

167)

SCSL-03-01-PT  
C 4082-4210

4082



SPECIAL COURT FOR SIERRA LEONE

**IN TRIAL CHAMBER II**

**Case No:** SCSL-03-01-PT

**Before:** Hon. Justice Julia Sebutinde, Presiding  
Hon. Justice Richard Lussick  
Hon. Justice Teresa Doherty

**Registrar:** Mr. Lovemore G. Munlo, SC

**Date filed:** 25 January 2007

**THE PROSECUTOR**

-v-

**CHARLES TAYLOR**

---

PUBLIC

**DEFENCE APPLICATION TO INSPECT EXHIBITS IN THE CUSTODY  
OF THE PROSECUTION PURSUANT TO RULE 66 (A)(iii)**

---

**Office of the Prosecutor**

Mr. Stephen Rapp  
Mr. Christopher Staker  
Mr. James C. Johnson  
Ms. Brenda Hollis  
Ms. Wendy van Tongeren  
Ms. Shyamala Alagendra  
Mr. Alain Werner

**Counsel for Charles Taylor**

Mr. Karim A. A. Khan  
Mr. Roger Sahota

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT MANAGEMENT	
25 JAN 2007	
NAME	Advega Nsiima-k.
SIGN	Nsiima-k.
TIME	12:40

**I     INTRODUCTION**

- 1. This is the Defence Application to Inspect Exhibits in the Custody of the Prosecution pursuant to Rule 66(A)(iii) of the Rules of Procedure and Evidence (the "Rules").
- 2. For the reasons advanced below in Sections II, III and IV, the Defence submit that the Prosecution have failed to discharge their obligations pursuant to Rule 66(A)(iii) of the Rules to: (i) disclose exhibits in their custody or control upon a showing by the Defence of the categories considered material to the preparation of the Defence, and (ii) to disclose exhibits in their custody or control which are intended for use as evidence at trial or were obtained from or belonged to the accused and should be disclosed as of right to the Defence.

**II     LEGAL FRAMEWORK**

- 3. According to Article 17(2) of the Special Court for Sierra Leone ("SCSL") Statute, "[t]he accused shall be entitled to a fair and public hearing, subject to measures ordered by the Special Court for the protection of victims and witnesses" [emphasis added].
- 4. This statutory right of the Accused is key to all the rules and principles of evidence and procedure, including the disclosure procedure. With regard to the production of exhibits, the leading principle of disclosure, as set out in Rule 66 (A) (iii) of the Rules, is that the Prosecutor shall:

"At the request of the defence, subject to Sub-Rule (B), permit the Defence to inspect any books, documents, photographs and tangible objects in his custody or control, which are material to the preparation of the Defence, upon a showing by the defence of categories of, or specific, books, documents, photographs and tangible objects which the defence considers material to the preparation of the defence OR to inspect books, documents, photographs and tangible objects in his custody or control which are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused" [emphasis added].

- 5. The Defence take the view that as a matter of statutory construction, Rule 66(A)(iii) has two separate limbs as the effect of the clause "or" is distributive<sup>1</sup> rather than subjunctive. The first deals with documents which whilst not necessarily exculpatory (and which fall to be

---

<sup>1</sup> "Tending to distribute; serving to divide and assign in portions; dealing to each his proper share. *Distributive justice.*" *Swift*. Webster Dictionary, 1913.

disclosed as of right to the Defence under Rule 68) are otherwise material to the preparation of the Defence. This requires a showing by the Defence of the categories considered material to the preparation of the Defence. The second limb deals with material which the Prosecution intends to rely upon at trial or which was obtained from or belonged to the accused. This material falls to be disclosed as of right to the Defence and does not require a showing by the Defence of the categories considered material to the preparation of the Defence.

### **III PROCEDURAL HISTORY**

6. The Defence requested disclosure of all material failing to be served pursuant to Rule 66(A)(iii) at the Status Conference on 22 September 2006 where the Prosecution outlined their interpretation of Rule 66(A)(iii):

MR. STAKER: "Rule 66(A)(iii), the Defence has previously indicated its intention to invoke this rule. We note that, under the terms of that rule, disclosure is made by the Prosecution upon a showing by the Defence of the categories of those items that it considers to be material, material being a reference to material that is material to the preparation of the defence. The Prosecution has not received any such request from the Defence to date, so at this stage we have no request under that provision on which we can act. But if we were to receive such a request, it would be dealt with at that time....."<sup>2</sup>

".....and the other is Rule 66(A)(iii) where, as I say, it's not the practice for the Prosecution to disclose all documents somehow relevant to the case to the Defence at an early stage. It's at the Pre-Trial Conference stage that the exhibits to be used at trial are then specified. But if, at an earlier stage, the Defence says to the Prosecution, "We are conducting our investigations; it's material to the preparation of our defence that we find material related to issue X or Y or Z; we want to inspect any documents or material in your possession related to those issues," now, it may be that is a different understanding of the rule to Mr. Khan, but as I say, if there is an issue as to statutory interpretation, the appropriate way of proceeding would be by way of formal motion."<sup>3</sup>

7. The Defence maintain the position outlined above that pursuant to the second limb of Rule 66(A)(iii) such material falls to be disclosed as of right as indicated by the response of Counsel for the Defence to the Prosecution's submissions<sup>4</sup> at the Status Conference on 22 September 2006.

<sup>2</sup> *Prosecutor v. Charles Ghankay Taylor*, SCSL-2003-01-PT, Status Conference Transcript, 22 September 2006, p. 12, lns. 14-23.

<sup>3</sup> *Ibid*, p. 25, ln. 18 – p. 26, ln. 1.

<sup>4</sup> *Ibid*, p. 15, ln. 9 – p. 16, ln. 9.

8. On 2 October 2006<sup>5</sup> the Defence wrote to the Prosecution further reiterating their interpretation of the second limb of Rule 66 (A) (iii) and stating as follows:

“... we ask to “inspect any books, documents, photographs and tangible objects” falling within the following categories pursuant to the first limb of Rule 66 (A) (iii) namely:-

- a. Any material to be tendered to prove the individual criminal responsibility of the Accused including any material pertaining to the allegation that the Accused exercised de facto control over the RUF and/or AFRC and/or Junta.
- b. Any material pertaining to the allegation that the Accused and /or his agents traded diamonds for arms with the RUF and/or AFRC and/or Junta.
- c. Any material pertaining to the logistical arrangements for arms or ammunition or other military or non-military supplies intended for the RUF and/or AFRC and / or Junta alleged to be co-ordinated by the Accused and / or his agents.
- d. Any material pertaining to the logistical arrangements for the onward sale or other disposal of diamonds by the Accused and/or his agents.
- e. Any material pertaining to any alleged financial benefit derived either by the Accused and/or his agents and/or any of the leaders of the RUF, AFRC or Junta.
- f. Any material indicating that any members of the RUF or AFRC or Junta or other individuals connected with the Accused were engaged in diamond trading independently of the Accused (including documentary evidence implicating Foday Sankoh in this regard).
- g. Any material indicating that any members of the RUF or AFRC or Junta or other individuals connected with the Accused received arms, ammunition, military supplies or other forms of support from sources other than the Accused.
- h. Evidence the OTP intend to rely on to:-
  - i. establish the geographical boundaries of Sierra Leone and Liberia,
  - ii. establish the geographical location of RUF and AFRC and Junta bases, training camps and other administrative and military facilities,

---

<sup>5</sup> Annex 1: Letter from the Defence Counsel for Mr. Taylor to the Prosecution, dated 2 October 2006.

4086

- iii. establish the geographical location of diamond mines under the control of the RUF and AFRC and Junta,
  - iv. establish the geographical location of military bases, training camps and other administrative and military facilities said to be under the control of the Accused.”
9. To date the Prosecution have served the Defence with disclosure packages on 17 May 2006, 11 August 2006, 30 August 2006, 22 September 2006, 3 October 2006, 13 October 2006, 27 October 2006, 24 November 2006, 13 December 2006, and 8 January 2007.<sup>6</sup> Any exhibits provided within these disclosure packages have been served either under Rule 68 as potentially exculpatory material, as Open Source material, or as potential exhibits that may be included within the pre-trial brief.<sup>7</sup> Each disclosure package is normally accompanied by a covering letter with a declaration that the material contained therein is served “In accordance with Rules 66 and 68 of the Rules of Procedure and Evidence (“RPE”).”<sup>8</sup>

**IV ARGUMENT**

10. The Prosecution’s interpretation of Rule 66(A)(iii), namely that they are only obliged to disclose exhibits other than pursuant to Rule 68 or Rule 73bis “upon a showing by the Defence of the categories of those items that it considers to be material, material being a reference to material that is material to the preparation of the defence”<sup>9</sup> is erroneous. As set out above Rule 66 (A) (iii) has two limbs and the Prosecution have failed to comply with their disclosure obligations with regard to both the requirements of the Rule. This is illustrated by the Prosecution’s failure to refer explicitly to Rule 66 (A) (iii) in any of their correspondence, save for the blanket declaration that material has been served “In accordance with Rules 66 and 68 of the Rules of Procedure and Evidence (“RPE”).”<sup>10</sup>
11. As regards the first limb of Rule 66(A)(iii), the Prosecution have failed to reply in any substantive manner to the points raised in the Defence letter of 2 October 2006. No indication has been given in any of the disclosure letters received from the Prosecution that any material

---

<sup>6</sup> Annex 2: Letters from the Prosecution with supporting material addressed to the Defence Counsel for Mr. Taylor, dated 17 May 2006, 11 August 2006, 30 August 2006, 22 September 2006, 3 October 2006, 13 October 2006, 27 October 2006, 24 November 2006, 13 December 2006 and 8 January 2007. The Prosecution has been notified that the Defence has not received a disclosure package dated 10 November 2006.

<sup>7</sup> See Annex 2.

<sup>8</sup> See Annex 2.

<sup>9</sup> *Prosecutor v. Charles Ghankay Taylor*, SCSL-2003-01-PT, Status Conference Transcript, 22 September 2006, p. 12, lns. 14-18.

<sup>10</sup> See Annex 2.

served has been provided further to a consideration of the “categories” of material considered relevant to the Defence.

12. Moreover, the Prosecution have failed to disclose material that the Defence is entitled to as of right. Contrary to the clear intent of the second limb of Rule 66(A)(iii), the Prosecution have not made available those exhibits they intend to use at trial or that were obtained from or belonged to the Accused. Service of a selection of “potential exhibits”<sup>11</sup> that may be relied on does not satisfy the requirements of the second limb of Rule 6(A) (iii).

## V CONCLUSION

13. Accordingly, for the reasons adumbrated above, the Defence respectfully urge the Chamber to order the Prosecution to disclose:

- (i) all exhibits in their custody or control that fall within the categories considered material to the preparation of the Defence as outlined in the Defence letter of 2 October 2006, and
- (ii) all exhibits in their custody or control which are intended for use as evidence at trial or were obtained from or belonged to the accused.

Respectfully Submitted,



---

**Karim A. A. Khan**  
**Counsel for Mr. Charles Taylor**

Dated this 25<sup>th</sup> Day of January 2007

---

<sup>11</sup> See Annex 2, Letters from the Prosecution dated 13 October 2006, 13 December 2006 and 8 January 2007.

**Table of Authorities**

**Special Court for Sierra Leone**

1. *Prosecutor v. Charles Ghankay Taylor*, SCSL-2003-01-PT, Status Conference Transcript, 22 September 2006.



**SPECIAL COURT FOR SIERRA LEONE**  
JOMO KENYATTA ROAD • FREETOWN • SIERRA LEONE  
PHONE: +39 0831 257000 or +232 22 297000 or +39 083125 (+Ext)  
UN Intermission 178 7000 or 178 (+Ext)  
FAX: +232 22 297001 or UN Intermission: 178 7001

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-2003-01-PT  
Document Index Number: 167  
Document Date 25 January 2007  
Filing Date: 25 January 2007

Number of Pages 129

Page Numbers from: 4089-4210

- Application**  
 Order  
 Indictment  
 Other  
 Correspondence

Document Title:

**Defence Application to Inspect Exhibits in the Custody of the  
Prosecution Pursuant to Rule 66 (A) (iii)  
(CONFIDENTIAL-Annexes).**

Name of Officer:

Advera Nsiima K.  
Signed: *Nsiima*