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SCSL-03-01-T
(30057-30061)

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THE SPECIAL COURT FOR SIERRA LEONE

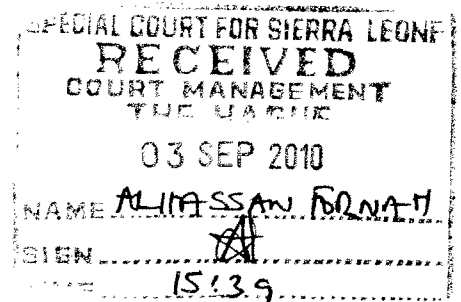
Trial Chamber II

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

Registrar: Ms. Binta Mansaray

Date: 3 September 2010

Case No.: SCSL-03-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**DEFENCE REPLY TO PROSECUTION OBJECTION
TO PUBLIC WITH ANNEX A DEFENCE MOTION
FOR ADMISSION OF DOCUMENT PURSUANT TO RULE 92bis -
ICTJ REPORT ON LIBERIAN TRUTH AND RECONCILIATION COMMISSION**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Ms. Leigh Lawrie
Mr. Nathan Quick

Counsel for Charles G. Taylor:

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

I. Introduction

1. The Defence submits that the Prosecution's objections¹ to the Defence *Motion for Admission of Document Pursuant to Rule 92bis – ICTJ Report on Liberian Truth and Reconciliation Commission*² are largely unfounded and thus the selected portions of the ICTJ Report as annexed in the Defence Motion should be admitted.
2. Certainly, the Prosecution's alternative request to admit the entire ICTJ Report and the entire Liberian TRC Report has no basis in law and should be disregarded by the Trial Chamber.
3. Alternatively, to the extent that the Trial Chamber agrees with the Prosecution's characterization of the ICTJ Report as opinion evidence, the Defence would only seek admission through Rule 92bis of the introductory pages, the Executive Summary and paragraphs 1, 7, 8, 9, 13, 23 and 27 of Section 2 "The Final Report: Merits and Limitations".

II. Submissions

Relevance of the ICTJ Report

4. The ICTJ Report is relevant to the accuracy, reliability and probative value of Prosecution TRC Exhibits, irrespective of the fact that the exhibits were admitted purely for impeachment and memory refreshing purposes.³ The limited nature of the stated purpose for admission does not change the nature of the underlying content of the exhibits. It is common sense that a document cannot be used to impeach a witness if, to begin with, the content of that document is not reliable. The ICTJ Report highlights the unreliable nature of the factual findings in the TRC Report on the basis that the factual findings are not properly sourced or cited. Thus any reliance to be placed on the facts contained in those exhibits by the Trial Chamber to suggest that the Accused or Defence witnesses were not accurate or truthful in their testimony should be minimized given the facts presented in the ICTJ Report questioning the reliability of the Liberian TRC report.

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1067, Prosecution Objections to Public with Annex A Defence Motion for Admission of Document Pursuant to Rule 92bis – ICTJ Report on Liberian Truth and Reconciliation Commission, 30 August 2010 ("Objection").

² *Prosecutor v. Taylor*, SCSL-03-01-T-1060, Defence Motion for Admission of Document Pursuant to Rule 92bis – ICTJ Report on Liberian Truth and Reconciliation Commission, 25 August 2010 ("Motion").

³ Objection, para. 4.

5. What the Prosecution frames as “drafting critiques” contained in the ICTJ Report⁴ are in fact examples of the unreliability of the TRC factual findings. For instance, paragraph 8 of Section 2 states that the TRC Report “lacks evidentiary data to support many of its claims and there are inadequate references to substantiate the information on which the conclusions are based”. This is not a drafting critique but a statement highlighting the careless and unsubstantiated nature of the TRC’s factual findings, which are the core of the Prosecution’s TRC Exhibits.
6. The Prosecution has relied on the TRC Exhibits to discredit the testimony of Defence witnesses. However if factual findings of the TRC Exhibits themselves are not accurate or reliable then the TRC Exhibits’ probative nature vis-à-vis Defence witnesses’ testimony is negated. It is true that the annexed sections of the ICTJ Report are primarily aimed at addressing the credibility of the evidence, however this does not make the ICTJ Report collateral to a degree that would justify its exclusion, as the Prosecution suggests.⁵ This is especially true where the subject-matter of the material being used to impeach a witness (in this case, factual findings pertaining to the Liberian conflict) is related to the subject matter of the offence (in this case, the conduct of warring parties in the Liberian conflict and the alleged spill-over into the Sierra Leonean conflict).⁶

Any Opinion Evidence is Not of the Type that Justifies Exclusion

7. By its nature, the ICTJ Report does contain some assertions of opinion by its authors. However, these opinions do not comment on issues relating to any charges in the Indictment and do not purport to analyze the guilt or innocence of the Accused. Thus the Defence submits it is not the type of opinion evidence that Rule 92bis seeks to exclude.
8. However, as noted above, to the extent that the Trial Chamber agrees with the Prosecution’s characterization of portions of the ICTJ Report as opinion evidence, the Defence would then only seek admission through Rule 92bis of the ICTJ Report’s introductory pages, Executive Summary and paragraphs 1, 7, 8, 9, 13, 23 and 27 of Section 2 “The Final Report: Merits and

⁴ Objection, para. 5.

⁵ Objection, para. 7.

⁶ *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T-328, Ruling on Defence Oral Application to Call OTP Investigators Who Took Down in Writing Statements of Prosecution Witness TF1-021, 7 December 2004, para. 20.

Limitations". These paragraphs are factual in nature and capture the essence of the TRC Report's limitations.

No Legal Basis for Admission of the entire ICTJ Report and Liberian TRC Report

9. The Prosecution cannot be serious in its suggestion that the Trial Chamber should submit the entire ICTJ Report and Liberian TRC Report to be able to analyze the extracts of the ICTJ Report that the Defence has selected.⁷ There is no legal basis for that proposition and the Prosecution does not suggest any.
10. The entire ICTJ Report is not necessary for the Trial Chamber to understand the sections selected by the Defence. In fact, the Defence has sought admission of the introductory pages and Executive Summary precisely so that the Trial Chamber can have some appreciation of the context and contents of the entire ICTJ Report without burdening the Chamber with unnecessary material.
11. In any event, the entire Liberian TRC Report would be inadmissible under Rule 92bis because it is largely irrelevant and contains many instances of acts and conduct of the Accused.

III. Conclusion

12. The Trial Chamber should admit the selected portions of the ICTJ Report as annexed in the Defence Motion, as it meets the criteria for admission under Rule 92bis.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 3rd Day of September 2010
The Hague, The Netherlands

⁷ Objection, para. 10.

Table of Authorities

SCSL

Prosecutor v. Taylor, SCSL-03-01-T-1067, Prosecution Objections to Public with Annex A Defence Motion for Admission of Document Pursuant to Rule 92bis – ICTJ Report on Liberian Truth and Reconciliation Commission, 30 August 2010

Prosecutor v. Taylor, SCSL-03-01-T-1060, Defence Motion for Admission of Document Pursuant to Rule 92bis – ICTJ Report on Liberian Truth and Reconciliation Commission, 25 August 2010

Prosecutor v. Norman, Fofana, Kondewa, SCSL-04-14-T-328, Ruling on Defence Oral Application to Call OTP Investigators Who Took Down in Writing Statements of Prosecution Witness TF1-021, 7 December 2004