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SCSL-03-01-PT
(4349-4351)

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SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

Before: Justice Julia Sebutinde, Presiding Judge
 Justice Richard Lussick
 Justice Teresa Doherty

Registrar: Lovemore G. Munlo, SC

Date filed: 16 February 2007

PROSECUTOR

Against

Charles Ghankay Taylor
(Case No.SCSL-03-1-PT)

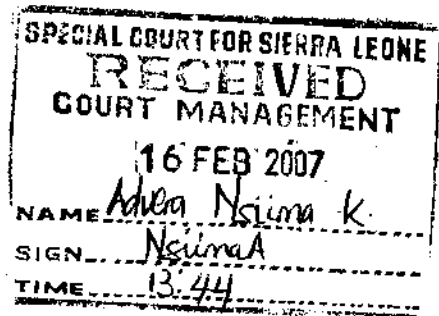
DECISION ON DEFENCE APPLICATION TO INSPECT EXHIBITS IN THE CUSTODY
 OF THE PROSECUTION PURSUANT TO RULE 66(A)(III)

Office of the Prosecutor:

Brenda Hollis
Urs Wiedemann

Defence Counsel for Charles G. Taylor:

Karim A.A. Khan
Roger Sahota



TRIAL CHAMBER II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court"), composed of Justice Julia Sebutinde, Presiding Judge, Justice Richard Lussick and Justice Teresa Doherty;

SEISED of the "Defence Application to Inspect Exhibits in the Custody of the Prosecution Pursuant to Rule 66(A)(iii)" ("Motion"), filed on 25 January 2007, in which the Defence submits that the Prosecution has not complied with its obligations under Rule 66(A)(iii) of the Special Court's Rules of Procedure and Evidence ("Rules")¹, and should be ordered "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"²;

NOTING the "Prosecution Response to Defence Application to Inspect Exhibits in the Custody of the Prosecution Pursuant to Rule 66(A)(iii)" ("Response"), filed on 5 February 2007, wherein the Prosecution opposes the Motion and submits that it should be dismissed³ on the grounds that (i) the defence has failed to demonstrate any violation by the Prosecution of its disclosure obligations under the Rules⁴; (ii) while the Motion is entitled "Application to Inspect Exhibits in the Custody of the Prosecution" the relief sought is an order for 'disclosure' rather than 'inspection'⁵; and (iii) the Prosecution has, in any event, complied with and exceeded its disclosure obligations under the Rules by disclosing material it considers exculpatory or that amounts to potential exhibits⁶.

NOTING that the Defence indicated to the Trial Chamber that it does not intend to file a Reply to the Response⁷;

MINDFUL of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone ("Statute") and of Rules 66 and 68 of the Rules;

NOTING that Rule 66(A)(iii) of the Rules provides that

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

(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.

¹ Motion, paras 2-12.

² Motion, para. 13.

³ Response, para. 25.

⁴ Response, paras 3, 5, 6-12, 17-24.

⁵ Response, para. 4.

⁶ Response, paras 13-16.

⁷ See Document No. SCSL-03-01-PT-180, Letter dated and filed 12 February 2007 from Mr. Karim Khan, Defence Counsel, addressed to the Trial Chamber.



CONSIDERING that although the Motion is described as an "Application to Inspect Exhibits in the Custody of the Prosecution," it in fact seeks orders for "disclosure" rather than "inspection" of material;⁸

CONSIDERING FURTHER that the Defence in their letter of 2 October 2006 indicated to the Prosecution that they would "prefer to inspect this material by way of service of the exhibits as hard copies or (depending on the volume) in electronic form";⁹

SATISFIED that the Prosecution has in fact disclosed to the Defence on an ongoing basis the following material:¹⁰

- (i) statements of witnesses that the Prosecution intends to call to testify pursuant to Rule 66 (A) (i) and (ii);
- (ii) exculpatory material pursuant to Rule 68;
- (iii) potential exhibits including materials requested in the Defence letter of 2 October 2006;


NOTING that the Defence has not challenged the Prosecution submission that "Material that has been reviewed by the Prosecution and has relevance either under Rule 66 or 68 has already been disclosed. Material not reviewed is being processed and will be disclosed as soon as possible, according to the liberal practice described above. This process will be complete at the latest when the Pre-Trial Brief and the exhibit lists are due.";¹¹

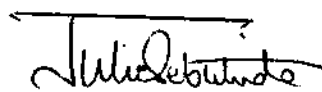
HOLDING that Rule 66 (A) (iii) does not place an obligation upon the Prosecution before or during the inspection, to sort or identify the inspection material according to the categories specified by the Defence;

FINDS that in the circumstances the Defence application is without merit; and

HEREBY DISMISSES THE MOTION.

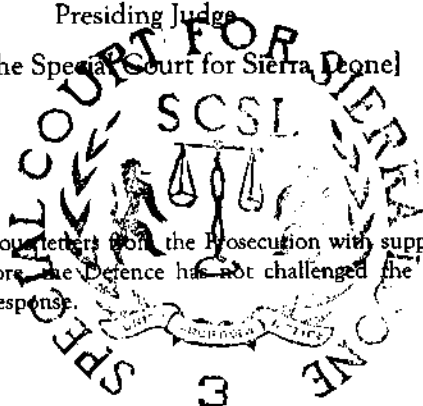
Done at Freetown, Sierra Leone, this 16th day of February 2007.


Justice Richard Lussick


Justice Julia Sebutinde
Presiding Judge


Justice Teresa Doherty

[Seal of the Special Court for Sierra Leone]



⁸ Motion, para. 13. See also Response, para. 4.

⁹ Annex 1 to the Motion.

¹⁰ See Annex 2 to the Motion containing various letters from the Prosecution with supporting material addressed to the Defence Counsel for Mr. Taylor. Furthermore, the Defence has not challenged the Prosecution submissions in this regard, contained paras. 13-16, 20-23 of the Response.

¹¹ Response, para. 23.