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SCSL-03-01-T  
(30237-30248)

30237



SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

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

Registrar: Binta Mansaray

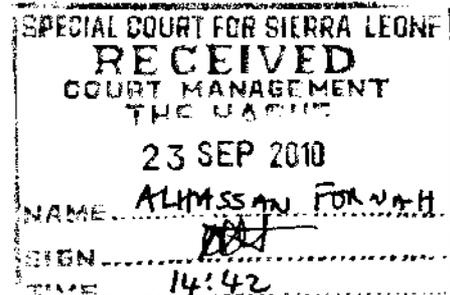
Case No.: SCSL-03-1-T

Date: 23 September 2010

PROSECUTOR

v.

Charles Ghankay TAYLOR



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

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Office of the Prosecutor:

Brenda J. Hollis  
Leigh Lawrie

Counsel for the Accused:

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

**TRIAL CHAMBER II** (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);  
**SEISED** of the “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”, filed on  
 4 August 2010 (“Motion”);<sup>1</sup>

**NOTING** the “Prosecution Response to 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”, filed on 13 August 2010 (“Response”);<sup>2</sup>

**NOTING ALSO** the “Defence Reply to Prosecution Response to Defence Motion for Disclosure of  
 Statement and Prosecution Payments Made to DCT-097”, filed on 18 August 2010 (“Reply”);<sup>3</sup>

**NOTING FURTHER** the “Public with Confidential Annex A Addendum to Defence Reply to  
 Prosecution Response to Defence Motion for Disclosure of Statement and Prosecution Payments  
 made to DCT-097”, filed on 19 August 2010 (“Addendum”);<sup>4</sup>

**RECALLING** that on 7 September 2010 the Trial Chamber delivered a brief oral Decision granting  
 the Motion in part and undertook to publish its reasoned Decision in writing in due course (“Oral  
 Decision”);<sup>5</sup>

**RECALLING FURTHER** the Trial Chamber’s oral Order to the Prosecution to:

1. Disclose to the Defence forthwith, pursuant to Rule 68:
  - (a) an account of all payments made to or benefits conferred upon Witness DCT-097/TF1-354  
 by the Prosecution for the period 2004 to 2006, or at any time before or after that period.
  - (b) all documents relating to such payments, including receipts, vouchers, Money Gram  
 receipts, etc;
2. Provide an explanation for those payments.

**COGNISANT** of the provisions of Article 17(4) of the Statute of the Special Court for Sierra Leone  
 (“Statute”) and Rules 66, 68 and 73(A) of the Rules of Procedure and Evidence (“Rules”);

**HEREBY** delivers its reasoned Decision based solely on the written submissions of the parties,  
 pursuant to Rule 73(A):

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<sup>1</sup> SCSL-03-01-T-1039.

<sup>2</sup> SCSL-03-01-T-1046.

<sup>3</sup> SCSL-03-01-T-1052.

<sup>4</sup> SCSL-03-01-T-1053.

<sup>5</sup> Transcript 7 September 2010, pp. 48082, 48083.

## I. BACKGROUND

1. “Witness DCT-097” is the pseudonym of a protected Defence witness<sup>6</sup> listed on the Defence Core Witness List.<sup>7</sup> According to the Defence, Alex Yearsley of “Global Witness”<sup>8</sup> interviewed Witness DCT-097 in Abidjan in 2001 or 2002 and recorded a statement from the latter (“Global Witness Statement”), which statement allegedly related to the witness’s involvement in trading diamonds for the Revolutionary United Front (RUF) in Monrovia from 2000.<sup>9</sup> Subsequently, the Prosecution contacted Witness-DCT-097 through Yearsley and communicated with him from 2004 until sometime in 2006.<sup>10</sup> The Defence maintains that during this period, the Prosecution made numerous payments to Witness DCT-097 estimated at \$ 30,000 in total.<sup>11</sup> The Prosecution in accordance with its disclosure obligations under the Rules disclosed to the Defence certain material in relation to Witness DCT-097 under the pseudonym “TF1-354” although it ultimately did not call Witness DCT-097 as a witness in any case before the Special Court.<sup>12</sup> However, the Prosecution did not disclose the Global Witness Statement nor the payments made to Witness DCT-097.

2. The Defence submits that despite repeated requests from the Defence for disclosure of the statement or statements given by Witness DCT-097 and records of moneys given to the witness, the Prosecution has breached its Rule 68(B) obligations by failing to disclose information relating to:

- (i) the existence and substance of a statement given by DCT-097 to Global Witness, which the Prosecution is aware of and which pre-dated Prosecution interviews with DCT-097; 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.<sup>13</sup>

3. The Defence maintains that the Global Witness Statement is exculpatory in that it states that Charles Taylor was not connected to the RUF diamond trading in Monrovia and clearly suggests the

<sup>6</sup> See *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 2009, where the witness was granted *inter alia*, the protective measure of use of a pseudonym.

<sup>7</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-957, Defence Rule 73ter Filing of Witness Summaries - Version Five, 12 May 2010, Annex C.

<sup>8</sup> According to the website [www.globalwitness.org](http://www.globalwitness.org), Global Witness is a non-Governmental organisation that “exposes the corrupt exploitation of natural resources and international trade systems in order to drive campaigns that end impunity, resource-linked conflict and human rights and environmental abuses.”

<sup>9</sup> Motion, para. 10.

<sup>10</sup> Motion, para. 10.

<sup>11</sup> Motion, paras 2, 10, 11, 18, 19 and Confidential Annex G.

<sup>12</sup> Letter from Courtenay Griffiths, QC, to Brenda Hollis, 19 May 2010 [Confidential Annex B to the Motion] (“First Disclosure”).

<sup>13</sup> Motion, paras 1-2.

innocence of the Accused.<sup>14</sup> The Defence argues that the Prosecution “must have this statement within its custody or control” or “at the very least, it must have been privy to the contents of the statement”.<sup>15</sup> The Defence further maintains that the payments made to Witness DCT-097 by the Prosecution are an exculpatory factor that “necessarily impacts on the credibility and reliability” of the witness’s statements disclosed to the Defence. The Defence maintains that by failing to disclose the Global Witness Statement and the said payments, the Prosecution is in breach of its Rule 68(B) obligations in relation to Witness DCT-097 whom the Defence intends to call as a witness<sup>16</sup> and accordingly, requests the Trial Chamber to compel the Prosecution to do so.

## II. APPLICABLE LAW

4. The Trial Chamber is mindful of the rights of the Accused as provided for in Article 17(4) of the Statute of the Special Court.

5. The Trial Chamber takes note of the legal provisions governing the disclosure of materials by the Prosecutor as set out in Rule 66, which provides in relevant part that:

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

6. The specific provisions of the law relating to the disclosure of exculpatory materials is embodied in Rule 68 of the Rules, which provides in relevant part as follows:

- (A) The Prosecutor shall, within 14 days of 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.

<sup>14</sup> Motion, para. 17.

<sup>15</sup> Motion, para. 16.

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

## III. DELIBERATIONS

*Arguments relating to the status of Witness DCT-097*

7. The Prosecution maintains that it is under no duty to disclose any materials relating to Witness DCT-097 as the latter is a Defence witness and has never been included on any of the Prosecution's witness lists filed with the Court in this case, nor has he ever testified on behalf of the Prosecution in this or any other case before the Special Court.<sup>17</sup> The Prosecution submits that its disclosure to the Defence on 14 June 2010 of un-redacted materials relating to the witness was "on a bona fide basis and in the spirit of the jurisprudence in this area",<sup>18</sup> rather than out of an obligation under the Rules. The Prosecution maintains that it has strictly complied with its disclosure obligations under the Rules and has "disclosed details of all payments to and benefits conferred on *Prosecution* witnesses. However, there is no jurisprudence to support the Defence contention that such disclosure must be made in respect of Defence witnesses."<sup>19</sup>

8. The Defence submits that on 21 July 2010 a Defence Lawyer and Defence investigator interviewed Witness DCT-097 who *inter alia*, disclosed to the Defence (a) that in 2004 the Prosecution approached him through Alex Yearsley of Global Witness; (b) that Witness DCT-097 was subsequently interviewed by various members of the Prosecution (including David Crane, Gilbert Morissette, John Berry, Maggie and an Australian); (c) that the Prosecution wanted him to confirm what they said they had heard from other sources, namely, that Witness DCT-097 was the main RUF person who carried diamonds to Charles Taylor; (d) that the Prosecution paid DCT-097 a "monthly allowance" of approximately \$ 1,200 from sometime in 2004 until sometime in 2006 generally for his "upkeep"; (e) that the Prosecution stopped paying this allowance to DCT-097 in 2006 when they met him for the final time and told him that "they were not getting what they needed from him"; and (f) that on this occasion, the Prosecution had been prepared to relocate Witness DCT-097 and his family but that he ultimately refused to cooperate.<sup>20</sup>

9. The Defence further submits that the nine statements and/or correspondences dated between 27 May 2004 and 15 January 2006 disclosed by the Prosecution to the Defence on 14 June 2010 in relation to DCT-097<sup>21</sup> are further proof that the Prosecution was in contact with and/or interviewed the witness from May 2004 to January 2006.<sup>22</sup> The Defence submits further that during the RUF

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<sup>17</sup> Response, paras 7-10.

<sup>18</sup> Response, para. 5.

<sup>19</sup> Response, para. 8.

<sup>20</sup> Motion, para. 10, Confidential Annex E.

<sup>21</sup> Motion, para. 9, Confidential Annex A.

<sup>22</sup> Reply, para. 11.

Case before Trial Chamber I,<sup>23</sup> the Prosecution assigned the witness the pseudonym TF1-354 and obtained protective measures for him as a “Category 1(C) insider witness”, including a provision wherein the Defence could not contact TF1-354 without the Court’s prior approval<sup>24</sup>. The Defence argues in view of the above, that DCT-097/TF1-354 remains a Prosecution witness and the fact that the Defence now intends to call him as a Defence witness should not relieve the Prosecution of its disclosure obligations under Rule 66 and/or Rule 68.<sup>25</sup> The Defence further submits that the Prosecution’s use of Witness DCT-097 as an informant or source rather than as a potential witness is not significant for purposes of a Rule 68(B) disclosure<sup>26</sup>. Rather it is the nature and/or content of the material in relation to the witness that determines whether or not it is exculpatory and therefore should be disclosed.<sup>27</sup>

### *Findings*

10. There is evidence to suggest that between May 2004 and January 2006 the Prosecution interacted with and/or interviewed Witness DCT-097 (otherwise known to the Prosecution as TF1-354), notwithstanding that he ultimately was never called to testify. The Prosecution admits making redacted and un-redacted disclosures to the Defence of nine statements and/or correspondences in relation to these interactions, on 17 May 2006 and 14 June 10, respectively.<sup>28</sup> The fact that the Prosecution obtained protective measures from Trial Chamber 1 for this individual including the use of the pseudonym “TF1-354” in order to protect his identity as a “Category 1(C) insider witness”<sup>29</sup> further illustrates the Prosecutions’ regard of this individual as a potential Prosecution witness. This evidence strongly suggests that for all intents and purposes Witness DCT-097 or TF1-354 was a potential Prosecution witness.

11. The Trial Chamber notes in any event, that the Defence request is for disclosure of potentially exculpatory material pursuant to Rule 68(B) rather than a request for general disclosure pursuant to Rule 66. Under Rule 68(B), the Prosecution is required to continuously disclose to the Defence “the existence of evidence known to the Prosecutor which in any way tends to suggest the innocence or

<sup>23</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T.

<sup>24</sup> Reply, para. 11.

<sup>25</sup> Reply, paras 11-12.

<sup>26</sup> Reply, para. 13.

<sup>27</sup> Reply, paras 14-15.

<sup>28</sup> Response, para. 5.

<sup>29</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-180, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004 and *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-102, Renewed Prosecution Motion for Protective Measures Pursuant to Order to the Prosecution for Renewed Motion for Protective Measures, 2 April 2004, where TF1-354 is listed in Annex A as No. 23 on the list of Category C Insider Witnesses.

mitigate the guilt of the Accused or which may affect the credibility of the Prosecution evidence". This provision has been liberally construed to apply to all exculpatory material that is in the custody or control of the Prosecutor, and is not limited to material relating to "Prosecution witnesses" as argued by the Prosecution.<sup>30</sup> Accordingly the Trial Chamber finds that the Prosecution is under an obligation to disclose to the Defence in relation to Witness DCT-097/TF1-354, any exculpatory material in its custody or control, regardless of whether or not the latter was called by the Prosecution to testify.

***Arguments in relation to the Disclosure of the Global Witness Statement:***

12. Firstly, the Defence requests the Trial Chamber to compel the Prosecution to fulfil its Rule 68 obligations by disclosing "the existence and substance of a statement given by Witness DCT-097 to Global Witness, of which the Prosecution is aware and which predated Prosecution interviews with DCT-097."<sup>31</sup> The Defence submits that in his interview of 21 July 2010, Witness DCT-097 informed members of the Defence (a) that in 2001 or 2002 he was interviewed by one Alex Yearsley of Global Witness who recorded a statement from the witness; (b) that the Global Witness Statement related to the witness's involvement in trading diamonds for the RUF in Monrovia from 2000 (c) that DCT-097 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; (d) that Alex Yearsley 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 (DCT-097) should cooperate; (e) that a few days later, Gilbert Morissette of the Prosecution called DCT-097 and asked to meet with the latter at a place chosen by DCT-097; (f) that the Prosecution wanted DCT-097 to confirm what they said they heard from other sources, namely, that DCT-097 was the main RUF person who carried diamonds to Charles Taylor; and (g) that DCT-097 was interviewed by various members of the Prosecution including David Crane, Gilbert Morissette, John Berry, Maggie and an Australian.<sup>32</sup> The Defence argues that since the crux of the Prosecution case rests on allegations that blood diamonds were provided by the RUF to Charles Taylor in exchange for his support of their revolution, the information given by Witness DCT-097 in the Global Witness Statement that the

<sup>30</sup> *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. 12; *Prosecutor v. Taylor*, SCSL-03-01-T-735, Decision on Confidential Defence Application for Disclosure of Documents in the Custody of the Prosecution Pursuant to Rule 66 and Rule 68, 18 February 2009, para. 5; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-363, Decision on Sesay Motion Seeking Disclosure of the relationship Between Governmental Agencies of the United States of America and of the Office of the Prosecutor, 2 May 2005, para. 35.

<sup>31</sup> Motion, paras 2, 16-17, 25.

<sup>32</sup> Motion, para. 10.

RUF was not involved in trading diamonds with Charles Taylor or the Liberian Government, clearly suggests the innocence of the Accused.<sup>33</sup>

13. Although Global Witness responded to a query from the Defence indicating that “they no longer have the requested information on record and are unable to provide it,”<sup>34</sup> the Defence claims that, before the Prosecution decided to contact DCT-097 it is only logical that Global Witness must have given the Prosecution some indication or summary of the substance of its interview with DCT-097 thus knowledge of this exculpatory material should be imputed to them<sup>35</sup> and that the Prosecution must have this Statement within its custody or control, or at the very least, been privy to the contents of the Statement.<sup>36</sup> The Defence further submits that given the demonstrated level of cooperation between Global Witness and the Prosecution the Prosecution is better placed to obtain the Statement and should have obtained and disclosed it<sup>37</sup>. The Defence accordingly requests the Trial Chamber to compel the Prosecution to disclose the extent of its knowledge in regard to the Global Witness Statement as well as a copy the Statement itself or Investigative Notes based on the lead Alex Yearsley gave to Gilbert Morissette in 2004.<sup>38</sup>

14. The Prosecution opposes the Motion on the grounds that it does not have any Global Witness Statement in its possession, nor does it know of the existence of any Rule 68 evidence in such material as speculated by the Defence.<sup>39</sup>

### *Findings*

15. The Trial Chamber has held that in order to establish that the Prosecution has breached its Rule 68(B) disclosure obligations, the onus is upon the Defence to:

- (i) identify the material sought with requisite specificity;
- (ii) make a *prima facie* showing of the exculpatory or potentially exculpatory nature of the materials requested;
- (iii) make a *prima facie* showing of the Prosecution’s custody or control of the materials requested;
- (iv) show that the Prosecution has, in fact, failed to disclose the targeted exculpatory material.<sup>40</sup>

<sup>33</sup> Motion, para. 17; Reply, para. 5.

<sup>34</sup> Addendum, paras 1-3.

<sup>35</sup> Reply, paras 6, 8.

<sup>36</sup> Motion, para. 16.

<sup>37</sup> Reply, paras 8, 9.

<sup>38</sup> Motion, para. 16.

<sup>39</sup> Response, para. 4.

<sup>40</sup> *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; *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

16. Regarding the alleged Global Witness Statement, the Defence has not made a *prima facie* showing that the Global Witness Statement actually exists; that its content is potentially exculpatory or that it is in the custody or control of the Prosecution. On the contrary, the Defence has provided information showing that Global Witness “no longer has the information requested by the Defence and that they cannot be of assistance”.<sup>41</sup> Furthermore, the Trial Chamber is of the view that the Defence’s allegation that before the Prosecution decided to contact DCT-097 it is only logical that Global Witness must have given the Prosecution some indication or summary of the substance of its interview with DCT-097<sup>42</sup> and that the Prosecution must have this Statement within its custody or control, or at the very least, been privy to the contents of the Statement,<sup>43</sup> have no factual basis and are pure speculation or conjecture on the part of the Defence. The Trial Chamber finds that the Defence has not demonstrated on a *prima facie* basis, the Prosecution’s breach of Rule 68(B) obligation with regard to the alleged Global Witness Statement and accordingly dismisses this part of the Motion.

***Arguments in relation to the Disclosure of Payments made to Witness DCT-097***

17. Secondly, the Defence requests the Trial Chamber to compel the Prosecution to fulfil its Rule 68 obligations by disclosing “an accounting and explanation of money (estimated at \$ 30,000) paid to or benefits conferred on DCT-097 by the Prosecution from 2004 to 2006.”<sup>44</sup> It argues that the payments made to Witness DCT-097 during this period of cooperation with the Prosecution are “exculpatory” within the meaning of Rule 68(B) as they “necessarily impact on the credibility and reliability” of statements made by the witness to the Prosecution.<sup>45</sup>

18. The Defence submits that in his interview of 21 July 2010, Witness DCT-097 further informed members of the Defence (a) 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 \$ 1,200 a month from sometime in 2004 until 2006; (b) that the Prosecution did not provide this allowance for any

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Witness Statements of Witnesses the Prosecution does not Intend to Call, 30 March 2009, para. 13; *Prosecutor v. Taylor*, SCSL-03-01-T-735, Decision on Confidential Defence Application for Disclosure of Documents in the Custody of the Prosecution Pursuant to Rule 66 and Rule 68, 18 February 2009, para. 5; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-03-05-PT, Decision on Defence Motion for Disclosure Pursuant to Rules 66 and 68 of the Rules, 9 July 2004, paras 27, 43; *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T-436, Decision on Gbao and Sesay Joint Application for the Exclusion of the Testimony of Witnesses TF1-141, 26 October 2005, para. 24.

<sup>41</sup> Addendum to Reply, Confidential Annex A.

<sup>42</sup> Reply, paras 6, 8.

<sup>43</sup> Motion, para. 16.

<sup>44</sup> Motion, paras 2, 16-17, 25.

<sup>45</sup> Motion, paras 21-24.

specific purpose, but for DCT-097's general "upkeep"; (c) that this allowance would be given to DCT-097 in cash if he was in Freetown or would be sent to him via Money Gram if he was travelling throughout the sub-region; (d) 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.<sup>46</sup>

19. In support of the above submissions, the Defence annexed copies of 17 Money Gram receipts to the Motion which, it submits, were provided to the Defence investigators by Witness DCT-097, showing payments being sent via the money transfer service known as Money Gram, from five former or current Prosecution employees (including Mustapha Koroma, Aiah Komeh, Miatta Samba, Prince Sannoh and Umaru Kamara) to DCT-097 in various West African Countries, during the period 8 April 2004 to 19 June 2006 in amounts such as \$ 2,000; € 1,552 Euros; 8,989,200 Ghanaian Cedis and 526,269 CFA Francs.<sup>47</sup> The Defence further submits that based on the information from DCT-097, the 17 Money Gram receipts do not represent the sum total of payments made to or benefits conferred upon DCT-097 by the Prosecution and that additional payments were also made in cash.<sup>48</sup>

20. The Prosecution, whilst not denying that it made the alleged payments to DCT-097, submits that "at this stage it is not under an obligation to disclose material relating to payments made to or benefits conferred upon DCT-097 as the latter was not called to testify on behalf of the Prosecution".<sup>49</sup>

### ***Findings***

21. The Trial Chamber adopts the view of the ICTR in the *Prosecutor v. Karemera et al.* where the Trial Chamber in interpreting a rule similar to our Rule 68(B) stated:

Materials 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.<sup>50</sup>

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<sup>46</sup> Motion, para 10.

<sup>47</sup> Motion, paras 11, 18, Public Annex F and Confidential Annex G.

<sup>48</sup> Motion, para. 18.

<sup>49</sup> Response, paras 7-10.

<sup>50</sup> *Prosecutor v. Karemera, Ntirumpatse and Nzirorera*, ICTR-98-44-PT, Decision on Defence Motion for Full Disclosure of Payments to Witnesses, 23 August 2005 para. 6; see also *Prosecutor v. Nzirorera et al.*, ICTR-98-44-I, Decision on 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.





22. With regard to the alleged payments made to or benefits conferred on Witness DCT-097, the Trial Chamber notes that the Prosecution has neither challenged the contents of the 17 Money Gram receipts annexed to the Motion nor the fact that the payments were made by five of its staff to Witness DCT-097. Furthermore, the Trial Chamber notes that some of the “sender names” indicated on the 17 Money Gram receipts are names of Prosecution employees listed on a Special Court telephone directory attached as Annex H to the Motion. In the Trial Chamber’s view, these 17 receipts link the Prosecution to the payments made to Witness DCT-097 during the period 8 April 2004 to 19 June 2006. The payments do not appear to have been made by the Witness and Victims Service of the Special Court (WVS) and on the face of it, appear to be beyond that which is reasonably required for the management of witnesses or victims. Accordingly the Trial Chamber holds that they should have been disclosed by the Prosecution as evidence which may affect the credibility of the Prosecution evidence under Rule 68(B). The Trial Chamber is satisfied in relation to the alleged payments, that the Defence has (a) identified the material in question with sufficient specificity; (b) made a *prima facie* showing of the exculpatory or potentially exculpatory nature of the said payments; (c) made a *prima facie* showing of the Prosecution’s custody or control of the materials requested; and (d) shown that that the Prosecution has, in fact, failed to disclose the said exculpatory material. The Trial Chamber finds that the Defence has discharged its burden of proof under Rule 68(B) in relation to the payments made to Witness DCT-097.

**FOR THE ABOVE REASONS**, on 7 September 2010 the Trial Chamber in its Oral Decision

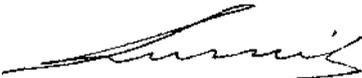
**GRANTED THE MOTION** in part; and

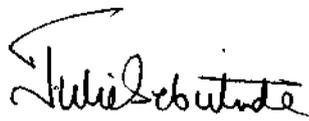
**ORDERED** the Prosecution as follows:

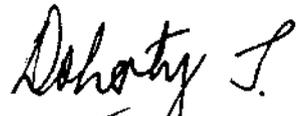
1. To disclose to the Defence forthwith, pursuant to Rule 68:
  - (a) An account of all payments made to or benefits conferred upon DCT-097/TF1-354 by the Prosecution for the period 2004 to 2006, or at any time before or after that period;
  - (b) All documents relating to such payments, including receipts, vouchers, Money Gram receipts, etc;
2. To provide an explanation for those payments.

DISMISSED the remainder of the Motion.

Done at The Hague, The Netherlands, this 23<sup>rd</sup> day of September 2010.

  
Justice Richard Lussick

  
Justice Julia Sebutinde  
Presiding Judge

  
Justice Teresa Doherty

