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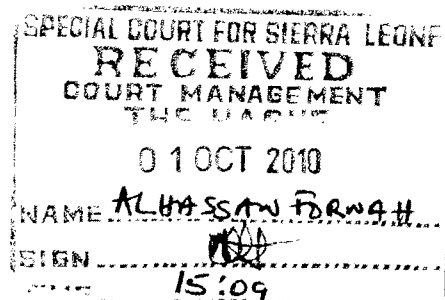
**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR**

TRIAL CHAMBER II

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

Registrar: Ms. Binta Mansaray

Date filed: 1 October 2010



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

**PROSECUTION RESPONSE TO "PUBLIC WITH CONFIDENTIAL ANNEXES A-D DEFENCE MOTION
FOR DISCLOSURE OF EXCULPATORY INFORMATION RELATING TO DCT-032"**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Ms. Leigh Lawrie
Mr. Nathan Quick

Counsel for the Accused:

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

I. INTRODUCTION

1. The Prosecution files this response to the “Public with Confidential Annexes A-D Defence Motion for Disclosure of Exculpatory Information Relating to DCT-032” (“**Motion**”).¹
2. The Motion incorrectly alleges that the Prosecution has not fulfilled its disclosure obligations under Rule 68(B) and requests disclosure of the details and results of an investigation into the death of Johnny Paul Koroma, records of all disbursements made to DCT-032 and an “original duplicate copy” of a letter of indemnity or “confirmation of such indemnity and the circumstances in which it was given.”²
3. The Defence allegation is unfounded as the requested information is not exculpatory. Accordingly, the Motion should be dismissed.

II. SUBMISSIONS

The results of the investigation into the death of Johnny Paul Koroma are not exculpatory

4. The details and results of an investigation into the death of Johnny Paul Koroma have not been disclosed to the Defence because they are not exculpatory.
5. As Rule 68(B) clearly states exculpatory evidence is evidence which “tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence.” The Prosecution has led evidence that Johnny Paul Koroma was killed but has not led evidence to suggest that his remains were buried in a specific location.³ Therefore, contrary to the Defence argument in paragraph 10 of the Motion, no evidence is contradicted by the fact that the remains found at the locations specified in Annex A of the Motion were not the remains of Johnny Paul Koroma.⁴

The disbursements made to DCT-032 are not exculpatory

6. DCT-032 has never been listed as either a potential Prosecution witness or a Prosecution witness nor has he ever been treated as a victim. Rather, he was always a Prosecution source. Therefore, the Prosecution has no obligation to disclose to the Defence

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1088, Public with Confidential Annexes A-D Defence Motion for Disclosure of Exculpatory Information Relating to DCT-032, 24 September 2010.

² Motion, para. 2.

³ Evidence has been led that Johnny Paul Koroma was killed in Lofa but no evidence has been led regarding the location of any burial site (see TF1-561, Trial Transcript, 15 May 2008, pp. 9998-10000; TF1-375, Trial Transcript, 25 June 2008, pp. 12751-53 & 12756-64).

⁴ Motion, Annex A, paras. 18-19, 25.

information related to any benefits paid to and/or promises made to him under Rule 68(B).

7. The *Karemera* standard adopted by this Chamber sets out the circumstances in which benefits paid to and/or promises made to individuals by the Prosecution are considered exculpatory.⁵ This standard involves satisfaction of a two stage test. First, the benefit or promise must have been paid or made to “witnesses” or “victims”.⁶ If this first stage is satisfied in the affirmative, then the benefit or payment must be “beyond that which is reasonably required [for the management of *witnesses* and *victims*].”⁷
8. In its recent decision, this Chamber found both stages of the *Karemera* standard satisfied in respect of the Defence witness, DCT-097. The Chamber found that DCT-097 was a “potential prosecution witness”⁸ and that the payments made to him appeared on the face of it “to be beyond that which is reasonably required for the management of witnesses and victims.”⁹ In finding him to be a potential witness, it was noted that there were nine statements and/or correspondences between May 2008 and June 2010¹⁰ and that the Prosecution obtained protective measures for DCT-097 including a pseudonym from Trial Chamber I in the case of *Prosecutor v. Sesay et al.*¹¹
9. The disclosure requirement set forth in the DCT-097 Decision is to be contrasted with and distinguished from that of DCT-032. DCT-032 has always been treated as a source by the Prosecution. Indeed, the fact that not all individuals who speak to the Prosecution are witnesses or potential witnesses is recognized in the Special Court’s Rules of Procedure and Evidence. For example, Rule 39(B) specifically makes the distinction between

⁵ *Prosecutor v. Taylor*, SCSL-03-01-T-1084, Decision on Defence Motion for Disclosure of Statement and Prosecution Payments Made to DCT-097, 23 September 2010 (“**DCT-097 Decision**”), para. 21 citing *Prosecutor v. Karemera et al.*, ICTR-98-44-PT, Decision for Full Disclosure of Payments to Witnesses, 23 August 2005 (“**Karemera Decision**”), para. 7.

⁶ DCT-097 Decision, para. 21. No explanation is given as to why a payment to a victim of itself might be considered exculpatory. The Prosecution notes that in the DCT-097 Decision at footnote 50 the decisions cited in addition to the *Karemera* Decision refer to benefits or promises made to Prosecution witnesses or their families. It is assumed, however, that the term “victim” is used to identify victims who are also witnesses.

⁷ Ibid.

⁸ Ibid, para. 10.

⁹ Ibid, para. 22.

¹⁰ Disclosure of these statements and correspondence was made on 14 June 2010 on a *bona fide* basis to prevent delay in cross-examination. Rule 68 information in this material was previously disclosed in May 2006 (along with Rule 66 material). The Prosecution also disclosed two proffers for DCT-097 on 31 August 2010. One proffer was disclosed pursuant to Rule 68. The second proffer related to information provided by DCT-097 as a source and was disclosed on a *bona fide* basis to prevent delay in cross-examination.

¹¹ DCT-097 Decision, para. 10.

“potential witnesses” and “sources”. Rule 66 is limited to witnesses and makes no mention of sources. In relation to DCT-032, no witness statements were taken nor were protective measures ever sought or granted. The proffer disclosed to the Defence on 4 June 2010 was provided in response to the Defence request for “any material, within its possession, which is relevant to [DCT-032]”¹² so as to avoid any delay in cross examination should this individual in fact be called to testify for the Defence. The details provided in the proffer relate to information received from DCT-032 as a *source* – nothing therein indicates that DCT-032 was ever considered a potential Prosecution witness. Rather, it is only DCT-032’s own affidavit, in which he also admits in detail the elaborate lies he says he concocted regarding the whereabouts of Koroma’s remains,¹³ which indicates that he was a potential Prosecution witness.¹⁴ A person cannot designate himself as a potential Prosecution witness. Yet, it is this convenient self-designation upon which the Defence relies in characterizing DCT-032 as a potential Prosecution witness.¹⁵

10. It is acknowledged that “exculpatory material ... is not limited to material relating to ‘Prosecution witnesses’”.¹⁶ However, as established in *Karemera* and this Chamber’s recent decision,¹⁷ information relating to benefits and promises only potentially falls within the category of exculpatory material where the individual to whom such items relate is a Prosecution witness or victim.

11. As DCT-032 is not a potential Prosecution witness, Prosecution witness or a victim, the first stage of the *Karemera* standard is not satisfied. No consideration need be given, therefore, to the second stage regarding the recompense paid to DCT-032 for his services as a source.

Letter of indemnity is not exculpatory material

12. The Defence erroneously insists that an indemnity letter to DCT-032 is exculpatory, but as the Defence itself admits, an indemnity letter is only exculpatory if drawn when DCT-032 was a potential Prosecution witness.¹⁸ Applying the *Karemera* standard and for the

¹² Motion, Annex D, CMS p. 30336.

¹³ Motion, Annex A, paras. 9 & 17.

¹⁴ Motion, Annex, A, para. 3.

¹⁵ Motion, para. 9 (DCT-032 was “by his own admission...also a potential witness for the Prosecution at one point”).

¹⁶ DCT-097 Decision, para. 11.

¹⁷ See paragraphs 7 & 8 above.

¹⁸ Motion, paras. 13-15.

reasons set out above,¹⁹ as DCT-032 was *never* a potential Prosecution witness, a Prosecution witness or a victim, the letter of indemnity does not require to be disclosed.

Request to Draw Adverse Inference Unfounded

13. As none of the requested material is exculpatory, the Defence invitation to the Chamber to draw adverse inferences against the Prosecution for its failure to disclose the requested material should be refused.

III. CONCLUSION

14. Disclosure is vital to the integrity of the trial process. The Prosecution is aware of and discharges its disclosure duties in accordance with the relevant Rules and jurisprudence.²⁰ However, the Prosecution's disclosure obligations do not mean that it must operate an open files policy such that each and every Defence request for disclosure must be granted. Rather, such requests are considered against the relevant Rules and jurisprudence.

15. For the reasons set out above, the Motion should be denied.

Filed in The Hague,
1 October 2010,
For the Prosecution,



Brenda J. Hollis,
The Prosecutor

¹⁹ See paras. 6-11, *supra*.

²⁰ For example, the DCT-097 Decision clarifies the disclosure obligations for disbursement payments to individuals not called as witnesses by the Prosecution. The Prosecution is, therefore, reviewing its material to ensure that it complies with this recent clarification of the law.

INDEX OF AUTHORITIES**SCSL*****Prosecutor v. Taylor***

Prosecutor v. Taylor, SCSL-03-01-T-1088, Public with Confidential Annexes A-D Defence Motion for Disclosure of Exculpatory Information Relating to DCT-032, 24 September 2010

Prosecutor v. Taylor, SCSL-03-01-T-416, Confidential Defence Motion for the Disclosure of Exculpatory Material Pursuant to Rule of the Rules of Procedure and Evidence, 13 February 2008

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-1084, Decision on Defence Motion for Disclosure of Statement and Prosecution Payments Made to DCT-097, 23 September 2010

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcript, 15 May 2008

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcript, 25 June 2008

ICTR

Prosecutor v. Karemera et al., ICTR-98-44-PT, Decision for Full Disclosure of Payments to Witnesses, 23 August 2005

<http://www.unictr.org/Portals/0/Case/English/Karemera/trail/230805.pdf>