure of Exculpatory Evidence, 7 October 2003
<http://69.94.11.53/ENGLISH/cases/Nziroreza/decisions/071003.htm>

Prosecutor v. Bizimungu, Mugeni, Bicamumpaka, and Mugiraneza, ICTR-99-50-T, Decision on Prosper Mugiraneza's Motion for Records of All Payments Made Directly or Indirectly to Witness D, 28 September 2006
<http://www.ictrcaselaw.org/docs/20080218-dco-9950-01-en.pdf>

Prosecutor v. Zigiranyirazo, ICTR-01-73-T, Decision on Defence and Prosecution Motions Related to Witness ADE, 31 January 2006
<http://www.ictrcaselaw.org/docs/doc72800.PDF>

LIST OF CONFIDENTIAL ANNEXES

- Annex A** Letter from Brenda Hollis to Courtenay Griffiths, QC, 14 June 2010
- Annex B** Letter from Courtenay Griffiths, QC, to Brenda Hollis, 19 May 2010
- Annex C** Letter from Courtenay Griffiths, QC, to Brenda Hollis, 3 June 2010
-
- Annex D** Letter from Brenda Hollis to Courtenay Griffiths, QC, 10 June 2010
- Annex E** Signed Statement by Logan Hambrick, Legal Assistant, 22 July 2010
- Annex G** MoneyGram Receipts (seventeen)
- Annex H** Special Court for Sierra Leone phone list (page 1)
- Annex I** Letter from Stephen Rapp to Courtenay Griffiths, QC, 19 December 2007

LIST OF PUBLIC ANNEXES

- Annex F** Table Summarising MoneyGram Payments



SPECIAL COURT FOR SIERRA LEONE

DOKTER VAN DER STAMSTRAAT 1 • 2265 BC LEIDSCHENDAM • THE NETHERLANDS

PHONE: +31 70 515 9701 or +31 70 515 (+Ext 9725)

Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the Confidential Case File.

Case Name: **The Prosecutor – v- Charles Ghankay Taylor**

Case Number: **SCSL-03-01-T**

Document Index Number: **1039**

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Application

Order

Indictment

Response

Motion

Correspondence

Document Title:

**Public with public Annex F and confidential Annexes A, B, C, D, E, G, H, I
Defence motion for disclosure of statement and Prosecution payments made
to DCT-097**

Name of Officer:

Alhassan Fornah

Signed:

29656

**PUBLIC
ANNEX F**

Table Summarizing MoneyGram Payments to DCT-097

Date	Sender's Name	Receiver's Location	Amount	Currency
04 August 2004	Mustapha Koroma	Nigeria	1,900.00	Dollars
10 November 2004	Aiah Komeh	Togo	720.81	Euros
21 December 2004	Miatta Samba	Nigeria	1400 or 1430	Dollars
28 January 2005	Aiah Komeh	Nigeria	1200	Dollars
10 March 2005	Aiah Komeh	Togo	881.03	Euros
16 March 2005	Prince Sannoh	Nigeria	1000	Dollars
22 March 2005	Miatta Samba	Nigeria	2000	Dollars
20 April 2005	Mustapha Koroma	Nigeria	1000	Dollars
03 May 2005	Mustapha Koroma	Ghana	8,989,200	Cedi
17 May 2005	Aiah Komeh	Togo	1552.48	Euros
27 May 2005	Miatta Samba	Burkina Faso	515.09 or 785.26	CFA Franc
08 June 2005	Miatta Samba	Ghana	8,989,200	Cedi
11 July 2005	Miatta Samba	Nigeria	800	Dollars
09 August 2005	Prince Sannoh	Nigeria	800	Dollars
29 August 2005	Aiah Komeh	Burkina Faso	517,995.67	CFA Franc
26 September 2005	Aiah Komeh	Togo	526,269.23	CFA Franc
19 June 2006	Umaru Kamara	Burkina Faso	???	

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