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SCSL-03-01-T  
(30904-30951)

30904



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

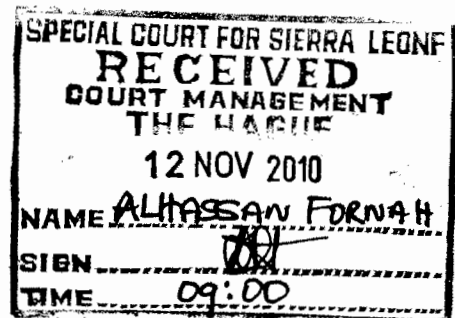
**Case No.:** SCSL-03-1-T

**Date:** 11 November 2010

PROSECUTOR

v.

Charles Ghankay TAYLOR



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DECISION ON PUBLIC WITH CONFIDENTIAL ANNEXES A-J AND PUBLIC ANNEXES K-O  
DEFENCE MOTION REQUESTING AN INVESTIGATION INTO CONTEMPT OF COURT  
BY THE OFFICE OF THE PROSECUTOR AND ITS INVESTIGATORS

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Office of the Prosecutor:

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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 Confidential Annexes A-J and Public Annexes K-O Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators”, filed on 24 September 2010 (“Original Motion”);<sup>1</sup>

**NOTING** the “Public with Confidential Annexes A-J and Public Annexes K-O Corrigendum to Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators”, filed on 27 September 2010 whereby the Defence substitutes its Original Motion with a corrected version thereof (“Motion”);<sup>2</sup>

**NOTING** the “Public with Confidential Annexes Prosecution Response to ‘Public with Confidential Annexes A-J and Public Annexes K-O Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators’”, filed on 4 October 2010 (“Response”);<sup>3</sup>

**NOTING ALSO** the “Public with Confidential Annex One Defence Reply to Prosecution Response to Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators”, filed on 11 October 2010 (“Reply”);<sup>4</sup>

**RECALLING** that 22 October 2010 the Trial Chamber issued a brief oral Decision dismissing the Motion in its entirety and undertook to publish its reasoned Decision in due course;<sup>5</sup>

**COGNISANT** of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”) and Rules 46, 73 and 77 of the Rules of Procedure and Evidence (“Rules”);

**HEREBY DELIVERS ITS REASONED DECISION AS FOLLOWS**, based solely on the written submissions of the parties, pursuant to Rule 73(A) of the Rules:

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<sup>1</sup> SCSL-03-01-T-1089.

<sup>2</sup> SCSL-03-01-T-1090.

<sup>3</sup> SCSL-03-01-T-1097.

<sup>4</sup> SCSL-03-01-T-1102.

<sup>5</sup> Transcript 22 October 2010, p. 48338.

## I. SUBMISSIONS

**Motion**

1. The Defence submits that it has reason to believe that the Prosecution and its Investigators have been conducting their investigations in a manner that is an abuse of process and in so doing have brought the administration of justice into disrepute. The Defence submits that, in particular, the Prosecution and its investigators have knowingly and wilfully interfered with the administration of justice by, *inter alia*, threatening, intimidating, causing injury or offering bribes to, or otherwise interfering with witnesses or potential witnesses.<sup>6</sup> The Defence, therefore, requests the Trial Chamber, pursuant to Rule 77(C)(iii), to order an independent investigation into:

- (i) The conduct of the Prosecution, including all its employees or agents, since the inception of the Special Court, in relation to witnesses and potential witnesses in this case, that is in breach of the Statute, Rules and Code of Conduct, including but not limited to the acts indicated in the attached affidavits and signed statements in Annexes B-J of the Motion;<sup>7</sup>
- (ii) All payments and benefits, including ongoing payments and relocations, offered and/or paid by the Prosecution to witnesses, potential witnesses or sources in connection with this case. This investigation should explore the full mandate of the Prosecution's Witness Management Unit, the source of its funding, and all disbursements made by that Unit in relation to this case.<sup>8</sup>

2. The Defence, while noting that the Prosecution enjoys full autonomy and wide-ranging discretionary powers under the Statute and Rules, submits that in exercising those powers the Prosecutor and all his/her subordinates must conduct themselves in a manner that is consistent with the public trust accorded to that office and act with utmost integrity and professionalism. In that regard, the Defence submits that the Statute, Rules and Code of Professional Conduct for Counsel with Rights of Audience before the Special Court for Sierra Leone ("Code of Professional Conduct") recognise that the conduct of the Prosecutor and his/her subordinates is "not above reproach". The

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<sup>6</sup> Motion, paras 1, 2.

<sup>7</sup> Motion, paras 1, 29-30.

<sup>8</sup> Motion, paras 1, 29-30.

conduct of the Prosecution is regulated by provisions such as Rule 46(C), Rule 95, the Code of Professional Conduct and more specifically Rule 77.<sup>9</sup>

3. The Defence submits that there is reason to believe that the Prosecutor, David Crane and all his successors in title, through their own acts of commission or omission and/or through the acts and conduct of their subordinates and/or agents, have violated the Statute, the Rules and the Code of Conduct in that they have: (i) assaulted a suspect and/or potential witness or source; (ii) exerted undue pressure by threatening, intimidating, or harassing suspects, witnesses, potential witnesses or sources; and (iii) offered and/or provided improper, unjustifiable or undue payments, benefits or other incentives, including relocation, to witnesses, potential witnesses or sources<sup>10</sup>, which acts the Defence submits, amount to misconduct, abuse of process and most importantly, contempt of court.<sup>11</sup>

4. The Defence further submits that from the outset the Prosecution's approach to this case has not only been overly zealous, it has also been "underhanded, malicious and overboard",<sup>12</sup> which has corrupted its entire investigation and case in the courtroom.<sup>13</sup> In addition to being *ultra vires* and contemptuous, the Prosecution's acts also affect the case in two principal ways. First, the Prosecution's conduct casts doubt on the credibility of its entire evidence before the Special Court.<sup>14</sup> Second, the Prosecution's misconduct has negatively affected the Accused's fair trial rights in that it has generally poisoned the environment and has made it difficult for the Defence to find witnesses who have not compromised themselves with the Prosecution.<sup>15</sup>

5. The Defence maintains that the information provided in the Motion and other examples contained in the Annexes attached to the Motion constitute sufficiently credible *indicia* of contempt, warranting the appointment of an independent investigator, and that the issue at stake affects not only the integrity of the Prosecution, but that of the entire judicial process.<sup>16</sup>

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<sup>9</sup> Motion, paras 5-8.

<sup>10</sup> Motion, para. 11.

<sup>11</sup> Motion, para. 12.

<sup>12</sup> Motion, para. 12.

<sup>13</sup> Motion, para. 12.

<sup>14</sup> Motion, para. 13.

<sup>15</sup> Motion, para. 14.

**Response**

6. The Prosecution opposes the Motion and denies all the allegations that at any time any former or current staff member knowingly and wilfully interfered with the administration of justice.<sup>17</sup>

7. The Prosecution contests the Defence's reading of the Rule 77(A)(iv) and notes that the Rule is not an open ended Rule that triggers open ended investigation. It refers to the context of the present proceedings and notes that there are no witnesses "giving" or "about to give" evidence and that there is little chance that the Defence will call any additional witnesses.<sup>18</sup>

8. The Prosecution submits that the Motion should be dismissed on two grounds. Firstly, the Motion is untimely as none of the allegations made by the Defence relate to recent incidents, event or contact, and the alleged misconduct should have been brought to the attention of the Trial Chamber without undue delay.<sup>19</sup> Therefore, the Motion in effect asks for a delay in these proceedings, at a point over three years after the trial has begun and when evidence has apparently been concluded.<sup>20</sup> Secondly, the Motion fails to establish that there is any credible reason to believe that any member of the Prosecution has been involved in conduct which would constitute "contempt of court", as the allegations are based on the following: statements of admitted liars; a person with an ongoing financial relationship with the Accused; speculation; a misrepresentation of the Witness Management Unit's ("WMU") mandate; matters already subject to cross-examination; inaccuracies; and irrelevant documentation.<sup>21</sup>

9. The Prosecution submits that there has been no infringement of the Accused's fair trial rights as the Prosecution has made full disclosure of all Rule 68 material for all Prosecution witnesses and the Defence has had the opportunity to cross-examine thereon.<sup>22</sup>

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<sup>16</sup> Motion, para. 29.

<sup>17</sup> Response, paras 1, 25-26.

<sup>18</sup> Response, para. 6.

<sup>19</sup> Response, paras 8-10.

<sup>20</sup> Response, para. 25.

<sup>21</sup> Response, paras 1, 11-24.

**Reply**

10. The Defence argues that it provided “enough” reason to believe that contempt may have occurred in relation to the witnesses who have given evidence and those who had the potential of giving evidence for the Prosecution and/or for the Defence.<sup>23</sup>

11. The Defence further argues that the Prosecution’s argument for narrow construction of the Rule is erroneous as it overlooks a fundamental difference between the ICTY and Special Court Rules. It submits that Rule 77(A)(iv) of the ICTY Rules is limited to three categories of witnesses (namely, those who have given evidence; are giving evidence and are about to give evidence), whereas the Special Court deliberately included a fourth category not provided for in the ICTY Rules, namely “potential witnesses.”<sup>24</sup>

12. The Defence disputes the Prosecution’s argument that the Motion is “untimely”. The Defence submits that the conduct complained of in this case spans the entire case and does not arise from a single incident or an isolated event. Rather, it is the culmination of a series of separate incidents, the continuous and cumulative effect of which makes them contemptuous so as to warrant an investigation.<sup>25</sup>

13. The Defence submits that its Motion is not a “dilatory strategy” as suggested by the Prosecution. It submits that it did not ask for an extension of time arising from the Motion, and does not intend to do so.<sup>26</sup>

14. The Defence further submits that while isolated facts of malfeasance by the Prosecution would be ignored by the Defence, the cumulative nature and the overall effect of the Prosecution’s conduct elevates such conduct to a level of contempt that cannot be ignored and calls for judicial intervention.<sup>27</sup>

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<sup>22</sup> Response, para. 25.

<sup>23</sup> Reply, para. 4.

<sup>24</sup> Reply, para. 5.

<sup>25</sup> Reply, para. 9.

<sup>26</sup> Reply, para. 14.

<sup>27</sup> Reply, paras 10-11.

15. The Defence challenges that the Prosecution's "inordinate delay" arguments, as the acts complained of raise issues that impact on the integrity of the proceedings and therefore cannot be dismissed on a mere technicality, as the misconduct also affects the fair trial rights of the Accused.<sup>28</sup>

16. The Defence submits that while a preliminary assessment of the witnesses' credibility might be necessary at this stage, the questions addressed by the Prosecution on the issue of the credibility of witnesses cannot be resolved on paper and makes an investigation "even more imperative".<sup>29</sup>

17. The Defence submits that the factual allegations contained in the Annexes to the Motion are credible, and that the Prosecution failed to challenge the facts in any specific or meaningful way.<sup>30</sup>

## II. APPLICABLE LAW

18. Rule 77 sets out the law and procedure for dealing with contempt of the Special Court. The relevant parts of Rule 77 provide:

### **Rule 77: Contempt of the Special Court** (amended 14 May 2005)

- (A) The Special Court, in the exercise of its inherent power, may punish for contempt any person who knowingly and wilfully interferes with its administration of justice, including any person who:
- (i) being a witness before a Chamber, subject to Rule 90(E) refuses or fails to answer a question;
  - (ii) discloses information relating to proceedings in knowing violation of an order of a Chamber;
  - (iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;
  - (iv) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before a Chamber, or a potential witness;
  - (v) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of a Judge or Chamber; or
  - (vi) knowingly assists an accused person to evade the jurisdiction of the Special Court.
- (B) Any incitement or attempt to commit any of the acts punishable under Sub-Rule (A) is punishable as contempt of the Special Court with the same penalties.

<sup>28</sup> Reply, para. 12.

<sup>29</sup> Reply, para. 16.

<sup>30</sup> Reply, para. 17.

- (C) When a Judge or Trial Chamber has reason to believe that a person may be in contempt of the Special Court, it may:
- (i) deal with the matter summarily itself;
  - (ii) refer the matter to the appropriate authorities of Sierra Leone; or
  - (iii) direct the Registrar to appoint an experienced independent counsel to investigate the matter and report back to the Chamber as to whether there are sufficient grounds for instigating contempt proceedings. If the Chamber considers that there are sufficient grounds to proceed against a person for contempt, the Chamber may issue an order in lieu of an indictment and direct the independent counsel to prosecute the matter.

[...]

- (I) If a counsel is found guilty of contempt of the Special Court pursuant to this Rule, the Chamber making such finding may also determine that counsel is no longer eligible to appear before the Special Court or that such conduct amounts to misconduct of counsel pursuant to Rule 46, or both.

19. The Appeals Chamber has stated that the standard of proof in determining whether an independent investigation should be ordered into a matter of contempt is:

[...] not that of a *prima facie* case, which is the standard for committal for trial. It is the different and lower standard of “reason to believe” that an offence may have been committed, which is the pre-condition for ordering an independent investigation.<sup>31</sup>

20. Notwithstanding the lower standard of proof, an allegation of contempt must be *credible* enough to provide a Judge or Trial Chamber with “reason to believe” that a person may be in contempt.<sup>32</sup>

21. Furthermore, any alleged misconduct should be brought to the attention of the Trial Chamber without undue delay.<sup>33</sup>

### III. DELIBERATIONS

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<sup>31</sup> *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-AR77-315, Decision on Defence Appeal Motion Pursuant to Rule 77(J) on both the Imposition of Interim Measures and an Order Pursuant to Rule 77(C)(iii), 23 June 2005 (“AFRC Appeals Decision”), para. 17.

<sup>32</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-690, Confidential Decision on Confidential Prosecution Motion For an Investigation by Independent Counsel Into Contempt of the Special Court for Sierra Leone and for Urgent Interim Measures, 8 December 2008, para. 23, referring to AFRC Appeals Chamber Decision, para. 2.

<sup>33</sup> *Prosecutor v. Taylor*, SCSL-03-01-600, Confidential Decision on Prosecution Motions for Investigations into Contempt of the Special Court for Sierra Leone (SCSL-03-01-451; SCSL-03-01-452; SCSL-03-01-457; SCSL-03-01-513), 19 September 2008, paras 14-15.



22. The Trial Chamber, for reasons which will follow, finds against the Defence in respect of two issues, namely: (A) the Defence's timing in bringing the alleged misconduct to the attention of the Trial Chamber and (B) the ambit of Rule 77. The Trial Chamber's findings on these issues are sufficient to dispose of the Motion. Nevertheless, given that the Motion contains serious allegations of contempt of court, the Trial Chamber considers it to be in the interests of justice to go on to examine the merits of such allegations. The Trial Chamber's deliberations in relation to these findings are set out below.

#### A) Timing of the Motion

23. The Prosecution submits that the Motion should be dismissed as untimely, as none of the allegations relate to recent incidents, events or contact. It submits that no request was filed at the time of the alleged incidents and that the Defence has not provided any explanation for the delay in bringing the alleged misconduct to the attention of the Trial Chamber.<sup>34</sup> The Defence argues however that the Motion is not untimely as the conduct complained of does not arise from a single incident or an isolated event, but rather from a series of separate incidents and that it is the continuous and cumulative effect that makes the conduct repulsive and contemptuous so as to warrant an investigation.<sup>35</sup>

24. The Trial Chamber recalls its jurisprudence that any alleged misconduct should be brought to its attention "without undue delay".<sup>36</sup> In the present case, the Trial Chamber notes that some of the incidents of alleged misconduct occurred at least two years and in some cases more than eight years ago.<sup>37</sup> For example, the incident reported by DCT-192 that he was slapped by Gilbert Morissette, allegedly occurred in 2002, some eight years ago and was brought to the attention of the Trial Chamber in September 2010.

<sup>34</sup> Response, paras 8-9.

<sup>35</sup> Reply, para. 9.

<sup>36</sup> *Prosecutor v. Taylor*, SCSL-03-01-600, Confidential Decision on Prosecution Motions for Investigations into Contempt of the Special Court for Sierra Leone (SCSL-03-01-451; SCSL-03-01-452; SCSL-03-01-457; SCSL-03-01-513), 19 September 2008, paras 14-15.

<sup>37</sup> The incident in Annex B (in relation to DCT-192) allegedly occurred in November 2002; in Annex C (in relation to DCT-130) in 2006 and 2007; in Annex E (in relation to DCT-086) in 2004 and 2005; in Annex F (in relation to DCT-102) in 2003; in Annex G (in relation to DCT-032) in 2008; in Annex H (in relation to DCT-023) in about 2003 and 2005/2006; in Annex I (in relation to DCT-261) in 2003; in Annex J (in relation to DCT-097) in about 2003 until 2006;

25. The Trial Chamber finds the Defence's assertions that "the conduct complained of in this case does not arise from a single incident or an isolated event; rather, it is the culmination of a series of separate incidents, the continuous and cumulative effect of which makes them repulsive and contemptuous so as to warrant an investigation" and that "it is the consistent pattern of conduct, or more appropriately, misconduct, by the Prosecution throughout the investigation and trial phases of this case that is a cause for concern"<sup>38</sup> - to be erroneous and fundamentally flawed. Contempt of court, as contemplated in Rule 77, is a criminal offence. If an incident does not constitute an offence of contempt at the time it occurs, it does not become an offence retrospectively because of other events that may occur in the future. Moreover, an act which does not constitute contempt of court cannot be transformed into such an offence because of the existence of similar acts by other persons.

26. The Trial Chamber therefore finds that the Defence did not act with due diligence in failing to bring the alleged acts of contempt to the attention of the Trial Chamber within a reasonable time and that no satisfactory explanation for the inordinate delay has been offered by the Defence. The Trial Chamber for this reason alone would dismiss the Motion.

#### **B) Ambit of Rule 77**

27. The Defence has requested an investigation into the conduct of not only the former and current Chief Prosecutor, but also of *all* employees and agents of the Prosecution since the Special Court's *inception* in relation to *all* witnesses, potential witnesses and sources in this case.<sup>39</sup> Furthermore, the Defence does not limit its request to the alleged misconduct specifically outlined in its Motions and Annexes, but requests investigations to go even beyond those alleged incidents. The Defence additionally requests that an investigation explore the mandate of the Prosecution's WMU and any payments it has made to Prosecution witnesses, potential witnesses or sources in this case.<sup>40</sup>

28. The Trial Chamber is of the opinion that the application made by the Defence amounts to a request for a general audit of the Prosecution's operations since the inception of the Special Court in 2002. Such a remedy does not fall within the ambit of Rule 77, which is concerned not with the general operations of an office or party, but rather with the conduct of individuals who have allegedly

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in Annex N (in relation to payments made to Prosecution witnesses) events that the Defence cross-examined witnesses on in 2008.

<sup>38</sup> Reply, para. 9.

<sup>39</sup> Motion, paras 29-30.

<sup>40</sup> Motion, para. 30.

committed contempt. Therefore, an investigation under Rule 77 must be targeted at an individual engaging in specific conduct and a moving party has to identify the specific acts committed by that individual amounting to interference with the administration of justice, in accordance with the “reason to believe” standard.

29. The Trial Chamber notes the Defence submission that the Motion is directed at “the Prosecutor, David Crane, and all his successors in title, through their own acts of commission or omission and/or through the acts and conduct of their subordinates and/or agents (including, but not limited to [...]: Alan White, Gilbert Morissette, Brenda Hollis, Chris Bomford, Rob Diak, John Berry, Chris Morris, Pete McLaren, Sharan Parmar, Yusuf Dafaie, Mustapha, Umaru, Kelvin, and Sophie Swart)”.<sup>41</sup> However, the Defence has not specified the misconduct of each of those persons that would have amounted to contempt of court. The Trial Chamber notes that the Defence has stated that this list of persons is only illustrative, not exhaustive, and only provides examples of persons who acted as agents or subordinates of the Prosecutor<sup>42</sup>. The Trial Chamber further notes that many of the incidents mentioned in the various affidavits pertain to other cases handled by the Special Court and not specifically the present case.

30. The Trial Chamber finds that the relief sought in the Motion effectively amounting to a request for a general audit of the operations of the Prosecution, falls outside the ambit of Rule 77 and for this further reason would dismiss the Motion.

31. Furthermore, since Rule 77(A)(iv) of the Special Court covers the same category of persons as the equivalent rule at the ICTY, the Trial Chamber will therefore disregard the Defence’s argument that the Prosecution erroneously attempted to support a restrictive interpretation of Rule 77(A)(iv).<sup>43</sup>

## C) Merits

### 1) *General submissions*

32. The Defences alleges that the Prosecution and its Investigators have knowingly and wilfully interfered with the administration of justice by, *inter alia*, threatening, intimidating, causing injury or offering bribes to, or otherwise interfering with witnesses or potential witnesses.<sup>44</sup>

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<sup>41</sup> Motion, para. 11.

<sup>42</sup> Motion, para. 11.

<sup>43</sup> See Reply, para. 5.

33. The Prosecution responds that the Motion is unfounded and appears to be an attempt to delay the proceedings and to put “evidence” before the Trial Chamber outside of the testimony and trial record.<sup>45</sup> It submits that relevant witness evidence could have been heard in court, under oath and tested by cross-examination and that the Defence decision not to call these witnesses is based on its evaluation that the credibility of these witnesses would not have withstood courtroom scrutiny.<sup>46</sup> Finally, it argues that there is no credible reason to believe any of the allegations, that the allegations relate to historic events, and that the allegations are made by individuals lacking credibility.<sup>47</sup>

34. The Defence replies that although it might be necessary for the Trial Chamber to make a preliminary assessment of credibility of the allegations at this stage, the counter allegations brought by the Prosecution raise factual disputes that cannot be resolved on paper, making an investigation even more imperative.<sup>48</sup> It argues that the Prosecution’s dismissal of the allegations as “historic events” is premised on a misconception that Rule 77(A)(iv) only applies to current evidence and that these issues only came to light in the Defence case.<sup>49</sup>

35. The Trial Chamber finds the Prosecution submission that the Defence, through this Motion, is attempting to improperly adduce ‘evidence’ before the Trial Chamber is not valid since the information provided by the Defence in support of its allegations does not become part of the evidentiary record. The Chamber also finds the Prosecution submission that the Defence could have called the relevant witness in court is misplaced, as there is no onus to provide live witnesses in order to satisfy the ‘reason to believe’ standard under Rule 77(C).

36. The Trial Chamber will now examine the specific allegations in the Motion according to the “reason to believe” standard.

## 2) *Improper inducements*

37. The Defence submits that there are credible reasons to believe that the Prosecution is in contempt for offering and/or providing monetary bribes and/or other inducements, such as

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<sup>44</sup> Motion, para. 2.

<sup>45</sup> Response, para. 2.

<sup>46</sup> Response, para. 2.

<sup>47</sup> Response, para. 13.

<sup>48</sup> Reply, para. 16.

<sup>49</sup> Reply, para. 21.

relocation in exchange for cooperation and testimony.<sup>50</sup> The Defence does not contest payments made to Prosecution witnesses by the Witness and Victims Section (“WVS”) of the Registry, but takes issue with the inducements that were offered and made by the WMU directly to its witnesses, potential witnesses or sources. The Defence submits that these payments, “administered through the opaque Witness Management Unit”, are contemptuous.<sup>51</sup>

38. The Defence accepts that Rule 39(ii) allows the Prosecution to “[t]ake all measures deemed necessary for the purpose of the investigation, including the taking of any *special measures* to provide for the safety, the support and assistance of *potential witnesses and sources*.”<sup>52</sup> However, it submits that the Prosecution overstepped the limits of this rule by (1) providing payments that were not objectively “necessary” and that were not for the safety, support and assistance of potential witnesses and sources,<sup>53</sup> and by (2) extending its payments beyond potential witnesses and sources to witnesses whose welfare is properly the responsibility of the WVS, which is neutral and independent of the parties.<sup>54</sup> It submits that even if the functions of the Prosecution’s WMU and the Registry’s WVS may overlap, it is impermissible for the Prosecution to duplicate or supplement payments made by WVS without justification<sup>55</sup> and that by making certain payments to witnesses, potential witnesses or sources, the WMU usurped the role of the WVS.<sup>56</sup> The Defence further submits that the continuation of payments by the WMU throughout the trial undermined any need for an independent witness section and that the conduct of the Prosecution was deliberate and designed to influence the cooperation of potential witnesses, witnesses, suspects and sources and consequently tainted their evidence.<sup>57</sup>

39. The Prosecution responds that the Defence misrepresents the WMU’s mandate<sup>58</sup> and submits that none of the documents provided by the Defence contain information sufficient to satisfy the “reason to believe” standard.<sup>59</sup>

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<sup>50</sup> Motion, para. 19.

<sup>51</sup> Motion, para. 19.

<sup>52</sup> Motion, para. 20; emphasis added by the Defence.

<sup>53</sup> Motion, para. 20.

<sup>54</sup> Motion, para. 21.

<sup>55</sup> Motion, para. 22.

<sup>56</sup> Motion, para. 23.

<sup>57</sup> Motion, para. 23.

<sup>58</sup> Response, paras 11, 21.

<sup>59</sup> Response, para. 18.

40. The Trial Chamber notes that the Prosecution has disclosed all payments made to witnesses to the Defence and that the Defence cross-examined those witnesses during the course of the trial.<sup>60</sup> As outlined above,<sup>61</sup> the issue raised does not fall within the ambit of Rule 77 as such. It is instead a question of discretionary payments and a possible abuse of that discretion under Rule 39(ii) in that the payments might not have been necessary for the safety, support or assistance of the potential witnesses and sources. The alleged abuse of any discretion under Rule 39(ii) will however only be considered at the stage of final deliberations, taking into account the evidence adduced and the cross-examination of the witnesses in question. It is not a matter that falls within the ambit of Rule 77.

### 3) *Allegations relating to DCT-192*

41. The Defence submits that during the course of questioning DCT-192, Prosecution Investigator Gilbert Morissette physically assaulted DCT-192, a suspect and/or potential witness, in order to elicit his cooperation and confession.<sup>62</sup> It cites in support of this allegation a signed statement of Logan Hambrick, Legal Assistant to the Defence, and an excerpt of Prosecution interview transcripts with Witness DCT-192.<sup>63</sup>

42. In her statement, Hambrick declares that during a proofing session with DCT-192 in 2010, the latter told her that he was taken from the Pademba Road Prison in Freetown in November 2002 where he was being held on charges of subversion, to meet with Prosecution investigators; that during this meeting Morissette accused him of giving an answer that was not “good enough”,<sup>64</sup> grew angry and slapped him in the presence of other investigators; that following this interview, the Prosecution continued to solicit his cooperation and suggested that they would not indict him if he would agree to testify against Chief Sam Hinga Norman; that upon his release from Pademba Road, a member of the Sierra Leonean Police who worked for the Prosecution, Tamba Mbeki, made sure he had “clearance” to continue his subversive activities as an operative for LURD; and that “ultimately, due to these benefits and threats, [he] felt pressured to cooperate with the Prosecution and provide them with information, even though he refused to testify against Norman.”<sup>65</sup> The 10 pages of interview

<sup>60</sup> See only Defence references in Annex N.

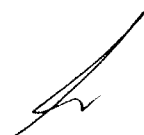
<sup>61</sup> See para. 28 supra.

<sup>62</sup> Motion, para. 15.

<sup>63</sup> Motion, Confidential Annex B.

<sup>64</sup> Motion, Confidential Annex B, para. g.

<sup>65</sup> Motion, Confidential Annex B, para. l.





transcripts cited by the Defence relate to preliminary aspects of the first meeting of DCT-192 with investigators of the Special Court. The Trial Chamber notes that the transcript does not refer to the exchange during which the slap allegedly took place as described by Hambrick in her statement.

43. The Prosecution submits that there is no credible reason to believe there was an assault during the questioning of DCT-192. It submits that the allegation is not signed or sworn despite the witness having been present in The Hague for proofing. It observes that the allegation relates to an incident which allegedly took place eight years ago, in November 2002,<sup>66</sup> argues that this raises doubt as to its reliability, and suggests that a more credible explanation is that the allegations of misconduct were triggered by the witness's realisation that he would shortly be required to explain to the Trial Chamber discrepancies between his statement to the Defence and his previous statements to the Prosecution.<sup>67</sup>

44. The Defence responds that DCT-192 was not "dropped" as a witness because the Defence feared he would not withstand scrutiny; rather the Defence did not call him because it became clear he was not willing to cooperate fully due to his ongoing relationship with former members of the Prosecution. The Defence submits it was not able to get the witness to sign a statement regarding the physical assault for the same reasons.<sup>68</sup>

45. The Trial Chamber takes note of the fact that this incident is only now being alleged, some eight years after it supposedly took place<sup>69</sup> and that the witness is unwilling to swear to it having occurred.<sup>70</sup> Further, contrary to the Defence suggestion, DCT-192 was never a potential witness in this trial; rather, he was interviewed by the Prosecution during its investigations of Hinga Norman, a suspect in the Civil Defence Forces case at that time. The Trial Chamber notes from the 10 pages of transcript cited by the Defence, that there is nothing to suggest that DCT-192 was mistreated. On the contrary, the transcript indicates that he was read his rights as a suspect and that the investigators inquired about his health and provided him with food and drink. The Trial Chamber also notes that DCT-192 did not suggest that his cooperation with the Prosecution was as a result of the alleged slap, but rather, that it was due to "benefits and threats including his clearance to continue his subversive

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<sup>66</sup> Response, para. 8.

<sup>67</sup> Response, para. 12.

<sup>68</sup> Reply, para. 20.

<sup>69</sup> Motion, Confidential Annex B.

<sup>70</sup> Reply, 20.

activities". The Trial Chamber finds that the allegation is not sufficiently credible to provide the Trial Chamber with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in the present case.

4) *Allegations relating to DCT-102*

a) *"Sweeping" in Kailahun District*

46. The Defence submits that the Prosecution, INTERPOL and the Sierra Leonean police used a system called "sweeping" in Kailahun District, in which those who refused to cooperate would be arrested by UNAMSIL and the Sierra Leonean police.<sup>71</sup> It cites in support of this allegation the affidavit of DCT-102.<sup>72</sup>

47. In his affidavit, DCT-102 swears that at the time he was first approached by the Prosecution in Kailahun in 2003, there was "general fear" that all senior RUF members would be arrested. He states that he understood from a person who worked with the Truth and Reconciliation Commission ("TRC") in Kailahun that if he did not cooperate with the TRC, INTERPOL would have him arrested and that this was called "sweeping". He states that his "INTERPOL connections" similarly "assured" him that if he did not cooperate with the Special Court, he would be subject to the same "sweeping" system but that if he did talk to the Prosecution he could not be arrested. He states that he understood that Augustine Gbao was also arrested under this "sweeping" system after he refused to cooperate with the Prosecution. He states he was subsequently taken to the police station by a Prosecution investigator and that "when news spread around town that I had been arrested, they took me back to my house."<sup>73</sup> He states he was later interviewed by David Crane in Freetown and that "[w]hen the Prosecution realized that I would not say anything more about diamond transactions between the RUF and Taylor, they then flew me back to Kailahun."<sup>74</sup>

48. The Prosecution responds that the allegation is inaccurate,<sup>75</sup> as according to an investigator's understanding, no INTERPOL operated in the area.<sup>76</sup> It submits that it has no record of interviewing DCT-102 under the name given in his affidavit. It suggests that it appears he is witness TF1-273 and

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<sup>71</sup> Motion, para. 17.

<sup>72</sup> Motion, Confidential Annex F.

<sup>73</sup> Motion, Confidential Annex F, para. 9.

<sup>74</sup> Motion, Confidential Annex F, para. 23.

<sup>75</sup> Response, para. 11.

<sup>76</sup> Response, Confidential Annex 4 with reference to para. 6 of the affidavit.



that therefore he lied about his name and/or his contact with the Prosecution. It submits that his allegations of “sweeping” are based solely on supposed statements from unnamed sources and his own speculation. Finally, the Prosecution submits that the affidavit refers to contact with the Prosecution in 2003.<sup>77</sup>

49. The Defence replies that the Prosecution allegation against DCT-102 raises a dispute of fact that cannot be resolved through this Motion.<sup>78</sup>

50. The Trial Chamber notes that the allegation relates to events dating back to 2003 but was not brought to the attention of the Court until now, some 7 years later. The Trial Chamber finds this to be undue delay. The Trial Chamber finds that DCT-102’s conclusion that the Prosecution was involved in “sweeping” is highly speculative and without factual foundation. Even if believed, Witness DCT-102’s allegations of “sweeping” in Kailahun District do not substantiate claims of misconduct against the Prosecution. Rather, they stem from conclusions he drew based on information conveyed to him by other sources, namely, a person who worked for the Truth and Reconciliation Commission, his “INTERPOL” connections, and an unknown source. These authorities are not under the control of the Prosecution. In addition, the Trial Chamber finds there is nothing in the information provided by the Defence to indicate that any arrests made at the time would have been improper. In fact, DCT-102 indicated that Augustine Gbao (who was later convicted by the Special Court for crimes committed during the war in Sierra Leone) was among those arrested, indicating that the arrests were well-founded.

51. The Trial Chamber notes that following his interview in Freetown, the Prosecution flew DCT-102 home, which is not consistent with any coercion on the part of the Prosecution. It notes further that DCT-102 did not in fact testify for the Prosecution and that there is no link between any unwillingness to testify for the Defence and the alleged threat. The Trial Chamber finds that the allegation is not sufficiently credible to provide the Trial Chamber with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in the present case.

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<sup>77</sup> Response, para. 8.

<sup>78</sup> Reply, para. 22.

*b) Threats by David Crane*

52. The Defence alleges that the Prosecutor, David Crane, made verbal threats to and intimidated DCT-102. It alleges that Crane threatened to imprison DCT-102, “like Issa Sesay” if he did not cooperate. In support of this allegation, it cites the affidavit of DCT-102 as well as various documents provided by him, namely, the card of a Canadian, Don P. Ray; the business card of Special Court Investigator Chris Bomford; the contact information of Yusuf Dfae and Sharan Parmer of the Special Court and a photograph of the Witness together with UNAMSIL personnel deployed in Kailahun.<sup>79</sup>

53. In his affidavit, DCT-102 states that when he was brought to the Special Court in Freetown for an interview in 2003, he was referred to as a “perpetrator” which made him “so afraid”.<sup>80</sup> He states that he was made to sit in a chair in the centre of a circle of people; that David Crane was amongst this group and told him that “Issa” had been arrested by the Special Court and that if he did not want to join Issa, he should tell them the truth about the RUF sending diamonds to Charles Taylor; that Crane showed him a card with the picture of Don Ray, a Canadian security officer, standing in front of a jail cell and told him to keep it as a reminder of what could happen to him if he did not cooperate; and that Crane then ordered him into the next room to give a statement. DCT-102 states that the Prosecution flew him back to Kailahun when they realised he would not say anything further about diamond transactions, the RUF and Taylor.<sup>81</sup>

54. The Prosecution submits that the allegation is inaccurate<sup>82</sup> insofar as David Crane did not interview witnesses and did not meet with either TF1-273 or DCT-102.<sup>83</sup> It submits Don Ray was never a Prosecution Staff member<sup>84</sup> and that the “souvenir” referred to in the Motion is not Crane’s business card and does not corroborate the witness’s account of threats and intimidation.<sup>85</sup> Finally, the Prosecution observes that the affidavit refers to contact with the Prosecution in 2003.<sup>86</sup>

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<sup>79</sup> Motion, Confidential Annex F.

<sup>80</sup> Motion, Confidential Annex F, para. 12.

<sup>81</sup> Motion, Confidential Annex F, para. 23.

<sup>82</sup> Response, para. 11.

<sup>83</sup> Response, Confidential Annex 4 with reference to paras 13-15 of the affidavit.

<sup>84</sup> Response, para. 14.

<sup>85</sup> Response, para. 14.

<sup>86</sup> Response, para. 8.

55. The Defence replies that the Prosecution allegation against DCT-102 raises a dispute of fact that cannot be resolved through this Motion. It suggests that the Don Ray card corroborates the witness's account that he received the card from David Crane while being threatened with incarceration. Finally, it suggests that the redacted Prosecution disclosure relating to TF1-273 confirms that this witness was in fact interviewed in Freetown by Yusuf Dafaie and Sharon Parmer in 2003 following his initial meetings with the Prosecution.<sup>87</sup>

56. The Trial Chamber notes that the allegation relates to events dating back to 2003 but which were not brought to the attention of the Court until this Motion was filed, some seven years later. The Trial Chamber finds this to be undue delay. The Trial Chamber has taken into consideration the Prosecution's assertion that David Crane did not interview witnesses, did not meet with anyone with the pseudonym TF1-273 or DCT-102 and that Don Ray was never a member of the Prosecution. These assertions were not challenged by the Defence. The Trial Chamber considers that there is nothing to suggest that DCT-102 was actually intimidated by Crane and consequently unwilling to testify for the Defence. In fact, the Trial Chamber notes that the alleged threat apparently had no effect as DCT-102 is listed to testify for the Defence on 1 November 2010.<sup>88</sup> Therefore, it cannot be argued that the Defence has been prejudiced. Finally, the Trial Chamber notes that the Prosecution investigator urged DCT-102 to tell the truth, and when the information he sought was not forthcoming, the Prosecution invited him to rest and ultimately flew him back home to Kailahun. The Trial Chamber finds that there is no threat or interference with the administration of justice evident on the basis of this information. The Trial Chamber finds that the allegation is not sufficiently credible to provide the Trial Chamber with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice, in the present case.

*c) Offer of relocation*

57. The Defence alleges that the most egregious examples of inducements made by the Prosecution are offers of relocation and/or security protection where none was requested or warranted, or where the suggested security threat was actually created by the Prosecution. The Defence alleges that DCT-102 was told that as his knowledge of the RUF and diamonds was critical to the Prosecution case, he

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<sup>87</sup> Reply, para. 22.

<sup>88</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1107, Public with Annex A and B Defence Witness Order and List of Exhibits for the Week 1 November-5 November 2010, 26 October 2010.

could relocate to America and should open a bank account so the Prosecution could deposit \$90,000.<sup>89</sup> In support of this allegation, it cites the affidavit of DCT-102.<sup>90</sup>

58. In his affidavit, DCT-102 states that following his interview with David Crane in 2003, investigator Chris Bomford came to his hotel to try to convince him to cooperate. He alleges that Bomford stated that if he cooperated, the Prosecution could even take him to America and that “if I say what they want me to say and agree to testify, I should open a bank account, and they could deposit \$90,000 for me.”<sup>91</sup>

59. The Prosecution responds that it has no record of contact with anyone by the name given by DCT-102. It submits that the affidavit of DCT-102 makes it appear that he had contact with the Prosecution under a different name in 2002 and 2003, that he may be Witness TF1-273,<sup>92</sup> and was protected under the blanket protective measures decisions from 2003. However, this person does not appear on any Prosecution witness list.<sup>93</sup>

60. The Trial Chamber considers that an offer of relocation by a member of the Prosecution without the intent to induce a potential witness to lie is not in and of itself contemptuous. The Trial Chamber finds that the Defence has not demonstrated “reason to believe” that a member of the Prosecution made a statement to a potential witness with a view to inducing that person to lie or to prevent that person from testifying. Further, the Trial Chamber finds that the Defence has not demonstrated a link between the allegation and any actual interference with the administration of justice as DCT-102 is now coming to testify for the Defence.<sup>94</sup> Therefore, the Defence has not been prejudiced. Finally, the Trial Chamber notes that the so-called “offer” of \$90,000 was part of the costs of relocation and finds that the Defence have not demonstrated that this was excessive. The Trial Chamber accordingly finds that the allegation is not sufficiently credible to provide it with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice, in the present case.

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<sup>89</sup> Motion, para. 27.

<sup>90</sup> Motion, Confidential Annex F.

<sup>91</sup> Motion, Confidential Annex F, para. 21.

<sup>92</sup> Response, para. 14.

<sup>93</sup> Response, Confidential Annex 5.

<sup>94</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1107, Public with Annex A and B Defence Witness Order and List of Exhibits for the Week 1 November-5 November 2010, 26 October 2010.

*d) Inducement “by reference”:*

61. The Defence alleges that the Prosecution used a stratagem of “inducement by reference” by which it would, directly or indirectly try to induce potential witnesses by alluding to benefits or inducements given to other persons known to the targeted witness.<sup>95</sup> It alleges, for instance, that Witness DCT-102 was told by a Prosecution investigator to consider how well Gibril Massaquoi and Abu Keita were living on Prosecution largess.<sup>96</sup>

62. In his affidavit, DCT-102 states that when Chris Bomford came to his hotel in 2003, Bomford told him that Gibril Massaquoi was cooperating and was “enjoying the benefits”; that the Prosecution was “even cooking for him and he wasn’t doing anything but relaxing and that I could enjoy the same benefits”; and that Abu Keita was also “enjoying like Gibril”.

63. The Prosecution submits that allegations of “inducement by reference” do not satisfy the “reason to believe” standard.<sup>97</sup>

64. The Trial Chamber considers that it is normal practice for both Prosecution and Defence investigators to discuss security concerns with a witness and to provide witnesses with protective measures. It is only when such discussions are connected with an intent to induce a witness to lie that contempt of court may arise. The Trial Chamber finds that the Defence did not provide any supporting evidence that the “inducement by reference” was a stratagem undertaken by the Prosecution with the intent to unduly influence DCT-102. Further, the Trial Chamber notes that DCT-102 has not been prevented from testifying for the Defence and in fact is listed as a witness set to testify on 1 November 2010.<sup>98</sup> The Trial Chamber accordingly finds that the allegation is not sufficiently credible to provide it with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in the present case.

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<sup>95</sup> Motion, para. 28.

<sup>96</sup> Motion, para. 28.

<sup>97</sup> Response, para. 23.

<sup>98</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1107, Public with Annex A and B Defence Witness Order and List of Exhibits for the Week 1 November-5 November 2010, 26 October 2010.

4) *Allegations relating to Witness DCT-133*

a) *False intelligence and "arm-twisting"*

65. The Defence alleges that the Prosecution passed on false intelligence against DCT-133 in order to have him arrested and then "twist[ed] his arm into cooperating."<sup>99</sup> The Defence submits that "this "intelligence" was based on information gathered from DCT-097, during the time that he received over \$40,000 from the Prosecution to, *inter alia*, provide information."<sup>100</sup> In support of this allegation, the Defence cites Confidential Annex J, which contains a "declaration" by DCT-097 and Confidential Annex M which details payments made to him. The Defence also cites the affidavit of DCT-133.<sup>101</sup>

66. In his "declaration", DCT-097 states that starting in around 2005 or 2006, as a result of his cooperation with the Prosecution, he received "a lot" of money and other benefits. He states he was on a "regular retainer of USD 1200" and would get more money whenever he requested, including whenever he was "broke". He states, "[e]ach time I spoke with them they would also give me more money for different purposes, like transport, telephone calls and the like. The sums would range between USD500 and USD1500. I am not a small boy. I knew what the money was for. At one time, even Gilbert Morissette told me that they had spent a lot of money on me and yet I had not given them any useful information on Taylor's diamond transactions." He states, "[a]lthough I can no longer remember all the payments, I would estimate that all the cash payments were in the thousands".<sup>102</sup>

67. Confidential Annex M is a record of payments made to DCT-097. These payments are in the range of \$300-\$2000 and are recorded to have been made for various reasons including travel and related expenses, communication, assistance, information and accommodation.

68. In his affidavit, DCT-133 states that shortly after having met with a Prosecution investigator in 2007 with whom he did not cooperate, he was arrested by the Liberian National Security Agency ("NSA") on charges of treason and that the NSA director told him that "their friends in the sub-Region', the Prosecution for the Special Court for Sierra Leone," had given them information that he

<sup>99</sup> Motion, para. 17.

<sup>100</sup> Motion, footnote 26.

<sup>101</sup> Motion, Confidential Annex D.

<sup>102</sup> Motion, Confidential Annex J, para. 9.

had been recruiting former fighters to overthrow the Liberian government. He states that he put the allegation to a Prosecution investigator, who denied it.

69. The Prosecution submits that DCT-133's affidavit is inaccurate, as according to Investigation records, investigators learned in October 2006 from the NSA that it had arrested DCT-133 pursuant to a search warrant.<sup>103</sup> He was not arrested pursuant to any information provided by the Prosecution.<sup>104</sup> The Prosecution also argues that DCT-133 is an admitted liar<sup>105</sup> and cites his affidavit in which he admits to providing fabricated stories to the Prosecution in order to obtain money from them and to encourage them to "take my price for agreeing to testify seriously." Finally, it observes that the affidavit of DCT-133 refers to conduct that occurred in 2007.<sup>106</sup>

70. The Defence replies that the disputes of fact require further investigation, and that the facts that are not in dispute warrant investigation.<sup>107</sup>

71. The Trial Chamber notes as a preliminary consideration that DCT-097's "declaration" is a statement which is neither witnessed nor sworn and therefore is improperly referred to as a declaration.

72. The Trial Chamber notes that DCT-133 was arrested for "treason" and "recruiting former fighters to overthrow the Liberian government", and not for any reason related to the Prosecution. The Trial Chamber notes DCT-133's own admission that the Prosecution expressly denied that he was arrested on its impetus. The Trial Chamber also notes that the NSA is not an agent of the Prosecution nor are the persons who arrested DCT-133 linked to the Prosecution. The Trial Chamber finds therefore that the allegation is not connected to any member of the Prosecution and does not provide "reason to believe" that a member of the Prosecution knowingly and willingly interfered with the administration of justice. The Trial Chamber notes further that there is nothing in either the "declaration" of DCT-097 or the affidavit of DCT-133 which supports the allegation that DCT-133 was arrested on the basis of false information given to the Prosecution by DCT-097. The Trial Chamber accordingly finds that the allegation is not sufficiently credible to provide it with

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<sup>103</sup> Response, para. 11.

<sup>104</sup> Response, Confidential Annex 4 with reference to para. 7 of the affidavit.

<sup>105</sup> Response, para. 11.

<sup>106</sup> Response, para. 8.

<sup>107</sup> Reply, para. 23.

reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in the present case.

*b) Intimidation*

73. The Defence alleges that the Prosecution made up a story that DCT-133's life was in danger from persons associated with Charles Taylor to intimidate him into cooperating "at the back of an offer for protective measures."<sup>108</sup> In support of this allegation, the Defence cites the affidavit of DCT-133 and copies of plane tickets to Accra, hotel invoices in Accra, pictures of DCT-133's gate and fence with razor wire, calling cards of various Prosecution investigators and a slip of paper with Prosecutor Brenda Hollis' name and phone number.

74. In his affidavit, DCT-133 states that in 2007, a Prosecution investigator named Chris told him that the Prosecution had information that Solo, Ben Urey and Sando Johnson wanted to burn his house down for cooperating with the Prosecution and reassured him that they could provide him with the necessary security if he cooperated with them. DCT-133 stated that his own investigations later revealed that these allegations were not true. Nevertheless, he "managed to get the Prosecution to install a steel gate at his house, razor wire over the wall and provide security guards and pay for their salaries."

75. The Prosecution argues that DCT-133 is an admitted liar<sup>109</sup> and cites his affidavit in which he admits to providing fabricated stories to the Prosecution in order to obtain money from them and to encourage them to "take my price for agreeing to testify seriously." Finally, it observes that the affidavit of DCT-133 refers to conduct that occurred in 2007.<sup>110</sup>

76. The Defence replies that the disputes of fact require further investigation, and that the facts that are not in dispute warrant investigation.<sup>111</sup>

77. The Trial Chamber finds that the alleged threat to DCT-133 originated from "Solo, Ben Urey and Sando Johnson" and not the Prosecution. Rather, DCT-133 took advantage of the Prosecution by requesting they provide him with security measures at his home in the knowledge that his fears about the security had no basis. The Trial Chamber finds that there is nothing to suggest that

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<sup>108</sup> Motion, para. 18.

<sup>109</sup> Response, para. 11.

<sup>110</sup> Response, para. 8.

<sup>111</sup> Reply, para. 23.



DCT-133 gave information to the Prosecution on the basis of the alleged intimidation but rather because of the monies he believed he would receive. The Trial Chamber notes that he did not in fact testify for the Prosecution nor was he given a TFI number.

78. The Trial Chamber considers that there is nothing inappropriate in providing security measures to a potential witness where threats to his or her security exist. The Trial Chamber notes that there is nothing to suggest that the Prosecution believed that the threats to DCT-133 were unsubstantiated at the time they provided the security measures and that it cannot be argued that there was any intimidation on the part of the Prosecution in doing so. The Trial Chamber finds that DCT-133's allegation that members of the Prosecution "made up a story" that his life was in danger in order to intimidate him into cooperating is not substantiated. The Trial Chamber accordingly finds that the allegation is not sufficiently credible to provide it with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice, in the present case.

*c) Gifts of money*

79. The Defence alleges that the Prosecution offered or made other payments or inducements to witnesses, potential witnesses or sources in order to elicit their assistance, cooperation or evidence. It alleges that the Prosecution approached DCT-133 with gifts of money before ever having a substantive conversation with him.<sup>112</sup> In support of this allegation, the Defence cites the affidavit of Witness DCT-133.<sup>113</sup>

80. In his affidavit, DCT-133 attested that in 2007, he met with an investigator named Dave, who gave him money to "appease" him following his detention by the Liberian National Security Agency. He attested that every time he gave the Prosecution information, he would receive money. He stated that "[a]ll the time they asked me to be a witness, I insisted on being paid sufficient money to guarantee the safety, security and welfare of my family at my own terms" and that he received \$300 "every two months or so" to pay his guards. He stated that he initially requested a million dollars to testify against the Accused, but that "Brenda" stated that the Prosecution does not pay witnesses for their evidence and that payments made to witnesses are disclosed to the Defence who would raise questions. He stated that unnamed Prosecution investigators subsequently told him that "Brenda"

<sup>112</sup> Motion, para. 26.

<sup>113</sup> Motion, Confidential Annex D.

was still considering the matter if he could bring the price down. He was forced to bring the price down to \$250,000. He received \$500 for his upkeep. He met with “Brenda” and “Chris” in Accra where “Brenda” indicated she was aware of his reduced price and would see what she could do and said they wanted him to provide them with further information. DCT-133 did not in fact receive the \$250,000 he demanded.

81. The Prosecution argues that the affidavit submitted by the Defence in support of this allegation does not satisfy the “reason to believe” standard.<sup>114</sup> It also submits that DCT-133 is an admitted liar.<sup>115</sup>

82. The Trial Chamber takes note of the fact that DCT-133 only admits to having actually received \$300 on a bi-monthly basis for his guards and \$500 for his upkeep, as well as payments related to his interview in Ghana. The Trial Chamber has earlier noted that an investigator is entitled to discuss the terms of protective measures where the security of a witness has been threatened. The Trial Chamber considers that the payments to DCT-133’s guards (\$300 bi-monthly) were made in response to security threats to DCT-133. The Trial Chamber notes further that DCT-133 accepted these payments even after he determined for himself the threat was not substantiated. With regard to the payment of 500USD for DCT-133’s “upkeep” and the payments made in relation to his interview in Ghana, the Trial Chamber notes that there is nothing to suggest that these payments were excessive or improper. The Trial Chamber finds these payments fall within the ambit of Rule 39 and do not substantiate allegations of contemptuous conduct.

83. The Trial Chamber notes that there is nothing to substantiate TFI-133’s claim that the Prosecution negotiated “a fee in the hundreds of thousands of dollars” in order to testify or that he in fact received any such “fee”. Rather, by his own admission, he attempted to negotiate a price but Hollis informed him that the Prosecution does not pay witnesses. The Trial Chamber notes that when DCT-133 continued to demand payment, the Prosecution ceased contact with him. The fee he demanded was not paid and DCT-133 was never called as a Prosecution witness. The Trial Chamber therefore finds that the Defence allegation that the Prosecution gave DCT-133 “gifts of money” in order to elicit his assistance, cooperation or evidence is unsubstantiated. The Trial Chamber accordingly finds that the allegation is not sufficiently credible to provide it with reason to believe

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<sup>114</sup> Motion, para. 18.

that a member of the Prosecution knowingly and wilfully interfered with the administration of justice, in the present case.

5) *Allegations relating to Witness DCT-086*

a) *Unnecessary force in search of White Flower and threats to DCT-086*

84. The Defence submits that there are credible reasons to believe that the Prosecution is in contempt for wilfully and knowingly exerting undue pressure through threats and intimidation of witnesses, potential witnesses or sources, in order to secure their cooperation and/or their evidence, which interferes with the administration of justice.<sup>116</sup> It alleges, as an example, that on 5 March 2004, the Prosecution through an unnecessary show of force ransacked the Accused's residence in Monrovia and that during the course of this search, Prosecution Investigator Alan White made unnecessary threats to the caretaker and confiscated his personal items. It alleges that the next day the caretaker "narrowly escaped a kidnap attempt by or involving the Prosecution."<sup>117</sup> In support of these allegations, the Defence cites the affidavit of DCT-086 and provides a copy of the search warrant for White Flower.

85. In his affidavit, DCT-086 states that he was present during the search of White Flower and that Alan White made him stand against a wall, took a photograph of him and confiscated his SIM card and notebook which he never got back. He stated that "Morris" asked him to sign a document which he refused to do at which point Morris lunged at him and tried to grab him. DCT-086 felt that Morris wanted to "kidnap" him. DCT-086 stated that following this incident, he received calls from the American Embassy and from other unidentified people and that a group of security people came to his home, who apologised for his personal belongings having been confiscated.<sup>118</sup>

86. The Prosecution submits that the allegations made by DCT-086 relate to a lawful search conducted at White Flower in 2004,<sup>119</sup> further details of which were provided to the Defence in January 2007.<sup>120</sup> It submits that DCT-086 has an on-going financial relationship with the Accused<sup>121</sup> and provides Confidential Annex 1, a transcript of the Accused's testimony. In this testimony, the

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<sup>115</sup> Response, para. 11.

<sup>116</sup> Motion, para. 16.

<sup>117</sup> Motion, para. 17.

<sup>118</sup> Motion, Confidential Annex E, para. 20.

<sup>119</sup> Response, para. 17.

<sup>120</sup> Response, para. 8.

<sup>121</sup> Response, para. 11.

Accused names this individual and states that he was working for him at the time and that he had worked for him for many years previously.

87. The Prosecution further submits that the allegation is inaccurate<sup>122</sup> insofar as UNMIL did not take part in the search, but rather only provided security for it. The search was carried out by the Liberian authorities observed by OTP investigators.<sup>123</sup> The Prosecution submits that the allegations do not warrant the requested relief.<sup>124</sup> Finally, the Prosecution observes that this allegation is untimely<sup>125</sup> as it refers to a search in March 2004.<sup>126</sup>

88. The Defence replies that while the Prosecution raises a dispute of fact in relation to DCT-086's statement, there is independent evidence to support some of his allegations, including a report of a confirmed attempt by the Prosecution to "kidnap" a high-profile potential witness (not DCT-086).<sup>127</sup> The Trial Chamber notes that evidence supporting this assertion was not included in the Motion, but was rather only cited in a footnote in the Defence's reply.

89. The Trial Chamber notes that the search of White Flower took place on 5 March 2004 but that the allegation was not brought to the attention of the Court until this Motion was filed, over 6 years later. The Trial Chamber considers that the search was lawful and carried out pursuant to a warrant. It considers further that the search was not carried out by members of the Prosecution; rather, they were present as observers. The Trial Chamber notes that there is nothing in the alleged threats to DCT-086, including the confiscating of his personal items, the taking of a photograph and his perception that members of the Prosecution wanted to kidnap him, to suggest that these actions were taken knowingly and wilfully to persuade him to cooperate with the Prosecution or to prevent him from testifying for the Defence. Further, the Trial Chamber finds that there is no link between the alleged threats and the unwillingness of DCT-086 to testify. There is nothing to suggest that he was in fact intimidated or prevented from testifying. On the contrary, DCT-086 has indicated that he is willing to testify for the Defence.<sup>128</sup> The Trial Chamber finds no threat or interference with the administration of justice evident on the basis of this information. The Trial Chamber accordingly

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<sup>122</sup> Response, para. 11.

<sup>123</sup> Response, Confidential Annex 4, with reference to para. 4 of the affidavit.

<sup>124</sup> Response, para. 17.

<sup>125</sup> Response, para. 17.

<sup>126</sup> Response, para. 8.

<sup>127</sup> Reply, para. 25.

<sup>128</sup> Motion, Confidential Annex E, para. 3.

finds that the allegation is not sufficiently credible to provide it with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in the present case.

*b) Use of TF1-139 to convince DCT-086 to cooperate*

90. The Defence submits that there are credible reasons to believe the Prosecution is in contempt for offering and/or providing monetary bribes and/or other inducements, such as relocation, in exchange for cooperation and testimony.<sup>129</sup> The Defence alleges that TF1-139, listed as a Prosecution witness but not called to testify in this case, called DCT-086 from America and tried to convince him to cooperate.<sup>130</sup> Although the Defence did not cite supporting documentation for this allegation, the Trial Chamber has examined the affidavit of DCT-086 in Confidential Annex E as well as a list of payments made by WMU to TF1-139 in Confidential Annex K.

91. In his affidavit, DCT-086 attested that he received a call from a foreign number which “turned out to be” that of TF1-139, who said that he had given DCT-086’s name to “some people who wanted to talk to [him].”<sup>131</sup> DCT-086 attested that TF1-139 stated that he would ensure that he got employment when TF1-139 returned to Liberia and that he continued to call periodically after that time to ask if DCT-086 has talked “to the people.” DCT-086 stated, “I am not sure which people he referred to and I do not know whether he has any connection with the Special Court.” After this conversation, DCT-086 continued to receive a lot of calls from people who wanted information from him relating to Charles Taylor, but they “would not say” what organisation they were from.<sup>132</sup>

92. The Trial Chamber notes that this alleged incident dates back to 2005 but was not brought to the attention of the Court until the filing of the present Motion, some five years later. The Trial Chamber finds this to be undue delay. The Trial Chamber considers that the Defence submission that TF1-139 called DCT-086 “from America” to be unsubstantiated by the information provided in the affidavit. The Trial Chamber notes that there is nothing to suggest that TF1-139 was working for the Prosecution; that the alleged offer of employment was connected to the Prosecution or that the other calls received by DCT-086 were calls from persons in any way related to the Prosecution. Further, the Trial Chamber notes that there was no actual inducement offered by TF1-139, but rather

<sup>129</sup> Motion, para. 19.

<sup>130</sup> Motion, para. 28.

<sup>131</sup> Motion, Confidential Annex E, para. 22.

<sup>132</sup> Motion, Confidential Annex E, para. 23.

that his interaction with DCT-086 amounted only to a telephone conversation. The Trial Chamber therefore finds that there is nothing to suggest that TF1-139 or others did in fact unduly influence DCT-086 to co-operate with the Prosecution and that the allegation of contempt is not substantiated. The Trial Chamber accordingly finds that the allegation is not sufficiently credible to provide the Trial Chamber with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in the present case.

6) *Allegations relating to Witness DCT-130*

a) *Undue pressure*

93. The Defence submits that there are credible reasons to believe that the Prosecution is in contempt for wilfully and knowingly exerting undue pressure through threats and intimidation of witnesses, potential witnesses or sources, in order to secure their cooperation and/or their evidence, which interferes with the administration of justice.<sup>133</sup> It alleges, as an example of this, that the Prosecution exerted undue pressure against DCT-130, by threatening him at a meeting in the German Embassy compound in Monrovia. In support of this allegation, it cites Confidential Annex C<sup>134</sup> which contains an affidavit and a signed statement by DCT-130.<sup>135</sup>

94. The Prosecution argues that allegations contained in DCT-130's affidavit are speculative<sup>136</sup> and are based on subjective interpretations of otherwise normal events.<sup>137</sup> The Prosecution submits that there are inaccuracies in DCT-130's allegations,<sup>138</sup> in so far as his account differs from the account in the Prosecution's investigatory notes, namely that DCT-130's brother was in fact present at the meeting and took notes; that both DCT-130 and his brother walked into the Embassy compound without covering their faces, and that one investigator provided his business card to the brother in order to instil confidence.<sup>139</sup> The Prosecution observes that the affidavit refers to contact with the

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<sup>133</sup> Motion, para. 16.

<sup>134</sup> Motion, para. 11, with reference to Confidential Annex C.

<sup>135</sup> Motion, Confidential Annex C.

<sup>136</sup> Response, para. 11.

<sup>137</sup> Response, para. 16, with reference to para. 7 of the affidavit.

<sup>138</sup> Response, para. 11.

<sup>139</sup> Response, Annex 4, with reference to paras 7 and 8 of the affidavit.

Prosecution between November 2006 and January 2007<sup>140</sup> and that the substance of the allegations were publicised at a press conference in 2007.<sup>141</sup>

95. The Defence responds that DCT-130 was intimidated by the Prosecution's techniques. It states there is no inconsistency between his affidavit and his statement vis-à-vis the Prosecution account regarding his entrance into the compound, as he never said he actually went into the compound with his head covered. Finally, it suggests that the fact that DCT-130 held a press conference relating to his recruitment lends weight to his claims.<sup>142</sup>

96. In his affidavit, dated 23 September 2010, DCT-130 attests that when talking to Prosecution investigators he was prevented from having his younger brother in the room which made him feel intimidated. He also attests that when meeting with the Prosecution in the compound of the German embassy, a Prosecution investigator "insisted" that DCT-130 get into his jeep and cover his face, rather than walking into the compound himself, which made him feel as if they wanted to kidnap him. He attests that he did not want to be connected to the Prosecution in any way.<sup>143</sup>

97. In his signed statement, dated 24 February 2007, DCT-130 states that in January 2006, investigators drove into his yard in an unmarked Jeep and that their behaviour made him feel as if they wanted to kidnap him, so he slipped out of his yard unnoticed and later called them to inform them he was *en route* to their office with his brother. With regard to the incident at the German Embassy, DCT-130 said in his signed statement that investigators asked him and another individual to get into the jeep but that they refused and were escorted on foot.<sup>144</sup>

98. The Trial Chamber notes that the allegations of DCT-130 date back to 2006 while they are brought to the Trial Chamber's attention in 2010. The Trial Chamber finds this to be undue delay. Furthermore, the Trial Chamber notes certain material inconsistencies in DCT-130's allegations. In particular the differences in his signed statement and his later affidavit in relation to the presence of his younger brother at the first meeting with the Prosecution.<sup>145</sup> Moreover, DCT-130 did not express any fear in the statement, but does so in the affidavit. It therefore appears that the allegations in the

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<sup>140</sup> Response, para. 8.

<sup>141</sup> Motion, para. 8.

<sup>142</sup> Reply, para. 24.

<sup>143</sup> Motion, Confidential Annex C.

<sup>144</sup> Motion, Confidential Annex C.

<sup>145</sup> In the first affidavit DCT-130 does not mention that he requested his younger brother to be present.

affidavit were an afterthought. Furthermore, DCT-130's statements that he was prevented from having his younger brother in the room and that he was requested to enter a jeep and cover his head when entering the Embassy compound (which he was in fact not forced to do) do not in any way suggest that the acts were intended to intimidate him or that he was in fact intimidated by them. Furthermore, the Trial Chamber finds no merit in the complaint against DCT-130's brother being asked to leave the room during an interview, as it is standard procedure during interviews not to have third parties present. In any event, the Trial Chamber observes that the Prosecution records of this interview show that DCT-130's younger brother was in fact present at the meeting, a fact unchallenged by the Defence. In relation to the allegations that DCT-130 had to cover his head the Trial Chamber is of the view, that even if this event occurred, this too is standard procedure intended to protect the identity of the witness being interviewed. Finally, the Trial Chamber finds that the Defence has not demonstrated a link between the alleged actions and the failure of DCT-130 to come and testify in this trial. The Trial Chamber accordingly finds that the allegations are not sufficiently credible to provide it with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in the present case.

*b) Improper inducements*

99. The Defence alleges that the Prosecution offered improper inducements to DCT-130,<sup>146</sup> and that therefore the Prosecution "is in contempt for offering and/or providing monetary bribes and/or other inducements, such as relocation, in exchange for cooperation and testimony."<sup>147</sup> In support of this allegation, it cites Witness DCT-130's affidavit in Confidential Annex C.

100. In his affidavit, dated 23 September 2010, DCT-130 attested to the following: that Prosecution investigators told him in 2006 that the Prosecution offered to send him to America even though he never said that he was afraid to testify or that he wanted to leave Liberia. He stated that:

During this meeting, the Prosecution told me all kinds of things to make me cooperate with them. They said that they had been looking for me and that they would give me security, send me and my family to America, and that I would be famous in the world, if I agreed to talk against Mr. Taylor. I had never said that I was afraid to testify or that I wanted to leave Liberia. They just offered these things in order for me to feel encouraged to be part of them and say what they wanted me to say.

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<sup>146</sup> Motion, para. 11.

<sup>147</sup> Motion, para. 19.



They kept insisting that since the 'world court' had already found Mr. Taylor guilty and would be in jail for life, I should just cooperate with them and that this would be good for me. I knew that they were talking about some financial benefit. I was very frustrated by this. I could tell that since they said Mr. Taylor was already guilty, they were expecting me to lie to confirm that story. I never took money from them because that would have seemed as if I was working for them and I did not want to be connected to them in any way.<sup>148</sup>

101. In his earlier statement, dated 24 September 2007, DCT-130 stated that when first questioned by Prosecution investigators, the investigators said that the United Nations would provide security, free housing and money to sustain him and his family because they were concerned about his safety, even though the witness "never mentioned any fear." In his signed statement, DCT-130 did not mention an offer of relocation to the United States and stated, *inter alia*, more specifically:

After that, Pete McLaren said that we had been called so that we could testify, and sign a prepared statement in their possession against Mr. Taylor. He said that the Prosecution had recruited and paid 300 men in Liberia already to testify against Mr. Taylor. He also said that the UN would provide us money, free housing and overall security protection. He pointed out that Mr. Taylor would die in jail as the world court had already decided on his guilt, and only needed reasons to justify their decision. They also said that Mr. Taylor had stolen money from Liberia and huge quantities of diamonds from Sierra Leone.<sup>149</sup>

102. The Prosecution maintains that it was DCT-130, and not the Prosecution, who initiated contact. It further argues that allegations contained in DCT-130's affidavit are speculative<sup>150</sup> and are based on subjective interpretations of otherwise normal events.<sup>151</sup> The Prosecution observes that affidavit refers to contact with the Prosecution between November 2006 and January 2007<sup>152</sup> and that the substance of the allegations were publicized at a press conference in 2007.<sup>153</sup>

103. The Defence responds that DCT-130 was of great interest to the Prosecution as a witness, was offered protection without voicing any security concerns and was asked to sign a statement against Mr. Taylor before reading it (on assurances by the investigators not to worry as Mr. Taylor was already guilty). It submits that the fact that DCT-130 held a press conference in 2007 relating to his recruitment by the Prosecution lends credibility to his claims.

104. The Trial Chamber notes that DCT-130's allegations arise from events that occurred in 2006 and that while DCT-130 gave a Press Conference in Monrovia to "expose the way the Prosecution

<sup>148</sup> Confidential Annex C, Affidavit of Affirmation, 23 September 2010, paras 9-10.

<sup>149</sup> Confidential Annex C, Statement dated 24 February 2007, para. 8.

<sup>150</sup> Response, para. 11.

<sup>151</sup> Response, para. 16 with reference to para. 7 of the affidavit.

<sup>152</sup> Response para. 8.

had treated” him, the Defence did not bring the alleged misconduct to the Trial Chamber’s attention until the filing of the present Motion, over three years later. The Trial Chamber accordingly finds that this constitutes undue delay. Furthermore, the Trial Chamber considers that discussions between investigators and DCT-130 about possible protective measures to be appropriate in the circumstances, as it is standard procedure to assure the witnesses that any fears will be taken seriously. Discussions of relocation with DCT-130 were therefore properly addressed with the witness by the investigators and complied with Rule 39(ii). The Trial Chamber further finds his affidavit and his previous signed statement inconsistent in relation to the offer of relocation to the United States and whether he offered money by the Prosecution. In addition, the Trial Chamber notes that the allegations that the Prosecution offered him financial benefits for providing false testimony to be highly speculative. In any event, the Trial Chamber considers that the alleged payments would fall under the ambit of Rule 39(ii), as they are legitimate measures to protect the witness’s safety and security. Finally, the Trial Chamber takes note of DCT-130’s statement that he did not want to be connected with the Prosecution and the fact that he did not cooperate with them or accept the alleged inducements. DCT-130 was not called to testify by the Prosecution and no link has been demonstrated between his interactions with the Prosecution and his failure to testify for the Defence. In addition, the Trial Chamber notes that DCT-130 stated that he is willing to testify. The Trial Chamber accordingly finds that the allegations are not sufficiently credible to provide it with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in the present case.

7) *Allegations relating to Witness DCT-097*

*Exorbitant payments and inducements to Witness DCT-097 while a Prosecution witness*

105. The Defence submits that “even some of the pre-trial payments to witnesses that were properly within the Prosecution’s WMU purview were irregular as they went well beyond the proscribed rationale and were wilfully and knowingly designed to interfere with the administration of justice.”<sup>154</sup> It submits as an example, payments made to DCT-097 at the time he was a Prosecution witness. In support of this allegation, it cites DCT-097’s signed statement and Prosecution disclosure of payments made to DCT-097. The Defence submits that such conduct casts doubt on the credibility of

<sup>153</sup> Motion para. 8.

<sup>154</sup> Motion, para. 24.

the entire Prosecution's evidence and that the conduct of the Prosecution has negatively affected the Accused's fair trial rights in that it has generally poisoned the environment and has made it difficult for the Defence to find witnesses who have not compromised themselves with the Prosecution.

106. In his "declaration", DCT-097 stated that as a result of his cooperation with the Prosecution, he received "a lot of money and other benefits", was put on a regular retainer of \$ 1200 and received money whenever he was "broke". He stated that each time he spoke with the Prosecution, they would give him money in the range of 500 to 1500 USD for different purposes such as transport and telephone calls.<sup>155</sup> He stated, "[a]lthough these amounts of money were given as travel and subsistence allowances, I am not a small boy. I knew what the money was for. At one time, even Gilbert Morissette told me that they had spent a lot of money on me and yet I had not given them any useful information on Taylor's diamond transactions." He stated that "[s]ometimes, I would just tell them what they wanted to hear for them to give me money." He estimated that the cash payments were in the thousands of dollars.<sup>156</sup>

107. The Prosecution submits that DCT-097 was not called as a Prosecution witness; rather, he was used as a source and that the payments reflect this use.<sup>157</sup> As discussed above, the Prosecution argues that DCT-097 is an admitted liar<sup>158</sup> and that his allegation is inaccurate<sup>159</sup> in some respects.<sup>160</sup> Finally, the Prosecution submits that DCT-097's allegation can be challenged on the basis of delay<sup>161</sup> and observes that it refers to contact with the Prosecution from 2003 to 2004.<sup>162</sup>

108. The Defence replies that while DCT-097 was not called as a witness by the Prosecution, the money given to him as a potential Prosecution witness tainted the information he provided to them and is an example of the corrupting influence payments can have.<sup>163</sup>

109. In his declaration, DCT-097 states that during his initial contact with the Prosecution in approximately 2005 or 2006, Gilbert Morissette told him that the Prosecution wanted him to give

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<sup>155</sup> Motion, Confidential Annex J, para. 8.

<sup>156</sup> Motion, Confidential Annex J, para. 9.

<sup>157</sup> Response, para. 22.

<sup>158</sup> Response, para. 11.

<sup>159</sup> Response, para. 11.

<sup>160</sup> Confidential Annex 4, with reference to para. 7 of the affidavit of DCT-097.

<sup>161</sup> Response, para. 19.

<sup>162</sup> Response, para. 8.

<sup>163</sup> Reply, para. 28.

evidence against Taylor and that they would grant him protection, including relocation. He stated that he gave the Prosecution information on diamond for arms transactions between Taylor and the RUF as well as the political climate in the region, but that he could not vouch for "its entire accuracy." He also stated that he recommended other persons for the Prosecution to speak to.

110. The Trial Chamber notes that the allegations date back to 2005 and 2006. The Trial Chamber therefore finds that there was undue delay in bringing the allegations to the Trial Chamber's attention. The Trial Chamber has already dismissed the Prosecution's submission that DCT-097 was not one of its witnesses, and found that the "evidence strongly suggests that for all intents and purposes [DCT-097] was a potential Prosecution witness."<sup>164</sup> The Trial Chamber notes that the documentation of payments indicates amounts including \$ 4,700 provided to the witness for a reason that was redacted by the Prosecution; \$ 6,180 for lodging and expenses for the witness and his family as well as smaller instalment amounts ranging from hundreds to thousands of dollars for communication, transportation, meals, subsistence and expenses relating to a trip to Ghana.<sup>165</sup> The Trial Chamber finds that the Defence has not demonstrated how these allegations relate to charges of contempt. There is no indication that the payments were not necessary; rather, both DCT-097 and the Prosecution have provided legitimate reasons for these payments and the Trial Chamber finds that such payments fall within the discretion of the Prosecution pursuant to Rule 39(ii).

111. Further, the Trial Chamber finds that the evidence presented by the Defence does not suggest that the payments were made in exchange for DCT-097's testimony. Rather, the Trial Chamber finds that DCT-097 was exploiting the Prosecution to the point of giving them false information. Given these facts, the Trial Chamber finds no reason to believe that the Prosecution may have knowingly and wilfully interfered with the administration of justice. The Trial Chamber notes that DCT-097 received a total amount of \$ 40,441.37 from the Prosecution.<sup>166</sup> The Prosecution explained that these were discretionary payments pursuant to Rule 39(ii). The Trial Chamber finds that the Defence has not demonstrated how this discretion pursuant to Rule 39(ii) has been abused or in which way the payments can be considered as exorbitant. Further, the Trial Chamber finds that the Defence has not demonstrated how the conduct of the Prosecution prevents the Defence from calling DCT-097. The

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<sup>164</sup> See *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, para. 10.

<sup>165</sup> Motion, Annex M.

<sup>166</sup> Motion, Annex N, which is based on Prosecution disclosure of payments made to DCT-097.

Trial Chamber accordingly finds that the allegations are not sufficiently credible to provide it with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in the present case.

112. In relation to the Defence allegations of other improper inducements, the Trial Chamber considers that the Prosecution has a legitimate interest in discussing matters relating to witness protection with potential witnesses, including matters relating to relocation. It finds that there nothing to give the Trial Chamber reason to believe that such protective measures were extended to DCT-097 with the intent of interfering with the administration of justice. The Trial Chamber notes further that DCT-097 was not called as a Prosecution witness in this case and that, therefore, there is no link between the allegedly improper inducements and the Prosecution's case against the Accused, nor DCT-097's failure to testify for the Defence. The Trial Chamber accordingly finds that the allegations are not sufficiently credible to provide it with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in the present case.

8) *Allegations relating to DCT-032*

a) *Gifts of money*

113. The Defence alleges that the Prosecution offered or made payments or inducements to witnesses, potential witness or sources in order to elicit their assistance, cooperation or evidence. It alleges that the Prosecution approached DCT-032 with gifts of money before ever having a substantive conversation with him.<sup>167</sup> The Defence cites in support of this allegation the affidavit of DCT-032.<sup>168</sup>

114. The Prosecution submits that DCT-032 acted as a source for the Prosecution, was never listed as a witness, never given a TFI number nor given protective measures.<sup>169</sup> The Prosecution also submits that DCT-032 is an admitted liar<sup>170</sup> and cites his affidavit wherein he admits to having made up a story relating to the death of Johnny Paul Koroma and knowingly showing a false grave to

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<sup>167</sup> Motion, para. 26.

<sup>168</sup> Motion, Confidential Annex G.

<sup>169</sup> Response, Confidential Annex 5.

<sup>170</sup> Response, para. 11.

investigators.<sup>171</sup> The Prosecution observes that the affidavit of DCT-032 refers to contact with the Prosecution in June and July 2008.<sup>172</sup>

115. The Defence replies that the disputes of fact require further investigation, and that the facts that are not in dispute warrant investigation.<sup>173</sup> It submits that the bulk of the information provided by DCT-032 is unchallenged; what the Prosecution deems an “inconsistency” is really a contradiction between what someone in the Prosecution earlier told DCT-032 and what the Prosecution now claims.<sup>174</sup>

116. The Trial Chamber notes that the allegations by DCT-032 relate to incidents that occurred in or around June or July, 2008 and accordingly finds that the Defence’s failure to bring the allegations to the attention of the Trial Chamber in a timely fashion amounts to undue delay. The Trial Chamber notes that in his affidavit, DCT-032 attests that he met the Prosecution after being contacted by a man named William Obey, stating that Obey “came after [him] with small amounts of money.” He later met with Mustapha and Kelvin, who he understood were from the Special Court for Sierra Leone and who told him they wanted information on Johnny Paul Koroma’s death and gave him \$ 300 to buy a phone. Obey convinced DCT-032 to make up a story to get the money and DCT-032 continued to receive varying amounts of money from Kelvin, Mustapha or Umaru, amounts in the range of \$100 or \$150. In total, he believes he may have received over \$1000 from them. He attests that he gave the Prosecution an account of Johnny Paul Koroma’s death that he and Obey had concocted and that the Prosecution offered him \$500 to show them where the body was buried and promised a further \$5000 if the body was confirmed to be that of Johnny Paul Koroma. DCT-032 attests that he did in fact show the Prosecution a false grave and that the Prosecution gave him \$500 and another \$100 for having introduced them to another informant. He states, “I have never met Johnny Paul Koroma. My description of him to the Prosecution were [sic] entirely based on what they were suggesting to me. I just confirmed whatever they told me.”<sup>175</sup>

117. The Trial Chamber notes that the Defence did not bring the allegations to the attention of the Trial Chamber in a timely fashion, but rather two years after the incident occurred. The Trial

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<sup>171</sup> Motion, Confidential Annex D.

<sup>172</sup> Response, para. 8.

<sup>173</sup> Reply, para. 23.

<sup>174</sup> Reply, para. 26.

<sup>175</sup> Motion, Confidential Annex G, para. 27.

Chamber notes that the small payments made to DCT-032 were not made by the Prosecution, but rather by a person called Obey. The Defence has not suggested that Obey acted as an agent of the Prosecution when he made those payments. Therefore, it cannot be concluded that the Prosecution had any involvement in the payments made by Obey. In relation to the payments made by the Prosecution to this individual, the Trial Chamber finds that the payments to DCT-032 fall within the discretion of the Prosecution permitted by Rule 39(ii) and that the Defence has not demonstrated an abuse of that discretion. Furthermore, as DCT-032 did not in fact testify for the prosecution in this trial, the Trial Chamber finds no link between the alleged “gifts of money” and his failure to testify for the Defence. In addition, the Trial Chamber notes that the misconduct in this case was not on the part of the Prosecution, but rather on the part of Obey and DCT-032 who conspired to defraud the Prosecution by fabricating a story. Further, the Trial Chamber does not accept the Defence explanation that as a result of the Prosecution’s conduct the Defence was prevented from calling DCT-032 as a witness, as his affidavit does not suggest any unwillingness on his part to testify. The Trial Chamber accordingly finds that the allegation is not sufficiently credible to provide it with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in this case.

*b) Inducements “by reference” to Varmuyan Sheriff*

118. The Defence alleges that the Prosecution used a stratagem of “inducement by reference” by which it would, directly or indirectly try to “induce” potential witnesses by alluding to benefits or inducements given to other persons known to the targeted witness.<sup>176</sup> In this particular allegation the Defence alleges that in the case of DCT-032, a “Kelvin” of the Prosecution alluded to Varmuyan Sheriff’s Prosecution-financed house in Kenema and that, following contact by the Prosecution, Sheriff tried to persuade DCT-032 to cooperate with the Prosecution.<sup>177</sup> In support of this allegation, the Defence submits the affidavit of DCT-032.<sup>178</sup>

119. In his affidavit, DCT-032 attests that “Kelvin”, an investigator with the Prosecution, asked him which part of the world he wanted to live in and promised that the Prosecution could send him and his family anywhere he wanted to live. He attests that Kelvin told him about Varmuyan Sheriff whom he said was living very well after the Prosecution had bought him a house in Kenema. He attests that

<sup>176</sup> Motion, para. 28.

<sup>177</sup> Motion, para. 28.

<sup>178</sup> Motion, Confidential Annex G.

“Kelvin even called so that I could talk to Varmuyan Sheriff” and that Sheriff encouraged him to cooperate. He later heard that Varmuyan Sheriff was going to The Hague to testify.<sup>179</sup>

120. The Prosecution submits that the allegations made by DCT-032 cannot satisfy the “reason to believe” standard as they are inaccurate insofar as no house was bought in Kenema District for Varmuyan Sheriff.<sup>180</sup>

121. Firstly, the Trial Chamber notes that DCT-032’s allegations relate to contact with the Prosecution dating back to June or July 2008. The Trial Chamber finds that there was undue delay in bringing the allegations to the Trial Chamber’s attention. Furthermore, the Trial Chamber finds that there is no reason to believe that Sheriff was given a house in Kenema District by the Prosecution. The Prosecution has denied that allegation and the Trial Chamber notes that the allegations were not put to Varmuyan Sheriff during his cross-examination. In addition the Trial Chamber notes that DCT-032 stated in the affidavit that Varmuyan Sheriff asked him to come to his house in Freeport. The Trial Chamber finds this to be inconsistent with his allegation that the Prosecution bought him a house in Kenema. Furthermore the Trial Chamber notes that DCT-032 does not allege that Varmuyan Sheriff called him on behalf of the Prosecution. The Trial Chamber finds that there is nothing in DCT-032’s account to suggest that the alleged influence is linked to an intent to interfere with the administration of justice on behalf of the Prosecution. The Trial Chamber finds further that there is no link between the alleged inducement and DCT-032’s failure to testify for the Defence. Lastly, the Trial Chamber finds that the inducements were sought by DCT-032 and that there is no information available that the Prosecution initiated any such inducements. The Trial Chamber accordingly finds that the allegation is not sufficiently credible to provide it with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in the present case.

**9) Offers of relocation and protection as inducements to Abu Keita**

122. The Defence alleges that the most egregious examples of inducements made by the Prosecution are offers of relocation and/or security protection where none was requested or warranted, or where the suggested security threat was actually created by the Prosecution. It alleges that Abu Keita, a

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<sup>179</sup> Motion, Confidential Annex G, paras 12-15.

<sup>180</sup> Response, para. 19.



Prosecution witness who testified before the court, gave his testimony “at the back of an earlier agreement for relocation.”<sup>181</sup>

123. In relation to this incident the Defence refers to Defence exhibit D-468, which is an article appearing in the Standard Times, a Sierra Leone newspaper, dated 29 September 2009 with the headline “Prosecution Witness May Take Legal Suit Against Special Court for Breach of Agreement”. The article suggests Abu Keita made a verbal agreement with representatives of the Special Court that he would testify with the understanding that his life and the life of his family be protected and that they would be relocated. The article suggests that following his testimony, Abu Keita was not relocated and is in fear for his life.

124. The Prosecution responds that there is no credible reason to believe the Prosecution has made improper offers of relocation and/or security protection. It submits that it is normal for the Prosecution to discuss security concerns with witnesses in general terms and, in cooperation with WVS, to make such arrangements as are necessary and justified.<sup>182</sup>

125. The Prosecution argues that Article 15 of the Court’s Statute gives the Prosecutor the “power to question suspects, victims and witnesses [...]” and that Rule 39 grants the Prosecutor authority to “[t]ake all measures deemed necessary for the purpose of the investigation” and applies to potential witnesses and sources. It argues that WVS had no mandate to deal with sources or potential witnesses.<sup>183</sup>

126. The Defence responds that it is improper for the Prosecution to promise relocation and/or security protection when the witness concerned has not first raised that as a concern, precisely because such protective measures could be used as inducement. It submits this is the case with Abu Keita who threatened to sue the Prosecution for breach of promise after they failed to relocate him. It submits the Prosecution’s assertions regarding the relocation of Abu Keita contradict its own witness’ statements and that this bears investigation.<sup>184</sup>

127. The Trial Chamber recalls that Abu Keita testified as a Prosecution witness in this case in January 2008 and that the Defence had ample opportunity to cross-examine him in relation to these

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<sup>181</sup> Motion, para. 27.

<sup>182</sup> Response, para. 23.

<sup>183</sup> Response, para. 21.

allegations, in particular his alleged “deals” with the Prosecution on relocation. The Defence cannot therefore claim prejudice in this regard. In any event, the Trial Chamber considers that even if the Prosecution had promised Abu Keita relocation (which the Prosecution denies), the Prosecution has a legitimate interest in securing the safety of its witnesses, and may arrange for any appropriate protective measures for them, including relocation. The Trial Chamber notes that Abu Keita testified openly,<sup>185</sup> an indication that he was in fact, not concerned about his security, an indication consistent with the Prosecution position that it did not promise him relocation. The information provided, even if believed, does not support an allegation of contemptuous conduct on the part of the Prosecution. The Trial Chamber accordingly finds that the allegation is not sufficiently credible to provide it with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in the present case.

*10) Payment of \$10,000 to TF1-362 to testify*

128. The Defence alleges that “it is ‘common knowledge’ amongst RUF ex-combatants that Prosecution witness TF1-362 testified and lied before the Special Court and in exchange made approximately \$10,000.”<sup>186</sup> It cites in support of this allegation the affidavit of DCT-102, testimony of Charles Taylor, and the testimony of Defence Witness DCT-215. It does not specify when TF1-362 allegedly received this amount of money.

129. The Prosecution submits that common knowledge cannot be relied upon to support an allegation of contempt of court.<sup>187</sup> Furthermore, the Prosecution disclosed all relevant information for TF1-362 prior to the witness’ testimony to the Defence.<sup>188</sup>

130. In his affidavit, DCT-102 attests that he met TF1-362, who confirmed testifying in The Hague. He attests that he “heard a rumour” that TF1-362 received 10,000 USD but that he does “not have personal knowledge of that.”<sup>189</sup> Witness DCT-215 and the Accused both provided evidence in relation to this alleged incident, but are not able to provide any information as to whether TF1-362 received this money from the Prosecution or the reasons for receiving such funds.

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<sup>184</sup> Reply para. 29.

<sup>185</sup> Transcript 22 January 2008, p. 1946.

<sup>186</sup> Motion, para. 28.

<sup>187</sup> Response, para. 24.

<sup>188</sup> Response, para. 24.

<sup>189</sup> Motion, Confidential Annex F, para. 22.

131. Witness DCT-215 testified that he met TF1-362 who told him that “someone” had asked him/her to “go and tell lies” and that he/she was given “a little thing” for this. He said that this was a reference to the Prosecution because TF1-362 explained that he/she was given a new name and money to build a house.<sup>190</sup> He testified that he did not know the exact amount, but that “it is alleged by some people” that TF1-362 was paid up to 10,000 USD.<sup>191</sup>

132. The Accused testified that he heard that TF1-362 boasted of getting a job and 10,000 USD to build a house as a result of testifying before the Special Court.<sup>192</sup>

133. The Trial Chamber also notes that DCT-062 testified that he went together with DCT-102 to visit TF1-362.<sup>193</sup> TF1-362 told them that he/she was going to build a house.<sup>194</sup> However, DCT-062 testified that TF1-362 did not tell them where the money to build the new house would come from.<sup>195</sup>

134. The Trial Chamber notes that the allegations made by DCT-102 are based only on rumour and speculation and that DCT-102 has no personal knowledge of the allegations. The Trial Chamber further notes that even the Accused in his testimony cited rumour and not personal knowledge in relation to this event. It is not explained where the information came from. Moreover, the Trial Chamber notes that although DCT-215 and DCT-062 were present at the same occasion, the account given by each of them is contradictory regarding the statement TF1-362 is alleged to have made in their presence. Further the Trial Chamber notes that DCT-215’s testimony and the transcript reference provided by the Defence in support of the allegation does not specifically refer to an amount of 10,000 USD, but only to a “little thing”.<sup>196</sup> Furthermore neither of the two individuals state that TF1-362 named the Prosecution as the organ that supplied the \$10,000 or “little thing”. At best, the Defence allegation seems to be based on mere suspicion. With regard to the testimony of the Accused and Defence Witness DCT-062, the Trial Chamber will consider their evidence when assessing the credibility of Witness TF1-362 in the final judgement. Furthermore, as the Defence was able to cross-examine TF1-362 in relation to this allegation there is no prejudice suffered by the

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<sup>190</sup> John Vincent, Transcript 30 March 2010, pp. 38248-38250.

<sup>191</sup> John Vincent, Transcript 30 March 2010, pp. 38252-38254.

<sup>192</sup> Charles G. Taylor, Transcript 16 September 2009, p. 29074.

<sup>193</sup> DCT-062, Transcript 26 April 2010, pp. 39900-39901.

<sup>194</sup> DCT-062, Transcript 26 April 2010, pp. 39903-39904.

<sup>195</sup> DCT-062, Transcript 26 April 2010, pp. 40255-40257.

<sup>196</sup> Witness DCT-215, Transcript 30 March 2009, p. 38249.

Defence, in particular as the Prosecution stated that all payments were disclosed to the Defence. The Trial Chamber accordingly finds that the allegation is not sufficiently credible to provide it with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in the present case.

*11) Release from prison of Isaac Mongor and Foday Lansana*

135. The Defence alleges that “it is common knowledge” that Foday Lansana and Isaac Mongor, both Prosecution witnesses in this case, “were released from prison at the behest of the Prosecution, and/or that the Prosecution could have done so”<sup>197</sup> in exchange for their cooperation and testimony at trial.<sup>198</sup> The Defence submits that such displays of power and munificence by the Prosecution poison the pool of potential witnesses and further interfere with the administration of justice in that the credibility of such witnesses who come to testify is severely impacted. It cites in support of this allegation the affidavits of DCT-102 and DCT-023, and the testimony of Foday Lansana.

136. In his affidavit, DCT-102 states that “I am aware that some people ended up cooperating with the Prosecution because they could benefit out of it. Nya [Foday Lansana] and Isaac Mongor were release [sic] from jail because they agreed to testify in favour of the Prosecution.”<sup>199</sup>

137. In his affidavit, DCT-023 does not make statements relating to Foday Lansana or Isaac Mongor. He states, “I believed that the Prosecution could have even gotten me out of prison if they had wanted to. They are representing the UN and had the gavel in their hands.”<sup>200</sup> He also attests generally, that:

The belief that the Prosecution could offer benefits in exchange for testimony was widespread. It is very likely that some of the people, for instances [sic] some of those whom I met in prison would have cooperated, including saying things that were not true, to simply secure their release.”<sup>201</sup>

138. In his evidence before this Court, Foday Lansana testified that on 16 January 2007 when he gave his fifth statement to the Prosecution, the investigators told him they were working to secure his release from Pademba Road Prison. In his interview notes with the Prosecution from that date it was

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<sup>197</sup> Motion, para. 28.

<sup>198</sup> Motion, para. 19.

<sup>199</sup> Motion, Confidential Annex F, para. 22.

<sup>200</sup> Motion, Confidential Annex H, para. 8.

<sup>201</sup> Motion, Confidential Annex H, para. 15.

recorded that he told the Prosecution that he was afraid for his safety as other prisoners were questioning why he had left the prison on so many occasions and there was speculation that he was cooperating with the SCSL. He testified that on 26 April 2007, his lawyer informed him that he would be released as part of a general pardon from the President.<sup>202</sup> The Defence presented to Mr. Lansana a letter from the Prosecution dated 21 March 2007 addressed to President Ahmed Tejan Kabbah requesting Mr. Lansana's release from prison in order to facilitate his preparation by the Prosecution for testifying at trial.<sup>203</sup>

139. In his evidence before this Court, Isaac Mongor testified that he was released from prison in August 2005 and was contacted by the Prosecution the following year.<sup>204</sup> He did not testify that the Prosecution was involved in his release.

140. The Prosecution submits that the allegation is based on irrelevant documentation, specifically paragraphs 7 and 14 of DCT-023's affidavit.<sup>205</sup>

141. With regard to Foday Lansana and Isaac Mongor's alleged release at the behest of the Prosecution, the Trial Chamber notes that the Prosecution disclosed all information in relation to the release to the Defence and that the Defence used this information to cross-examine the witnesses.<sup>206</sup> Moreover, the Trial Chamber finds that the statement of DCT-102 in this regard is speculative and that DCT-023's statement is based on "common knowledge". In the Trial Chamber's view common knowledge is not sufficient to substantiate a particular allegation. The Trial Chamber finds, therefore, that there was no prejudice to the Defence. Further, given the Prosecution disclosure, and that the Defence had ample opportunity to cross-examine the witnesses on that incident, the Trial Chamber finds no suggestion that a member of the Prosecution intended to interfere with the administration of justice. The Trial Chamber will consider the credibility of the testimony of Lansana and Mongor in the final judgement in order to assess whether any allegation of interference in the release of these two witnesses had any impact on their credibility. The Trial Chamber accordingly finds that the allegation is not sufficiently credible to provide it with reason to

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<sup>202</sup> Foday Lansana, Transcript 25 February 2008, pp. 4611-4617.

<sup>203</sup> Foday Lansana, Transcript 25 February 2008, pp. 4618-4620.

<sup>204</sup> Isaac Mongor, Transcript 31 March 2008, pp. 6251-6252.

<sup>205</sup> Response, para. 11.

<sup>206</sup> Response, para. 24.

believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in the present case.

**12) *Improper inducements to Witness DCT-261***

142. The Defence alleges that the Prosecution offered improper inducements to Witness DCT-261,<sup>207</sup> and that this conduct by the Prosecution was deliberate and designed to influence the cooperation, and consequently, the evidence of potential witnesses, witnesses, suspects, and sources.<sup>208</sup> It cites in support of this allegation Confidential Annex I which contains an affidavit sworn by Witness DCT-261.

143. The Prosecution argues that DCT-261 is an admitted liar<sup>209</sup> and cites his affidavit wherein he admits to naming persons not actually related to him for relocation when this was offered to him by the former Chief of Investigations, Dr. Alan White, in exchange for his cooperation.<sup>210</sup> The Prosecution submits that the affidavit of DCT-261 refers to contact with the Prosecution in 2003.<sup>211</sup>

144. In his affidavit DCT-261 alleges that he was contacted by the Chief of Investigations of the Special Court, Dr. Alan White, in order to provide them with information about “the situation on the ground in Liberia, especially in relation to the location of Charles Taylor.” He further states that Dr. White told him in or about May 2003 that the Special Court issued an indictment against Mr. Taylor and that come “hell or high water” Mr. Taylor would be arrested. DCT-261 states that at some point he asked for support and that he received 500 USD from Dr. White. Further, Dr. White offered to relocate DCT-261’s family. However, instead of securing his family, DCT-261 gave the Prosecution names of an unrelated older lady and her grandchildren, who were all relocated by the Prosecution. DCT-261 further states that Dr. White called him on 3 June 2003 and sought information about Mr. Taylor’s travel schedule in the sub-region. Through his dealings with Dr. White, DCT-261 “came to realise that the Special Court was using LURD as its *de facto* military wing as Dr. White would inform him about upcoming LURD attacks.”

145. Considering the evidence presented by the Defence in support of this allegation, the Trial Chamber first notes that the alleged incidents took place in 2003 and finds that the complaint has

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<sup>207</sup> Motion, para. 11.

<sup>208</sup> Motion, para. 23.

<sup>209</sup> Response, para. 11.

<sup>210</sup> Confidential Annex I.

been brought after undue delay. In addition the Trial Chamber notes that it is not alleged that a member of the Prosecution offered inducements to DCT-261, but rather that DCT-261 himself instigated this, so that any payments made by the Prosecution were therefore only in response to DCT-261's request. Further, the Trial Chamber finds that the relocation of the old woman and her grandchildren is not alleged to have been linked to his cooperation with the Special Court, but rather with the concerns of his and his family's security. Rather, it is DCT-261 who defrauded the Prosecution. His allegations do not suggest any misconduct on behalf of the Prosecution. The Trial Chamber therefore finds that the allegation is not sufficiently credible to provide it with reason to believe that a member of the Prosecution knowingly and wilfully interfered with the administration of justice in the present case.

*13) Improper payments made by the Prosecution to other witnesses who testified before the court*

146. The Defence alleges that many smaller but equally improper payments were made by the Prosecution to witnesses who came and testified before the Special Court. It alleges that these payments were not justified by the explanations given by the Prosecution. It cites in support of these allegations Annex N, which sets a list of various payments made by WMU to various Prosecution witnesses.<sup>212</sup>

147. The Prosecution argues that the Defence was made aware of the Prosecution disbursements set out in Annex N and used them in cross-examination.<sup>213</sup> Therefore, the Prosecution submits that the allegations raised by the Defence have not been made in a timely manner.

148. The Trial Chamber notes payments made by the Prosecution were disclosed to the Defence and that the Defence did cross-examine or had ample opportunity to cross-examine Prosecution witnesses in relation these payments made by the Prosecution and cannot be said to be prejudiced.<sup>214</sup> The Defence allegations that the conduct of the Prosecution poisoned the pool of potential witnesses and interfered with the administration of justice in that the credibility of such witnesses who came to testify was severely impacted, is not substantiated. In any event a final determination of whether the witnesses were influenced by such payments rests with the Trial Chamber, when it assesses the

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<sup>211</sup> Response, para. 8.

<sup>212</sup> Motion, para. 25.

<sup>213</sup> Response, paras 8 and 11.

<sup>214</sup> Motion, Confidential Annex N.

credibility of the Prosecution witnesses and the veracity of their accounts in its deliberations on the judgement.

149. Therefore, the Trial Chamber finds no reason to believe that members of the Prosecution wilfully interfered with the administration of justice or otherwise engaged in contemptuous conduct as identified in Rule 77.

*14) Finding on the merits*

150. The Trial Chamber is not satisfied that any of the allegations submitted by the Defence provide reason to believe that contempt may have been committed by members of the Prosecution.

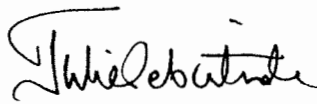
FOR ALL THE ABOVE REASONS

THE TRIAL CHAMBER on 22 October 2010 dismissed the Motion in its entirety.

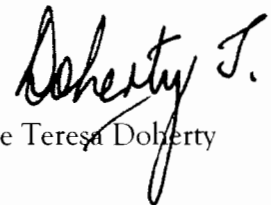
Done at The Hague, The Netherlands, this 11<sup>th</sup> day of November 2010.



Justice Richard Lussick



Justice Julia Sebutinde  
Presiding Judge



Justice Teresa Doherty

