

722)

SCSL-03-01-T  
(24080-24090)

24080



SPECIAL COURT FOR SIERRA LEONE

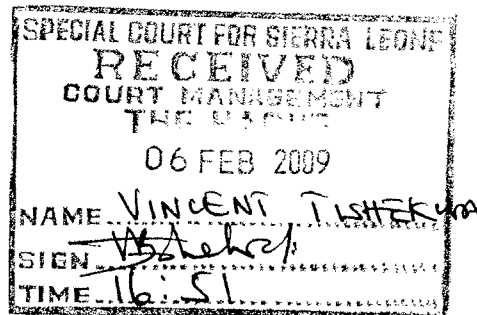
TRIAL CHAMBER II

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

Registrar: Herman von Hebel

Case No.: SCSL-03-1-T

Date: 6 February 2009



PROSECUTOR

v.

Charles Ghankay TAYLOR

---

DECISION ON MOTION FOR DISCLOSURE OF EVIDENCE UNDERLYING PREJUDICIAL STATEMENTS MADE BY THE CHIEF PROSECUTOR, MR. STEPHEN RAPP, TO THE MEDIA

---

Office of the Prosecutor:

Brenda J. Hollis  
Nicholas Koumjian  
Leigh Lawrie

Defence Counsel for Charles G. Taylor:

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

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);

SEISED of the “Urgent & Public Defence Motion for Disclosure of Evidence Underlying Prejudicial Statements Made by the Chief Prosecutor, Mr. Stephen Rapp, to the Media” filed 9 May 2008 (“Motion”);<sup>1</sup>

NOTING the “Prosecution Response to Defence Motion for Disclosure of Evidence Underlying Prejudicial Statements Made by the Chief Prosecutor, Mr. Stephen Rapp, to the Media” (“Response”) filed 19 May 2008;<sup>2</sup>

NOTING the “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” filed 26 May 2008 (“Reply”);<sup>3</sup>

CONGNISANT of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”); Rules 54, 66, 67, 68, 104, 105, of the Rules of Procedure and Evidence (“Rules”); and Articles 13, 23 and 24 of the Code of Professional Conduct for Counsel with the Right of Audience before the Special Court for Sierra Leone (“SCSL Code of Conduct for Counsel”);

DECIDES AS FOLLOWS based solely on the written submissions of the parties pursuant to Rule 73(A).

## I. INTRODUCTION

1. The Defence alleges that from as early as July 2007, Prosecutor Rapp, head of the Office of the Prosecutor (OTP), has made statements to the national and international media referring to investigations into Mr. Taylor’s alleged hidden assets.<sup>4</sup> Prosecutor Rapp has been reported as saying that although the Accused is receiving legal aid, “he has millions stashed in bank accounts around the world”;<sup>5</sup> that more than \$1 billion passed through the personal bank accounts of the Accused when he was President and that “he controlled enormous funds which he hid”;<sup>6</sup> that evidence has been found of “hundreds of millions of dollars taken by Charles Taylor illegally”;<sup>7</sup> that if the Prosecution does find money belonging to the Accused, Prosecutor Rapp hopes to share such money between the victims of the Sierra Leone war and the Government of Liberia.<sup>8</sup>

2. In light of such statements, the Defence seeks orders from the Trial Chamber:

<sup>1</sup> SCSL-03-01-T-500.

<sup>2</sup> SCSL-03-01-T-511.

<sup>3</sup> SCSL-03-01-T-521.

<sup>4</sup> Motion, paras 2, 7-11. In support of this statement, the Defence provided copies of various media reports, see Motion, Annexes A-G.

<sup>5</sup> Motion, para. 7, referring to the *Irish Times*, 12 July 2007.

<sup>6</sup> Motion, para. 8, referring to the *International Herald Tribune*, March 9, 2008.

<sup>7</sup> Motion, para. 9, referring to the *BBC Focus on Africa* program.

<sup>8</sup> Motion, paras 3, 10, referring to *BBC News Africa*, 2 May 2008, and *Mail & Guardian Online*, 8 May 2008.

- (i) under Rule 66(A) compelling the OTP to disclose to the Defence and the Office of the Principal Defender any and all evidence it holds regarding privately held funds that Mr. Taylor is said to have had or still has under his control; and
- (ii) 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 show that the Accused is no longer indigent<sup>9</sup>.

3. The Prosecution's position is that the information sought by the Defence is not subject to disclosure under Rule 66, nor under Rule 68, as it is neither material which the Prosecution intends to offer into evidence, nor is it exculpatory.<sup>10</sup> The Prosecution claims that the statements of Prosecutor Rapp referred to by the Defence do not relate to *sub judice* matters but to matters which are the subject of independent investigations in cooperation with the Panel of Experts appointed by the UN Security Council under Resolution 1760 (20 June 2007) and extended under Resolution 1792 (19 December 2007). For those reasons, the Prosecution submits that the motion is without merit and should be dismissed<sup>11</sup>.

## II. SUBMISSIONS

### 1. Motion

#### *Submissions on Disclosure Pursuant to Rule 66:*

4. The Defence believes that the issue of Mr. Taylor's assets is totally irrelevant to the Indictment.<sup>12</sup> However, it argues that to the extent the Prosecution has suggested in its public statements that "it is in possession of evidence regarding hidden assets (including bank accounts) of Mr. Taylor, including alleged evidence of large cash withdrawals, transfers to foreign bank accounts and profits from smuggled diamonds"; that "evidence of Mr. Taylor's previous or current wealth is relevant to the crime of Pillage (Count 11)"; and that "if the Prosecutor does actually find money belonging to Mr. Taylor, he hopes to share it with the victims of the Sierra Leone war and the Government of Liberia", then any related evidence currently in the possession of the Prosecution should be disclosed to the Defence pursuant to Rule 66.<sup>13</sup> The Defence further submits that if such evidence does exist, it should be disclosed because it is also relevant to the issue of the Accused having enriched himself at the expense of the Sierra Leonean public and to "the implication of an ongoing fraud being perpetrated on the Court by the Accused and the Defence [...] by virtue of his current status as a partially-indigent accused".<sup>14</sup>

5. The Defence notes that a media source has quoted court officials as saying that they would not release details of investigations into Mr. Taylor's alleged money as doing so might jeopardize the

<sup>9</sup> Motion, paras 1, 32 and Reply, para. 3.

<sup>10</sup> Response, paras 5-6.

<sup>11</sup> Response, paras 3, 22.

<sup>12</sup> Motion, paras 3, 22.

<sup>13</sup> Motion, paras 2-5, 22.

<sup>14</sup> Motion, paras 15,16.

investigation.<sup>15</sup> However, the Defence notes that Rule 66(B) permits the Prosecution to make an *ex parte* application to a Judge designated by the President to be relieved from the obligation to disclose where the disclosure might prejudice ongoing investigations.<sup>16</sup> The Defence notes that such an application may only be made with notice to the Defence and that since to date, it has not received any such notice, a belated *ex parte* application in this regard would be prejudicial to the Defence.<sup>17</sup>

***Submissions on Disclosure Pursuant to Rule 68:***

6. As an alternative to disclosure pursuant to Rule 66, the Defence argues that disclosure of any information behind the comments by Prosecutor Rapp would be necessary pursuant to Rule 68. The Defence notes that on 3 April 2006, for the purposes of retention of counsel, the Office of the Principal Defender determined that Mr. Taylor was "partially indigent" based on information Mr. Taylor's Declaration of Means.<sup>18</sup> The Defence submits that Prosecutor Rapp's allegations that Mr. Taylor possesses hidden wealth have the effect of calling into question Mr. Taylor's credibility and that of the Defence in maintaining that the Accused continues to remain partially-indigent<sup>19</sup> - a status that has not been challenged by the Registry.<sup>20</sup> Insofar as the comments of Prosecutor Rapp suggest that Mr. Taylor possesses personal wealth in contradiction to his declaration, the Defence submits Prosecutor Rapp implies an ongoing fraud is being perpetrated by Mr. Taylor and the Defence.<sup>21</sup> The Defence argues that a successful rebuttal of these allegations would exculpate Mr. Taylor *vis-à-vis* the allegations of hidden wealth, and as such, disclosure of any existing evidence supporting the comments by Prosecutor Rapp is necessary pursuant to Rule 68.<sup>22</sup>

***Submissions on an Order under Rule 54:***

7. The Defence contends that the comments of Prosecutor Rapp are prejudicial and unsubstantiated. It submits that such comments do not impartially respect the presumption of innocence of the Accused in a matter that is *sub judice*, and have the effect of prejudicing the fair trial rights of the Accused articulated in Article 17 of the Statute, as well as being contrary to Articles 13 and 24 of the SCSL Code of Conduct for Counsel.<sup>23</sup> Further, the Defence argues that although hitherto, the Principal Defender had not had sufficient legal or factual basis to question the partially-indigent status of the Accused, Prosecutor Rapp's public statements regarding hundreds of millions of dollars belonging to the Accused are prejudicial to him in that they tend to discredit him without giving him a chance to respond.<sup>24</sup>

8. The Defence claims that Prosecutor Rapp's media campaign distracts the time, energy and attention of the Defence from the factual and legal issues actually before the Court. It opines that it cannot ignore the allegations yet does not have the resources to compete with Prosecution

<sup>15</sup> Motion, para. 17, with reference to *The International Herald Tribune*.

<sup>16</sup> Motion, para. 17.

<sup>17</sup> Motion, paras 17-18.

<sup>18</sup> Motion para. 4; *Prosecutor v. Taylor*, SCSL-03-01-I-85, Principal Defender's Determination of Mr. Charles Ghankay Taylor's Indigence, 3 April 2006.

<sup>19</sup> Motion, para. 5.

<sup>20</sup> Motion, para. 20.

<sup>21</sup> Motion, para. 16.

<sup>22</sup> Motion, para. 5.

<sup>23</sup> Motion, para. 6.

<sup>24</sup> Motion, para. 20.

investigations into the matter<sup>25</sup>. It argues that the speculations of the Prosecutor regarding Mr. Taylor's wealth leave the Accused unaware of the extent of the case that he is supposed to meet, and this prejudices the Defence in the preparation of its case.<sup>26</sup> It points out that Article 23(i) of the SCSL Code of Conduct for Counsel requires that the investigations of the Prosecution shall have the "central aim of providing the factual and evidentiary basis for an accurate assessment of criminal responsibility" and not the aim of garnering public opinion to the side of the Prosecution.<sup>27</sup>

9. The Defence further argues that allegations of Mr. Taylor's wealth negatively impact on its ability to secure witnesses, in two ways. First, it suggests that potential Defence witnesses who are aware of the allegations of Mr. Taylor's personal wealth may conclude that he should share this wealth with them in return for testimony. Second, it complains that Prosecutor Rapp's suggestion that Mr. Taylor's alleged wealth would be shared with victims of the Sierra Leonean conflict and/or the Government of Liberia upon *conviction*, gives unscrupulous individuals incentive to give false testimony designed to result in conviction, with the expectation that they would be beneficiaries.<sup>28</sup>

10. To the extent that Mr. Taylor's alleged wealth is relevant to the Indictment, the Defence submits that Prosecutor Rapp is in breach of Articles 13 and 24 of the SCSL Code of Conduct for Counsel and should be barred from discussing with the media a matter that is *sub judice*.<sup>29</sup> The Defence also claims that the comments of Prosecutor Rapp are contrary to other rules of professional conduct which also apply to him, namely Rules 3.6(a) and 3.8(f) of the American Bar Association Model Rules of Professional Conduct and Rules 32:3.6 and 32:3.8 of the Iowa Rules for Professional Conduct which similarly prohibit prejudicial public statements by Counsel on matters that are *sub judice*.<sup>30</sup>

## 2. Response

### *Submissions on Disclosure Pursuant to Rule 66:*

11. As mentioned earlier, the Prosecution submits that the Motion is without merit and should be dismissed.<sup>31</sup> The Prosecution argues that there is no basis for disclosure pursuant to Rule 66(A), since it does not intend to call witnesses or offer documentary evidence regarding the information which the Defence seeks to obtain. Further, Rule 66(B) is not relevant, since the procedure it sets out relates only to material which the Prosecution would otherwise be obligated to disclose.<sup>32</sup> The Prosecution submits that Prosecutor Rapp's statements, rather than referring to proposed evidence in the case, instead relate to matters which are the subject of a separate and on-going investigation into assets held by Mr. Taylor in co-operation with the Panel of Experts appointed by UN Security Council.<sup>33</sup>

<sup>25</sup> Motion, para. 21.

<sup>26</sup> Motion para. 22.

<sup>27</sup> Motion para. 28.

<sup>28</sup> Motion, paras 23-24.

<sup>29</sup> Motion, paras 6, 26.

<sup>30</sup> Motion, para. 6.

<sup>31</sup> See above, under the heading "Introduction".

<sup>32</sup> Response, paras 4, 5.

<sup>33</sup> Response, paras 3-5; see above, under the heading "Introduction".

12. The Prosecution further submits that the alternative argument of the Defence for disclosure under Rule 68 is also without basis, since Rule 68 requires notice to the Defence of the existence of evidence which, of itself, “in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence;” it does not require notice to the Defence of the existence of information which, if rebutted, would serve to exculpate the Accused.<sup>34</sup>

***Submissions on an Order under Rule 54:***

13. The Prosecution submits the order sought is inappropriate and without merit. It argues that the comments made by Prosecutor Rapp do not ignore the presumption of innocence of the Accused, nor do they prejudice the rights of the Accused under Article 17 of the Statute. The Prosecution submits that Prosecutor Rapp’s comments refer to assets being used for restitution if the Accused is found guilty on Count 11, and do not amount to a pronouncement of guilt. The Prosecution submits that at this stage, Prosecutor Rapp is encouraging the location and freezing of assets which could later be the subject of proceedings in the Special Court and other courts for a legal disposition of the property, and that he is entitled to engage public support for this purpose.<sup>35</sup>

14. The Prosecution submits that there has therefore been no prejudice to the Accused. It notes that the determination of Mr. Taylor’s “partially indigent” status is provisional, not final. It rejects Defence claims that it is unaware of the extent of the case it is supposed to meet and states that the only case the Accused has to meet is the case on record before the Trial Chamber, and that in any event, “the Accused knows where his assets are and / or with whom he has entrusted those assets”.<sup>36</sup>

15. The Prosecution rebuffs the Defence argument that the possibility of restitution gives Prosecution witnesses an incentive to lie. The Prosecution contends that such an argument is not only inapplicable to witnesses from Liberia or to witnesses who are not victims, but improperly calls into question the trustworthiness of victims generally whenever recovery of damages is possible. Further the Prosecution maintains that any alleged difficulties in securing Defence witnesses during the trial may be overcome by issuing subpoenas pursuant to Rule 54.<sup>37</sup>

16. Finally, the Prosecution submits that the statements of Prosecutor Rapp do not involve matters which are *sub judice* and do not violate the SCSL Code of Conduct for Counsel or the US codes of conduct cited by the Defence.<sup>38</sup> Rather, such statements relate to extra-judicial matters, namely “the ongoing independent investigation, consistent with UN resolutions, to locate and freeze assets of the Accused”.<sup>39</sup> The Prosecution argues that Prosecutor Rapp’s comments do not relate to evidence before the Chamber, do not contain inflammatory language and can have no effect on the result of the trial.<sup>40</sup> It suggests instead that the Defence itself has engaged in public statements which involve *sub judice* matters or which disparage the Special Court.<sup>41</sup>

### 3. Reply

<sup>34</sup> Response, para. 6.

<sup>35</sup> Response, paras 8-9.

<sup>36</sup> Response, paras 10, 11.

<sup>37</sup> Response, paras 10-13.

<sup>38</sup> Response, paras 14, 16.

<sup>39</sup> Response, para. 16.

<sup>40</sup> Response, paras 20-21.

<sup>41</sup> Response, paras 14-16.

*Submissions on Disclosure Pursuant to Rule 66:*

17. The Defence submits that its point in seeking disclosure under Rules 66 and 68 is simply that Prosecutor Rapp has stated publicly on numerous occasions that information relating to Mr. Taylor's alleged wealth is relevant to Count 11 (the crime of Pillage). It suggests the Prosecution has conceded that it may seek to introduce documentary evidence of the material referenced by the Defence at trial, at which point the Prosecution would then disclose it under Rule 66(A). It argues that if this is indeed an option being considered by the Prosecution, out of fairness to the Defence, such evidence must be disclosed now.<sup>42</sup>

18. Additionally, the Defence contends that the absence of evidence of privately-held funds would tend to negate the charge of Pillage and should therefore be disclosed under Rule 68 as exculpatory.<sup>43</sup>

*Submissions on an Order under Rule 54:*

19. The Defence emphasises that it does not suggest that the Judges in this case would be prejudiced but that its concerns relate to the effect of prejudicial statements on its ability to secure witnesses willing to testify on Mr. Taylor's behalf, which witnesses are less likely to come forward in defence of someone that the international community, due to the Prosecutor's extensive propaganda, is publicly condemning for illegal acquisition and possession of billions of dollars. Compelling witnesses by subpoena is not, in the Defence's view, the most efficient or effective way of bringing witnesses to court.<sup>44</sup>

**III. APPLICABLE LAW**

20. The following are the rules governing the issues to be decided.

**Rule 54: General Provisions**

At the request of either party or of its own motion, a Judge or a Trial Chamber may issue such orders, summonses, subpoenas, warrants and transfer orders as may be necessary for the purposes of an investigation or for the preparation or conduct of the trial.

**Rule 66: Disclosure of materials by the Prosecutor**

(A) Subject to the provisions of Rules 50, 53, 69 and 75, the Prosecutor shall:

(i) Within 30 days of the initial appearance of an accused, disclose to the Defence copies of the statements of all witnesses whom the Prosecutor intends to call to testify and all evidence to be presented pursuant to Rule 92bis at trial.

(ii) Continuously disclose to the Defence copies of the statements of all additional prosecution witnesses whom the prosecutor intends to call to testify, but not later than 60 days before the date for trial, or as otherwise ordered by a Judge of the Trial Chamber either before or after the commencement of the trial, upon good cause being shown by the Prosecution. Upon good cause being shown by the Defence, a Judge of the Trial Chamber may order that copies of the

<sup>42</sup> Reply, paras 4-7.

<sup>43</sup> Reply, para. 8.

<sup>44</sup> Reply, paras 9-11.

statements of additional prosecution witnesses that the Prosecutor does not intend to call be made available to the defence within a prescribed time.

(iii) 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 to be material to the preparation of a defence, or to inspect any 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.

(B) Where information or materials are in the possession of the Prosecutor, the disclosure of which may prejudice further or ongoing investigations, or for any other reasons may be contrary to the public interest or affect the security interests of any State, the Prosecutor may apply to a Judge designated by the President sitting *ex parte* and *in camera*, but with notice to the Defence, to be relieved from the obligation to disclose pursuant to Sub-Rule (A). When making such an application the Prosecutor shall provide, only to such Judge, the information or materials that are sought to be kept confidential.

#### **Rule 68: Disclosure of Exculpatory Evidence**

(A) The Prosecutor shall, within 14 days of the receipt of the Defence Case Statement, make a statement under this Rule disclosing to the defence the existence of evidence known to the Prosecutor which may be relevant to issues raised in the Defence Case Statement.

(B) 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.

#### **Code of Professional Conduct for Counsel with the Right of Audience before the Special Court for Sierra Leone.**

##### **Article 13 – Contact with the Media**

(A) Counsel shall not publish or assist in the publication of any material concerning any current proceedings which:

- (i) is false; or
- (ii) discloses any confidential information.

(B) Counsel shall not comment on any matter which is *sub judice* in any case in which he is involved.

##### **Article 23 – Scope of Prosecution**

Prosecution Counsel shall:

- (i) conduct investigations and analyses with the central aim of providing the factual and evidentiary basis for an accurate assessment of criminal responsibility;
- (ii) conduct fair and firm prosecutions of crimes within the jurisdiction of the Special Court, when well-founded upon evidence reasonably believed to be reliable and admissible.

##### **Article 24 - Impartiality**



(A) Prosecution Counsel shall respect the presumption of innocence of all suspects and accused, and in particular, shall refrain from expressing a public opinion on the guilt or innocence of a suspect or an accused in public or outside the context of proceedings.

(B) Prosecution Counsel shall assess the materiality of facts and the probative value of evidence according to all relevant circumstances and irrespective of whether they are to the advantage or disadvantage of the suspect or accused.

#### IV. DELIBERATIONS

##### 1. Disclosure Pursuant to Rule 66

21. As a preliminary matter, the Trial Chamber confirms that to date, no *ex parte* application has been made by the Prosecution concerning evidence relating to the alleged wealth of Mr. Taylor under Rule 66(B). As stipulated in the Rule, such an application may only be made with notice to the Defence.

22. With regard to disclosure pursuant to Rule 66(A), the Trial Chamber notes the Defence position that the issue of Mr. Taylor's assets is irrelevant to the Indictment.<sup>45</sup> The Prosecution, in its Response, similarly contends that the material is not relevant and states that it does not intend, "at this time", to rely upon it at trial.<sup>46</sup> Considering, therefore, that the Defence has not shown how any such evidence is relevant or material to the preparation of its case and the Prosecution has not indicated its intention to rely on the evidence at trial, the Trial Chamber cannot see any reason to order the disclosure of any such material pursuant to Rule 66.<sup>47</sup>

23. However, two further issues flow from this finding. First, the Trial Chamber notes that the limiting phrase "at this time" used by the Prosecution in its Response suggests the possibility that the Prosecution may yet seek to rely upon such material. The Trial Chamber reminds the Prosecution that it is required to know its case before the start of trial and is not permitted to mould the case against the Accused as it progresses.<sup>48</sup>

24. Second, while both Parties agree that the state of Mr. Taylor's assets is not relevant to the Indictment, the Defence contends that Prosecutor Rapp has on "numerous occasions" stated to the public/media that information related to Mr. Taylor's wealth is relevant to Count 11 (Pillage).<sup>49</sup> The Trial Chamber has reviewed the sources provided by the Defence which purport to demonstrate this and finds that where Prosecutor Rapp has been personally quoted he has largely confined his comments to the on-going investigation into Mr. Taylor's assets and has not been quoted as relating the investigation to the present case. However, somewhat contrary to this finding is a statement highlighted by the Defence in its Reply, made by Prosecutor Rapp to Power TV on 30 April 2008, in which Prosecutor Rapp is quoted as stating:

---

<sup>45</sup> Motion, paras 3, 22.

<sup>46</sup> Response, paras 3-5.

<sup>47</sup> *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Decision on Defence Motion for Disclosure Pursuant to Rules 66 and 68 of the Rules, 9 July 2004; *Prosecutor v. Delalic et al.*, ICTY-96-21, Decision on the Motion by the Accused Zejnil Delalic for the Disclosure of Evidence, 26 September 1996.

<sup>48</sup> *Prosecution v. Brima et al.*, SCSL-04-16-T, Judgement, 20 June 2007, para. 80.

<sup>49</sup> Reply, para. 4.

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 [sic] 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.<sup>50</sup>

25. The Trial Chamber also notes the content of media articles, such as an article appearing on 9 March 2008 in the *International Herald Tribune*, which suggest that unnamed Prosecutors may have stated publicly that Mr. Taylor's alleged wealth is generally relevant to his prosecution for war crimes and crimes against humanity before this Chamber.<sup>51</sup>

26. The Trial Chamber finds that such statements are at odds with the Prosecution's stated position on the matter before this court, both in its Response to this Motion and in the foundational documents of this case. The indictment, in relation to Count 11 (Pillage), describes "widespread unlawful taking of civilian property"<sup>52</sup> and while the Prosecution's Amended Case Summary does not describe "Pillage" as such, it describes "Looting" in the following terms: "Civilian properties were routinely looted for items such as jewellery and other valuables, money and clothes."<sup>53</sup> The Prosecution Pre-Trial Brief similarly describes looting of civilian property.<sup>54</sup> "Pillage of diamonds" as described by Prosecutor Rapp in his interview with Power TV has not been articulated by the Prosecution in relation to Count 11 in the present case. No further argumentation has been provided by the Prosecution which would suggest to the Trial Chamber how the alleged state of Mr. Taylor's wealth would otherwise be relevant to Count 11. The Trial Chamber therefore disregards such extra-judicial statements. The only case to be met is that set out in the Indictment

## 2. Disclosure Pursuant to Rule 68

27. The Trial Chamber has considered the alternative Defence arguments that material related to Prosecutor Rapp's comments should be disclosed pursuant to Rule 68. It finds these arguments logically untenable. The Defence argued in the first instance that such evidence, if it exists, should be disclosed as exculpatory as it would rebut the Prosecution's implied allegation that Mr. Taylor has fraudulently declared himself to be partially indigent. The Trial Chamber finds that the Defence has not demonstrated how such information could be related to the present case. Any possible "vindication" of Mr. Taylor's character vis-à-vis his position on the state of his alleged wealth or partially-indigent status is irrelevant to the charges before him and to the credibility of the Prosecution's evidence. It cannot, therefore, be "exculpatory" with regard to his alleged criminal liability, within the meaning of Rule 68.

<sup>50</sup> Reply, Annex A.

<sup>51</sup> The article includes the following passages: "Prosecutors say the most exhaustive effort to date is under way to pinpoint the money the former dictator is believed to have amassed by pilfering the coffers of his country and running smuggling operations, particularly of diamonds, deep inside neighbouring states" and "Taylor, 60, has been charged with pillaging, but his hidden accounts and assets are also central to his prosecution on charges of war crimes and crimes against humanity." Marlise Simons, "Investigators report progress in tracking ex-warlord's fortune" *International Herald Tribune*, 9 March 2008, as provided by the Defence Motion, Annex A.

<sup>52</sup> SCSL-03-01-PT-263, Prosecution's Second Amended Indictment, para. 28.

<sup>53</sup> SCSL-03-01-T-327, Prosecution Notification of Filing of Amended Case Summary, para. 29.

<sup>54</sup> SCSL-03-01-PT-218, Rule 73bis Pre-Trial Conference Materials, Pre-Trial Brief, 4 April 2007, paras. 7, 34, 47, 48, 51, 81, 82, 83, 89, 96, 101, 103, 110, 115.

28. In the second instance, the Defence argued that such evidence, if it exists, could demonstrate the absence of privately-held funds which would tend to negate the charge of pillage. This argument fails for being wholly hypothetical in light of the Trial Chamber's findings in paragraph 26 above. More importantly, as laid out in detail by the Trial Chamber above, both Parties agree that the state of Mr. Taylor's alleged wealth is irrelevant to the charge of pillage (Count 11) and therefore could not be exculpatory with regard to Mr. Taylor's alleged criminal liability on that charge.

### 3. Order under Rule 54

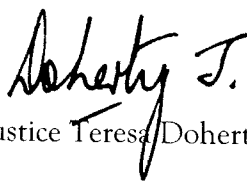
29. The Trial Chamber accepts the submissions of the Prosecution on this issue and is not satisfied that the Defence has made out a case for an order under Rule 54. In particular, the Defence has not shown that any comments made by Prosecutor Rapp to the media concerned *sub-judice* matters, nor that any such comments have prejudiced the fair trial rights of the Accused. The Defence arguments may have some substance in a trial by jury, but are not tenable in the present case where the trial is by professional judges.

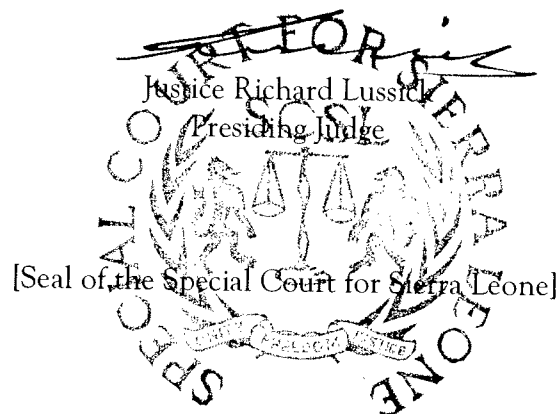
30. Nonetheless, the Trial Chamber does agree with the Defence that the statements complained of do tend to heighten public condemnation of the Accused. However, the question of whether Prosecutor Rapp was in breach of the SCSL Code of Conduct for Counsel is not one for the Trial Chamber to decide. Rule 32 of that Code sets out the procedure to be followed in the case of a complaint against counsel for misconduct.

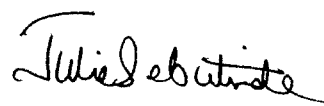
## V. DISPOSITION

31. **FOR THE ABOVE REASONS** the Trial Chamber  
DENIES the Motion.

Done at The Hague, The Netherlands, this 6<sup>th</sup> day of February, 2009.

  
Justice Teresa Doherty



  
Justice Julia Sebutinde