

1087)

SCSL-03-01-T
(30304-30314)

30304



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: 24 September 2010

Case No.: SCSL-03-01-T

THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

SPECIAL COURT FOR SIERRA LEONE	
RECEIVED	
COURT MANAGEMENT	
THE HAGUE	
24 SEP 2010	
NAME	ALMASSAW FORNIAH
SIGN	[Signature]
TIME	16:57

PUBLIC WITH ANNEX A

**DEFENCE MOTION FOR ADMISSION OF DOCUMENTS PURSUANT TO RULE 92bis –
NEWSPAPER ARTICLE**

Office of the Prosecutor:

Ms. Brenda J. Hollis

Counsel for the Accused:

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

I. INTRODUCTION

1. This is the Defence motion to admit into evidence the annexed documents, pursuant to Rules 92*bis* of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“Rules”).
2. The proposed material is relevant to the proceedings; in particular to the allegation put forward by Prosecution that the Accused was involved in diamond-dealings in exchange for arms and ammunition.
3. The document annexed to this motion is a Sunday Times newspaper article dated 19 September 2010 and entitled “Taylor a victim of ‘neo-colonial’ conspiracy”.

II. APPLICABLE LAW

4. Rule 92*bis* states:
 - (A) In addition to the provision of Rule 92*ter*, a Chamber may, in lieu of oral testimony, admit as evidence in whole or in part, information including written statements and transcripts, that do not go to proof of the acts and conduct of the accused.
 - (B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.
 - (C) A party wishing to submit information as evidence shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.
5. Trial Chamber II has ruled that the purpose of Rule 92*bis* is to permit the reception of information—assertions of fact (but not opinion) including, but not limited to, written statements and transcripts that do not go to proof of the acts and conduct of the accused—if such facts are relevant and their reliability is “susceptible to confirmation.”¹ However, the reliability of a document is not a bar

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-556, “Decision on Prosecution Notice Under Rule 92*bis* for the Admission of Evidence Related to *Inter Alia* Kenema District and on Prosecution Notice Under Rule 92*bis* for the Admission of the Prior Testimony of TF1-036 Into Evidence”, 15 July 2008, page 4.

to admission; information may still be admitted where it is capable of corroboration in due course.²

6. The Appeals Chamber of the Special Court for Sierra Leone has ruled that any information not going to proof of the acts and conduct of the accused which is *not tendered through a witness* [emphasis added] should be submitted under Rule 92bis.³ Furthermore, the Appeals Chamber has found that by its express terms Rule 92bis applies to information tendered “*in lieu of oral testimony*” and the information to be admitted is *not restricted to written statements or transcripts* [emphasis added].⁴

III. SUBMISSIONS AND ADMISSIBILITY OF EVIDENCE

7. Defence Exhibit DCT-463⁵, Sunday Times Newspaper Article dated 19 September 2010, is relevant to the proceedings. The Defence submits only the identified paragraphs (the last three paragraphs) of the article pursuant to Rule 92bis.
8. The three paragraphs are as follows:

² *Prosecutor v. Norman et al.*, SCSL-2004-14-AR73, “Fofana – Decision on Appeal against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, 16 May 2005, para. 26. In the AFRC trial, the Trial Chamber has stated that “evidence may be excluded because it is unreliable, but it is not necessary to demonstrate the reliability of the evidence before it is admitted.” See *Prosecutor v. Brima et al.*, SCSL-04-16-T, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92bis”, 18 November 2005, page 2, citing *Prosecutor v. Brima et al.*, SCSL-04-16-T, “Decision on Joint Defence Application for Leave to Appeal from Decision n Defence Motion to Exclude All Evidence from Witness TF1-277”, 2 August 2005, para. 6. In the same AFRC trial, the Trial Chamber considered the reliability of the evidence to be considered at the end of the trial and be evaluated and weighed as a whole, taking into account the context and nature of the evidence as well as the credibility and reliability of the evidence See: *Prosecutor v. Brima et al.*, SCSL-04-16-T, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92bis”, 18 November 2005, page 2. See also: *Prosecutor v. Norman et al.*, SCSL-04-14-T-447, “Decision on Prosecution’s Request to Admit into Evidence Certain Documents Pursuant to Rule 92bis and 89(C)”, 14 July 2005, page 3.

³ *Prosecutor v. Taylor*, SCSL-03-01-721 “Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’”, 6 February 2009, para. 34.

⁴ *Prosecutor v. Taylor*, SCSL-03-01-721, para 30-31. Subsequent to the Appeals Chamber Decision, Trial Chamber II found that : “The effect of Rule 92bis is to permit the reception of information-assertions of fact (but not opinion) including, but not limited to, written statements and transcripts that do not go to proof of the acts and conduct of the accused- if such facts are relevant and their reliability is “susceptible of confirmation”; proof of reliability is not a condition of admission: all that is required is that the information should be capable of corroboration in due course.”

⁵ Annex A

“The National Conventional Arms Control Committee authorises arms by government and South African arms manufacturers. The committee has in the past been criticised by organisations like Ceasefire for selling weapons to countries with sketchy human rights records, and for failing to keep a proper database of where South-African-made arms eventually end up.

This week, Justice Minister Jeff Radebe, who heads the committee, denied the country or its arms manufacturers had ever done business with Taylor.

Ministerial spokesperson Tlali Tlali said the committee’s records reflected there were ‘no applications for issuance of contracting or export permits’ on behalf of either Taylor government [*sic*], Liberia or the RUF.”

The Evidence is Relevant

9. The issue of Mr. Taylor’s travel to South Africa in order to purchase arms is one of the central issues of the Prosecution’s case.⁶ On 9 August 2010, the Prosecution opened their case on 9 August 2010 and brought 3 (three) additional witnesses to testify on the Accused’s trip to South Africa in 1997. This was done in order to support Prosecution allegations that the Accused used rough diamonds for personal enrichment and arm purchases for Sierra Leone, particularly during the AFRC/RUF period.⁷
10. Furthermore, Prosecution Expert Witness Dr. Stephen Ellis in direct examination stated that he believed that Mr. Taylor personally supervised the trade in diamonds from Sierra Leone to Liberia; had contractual relationship with military operatives from South Africa and elsewhere who were acting in support of the RUF; and facilitated the import of weapons, some of which appear to have been transmitted to the RUF to aid the latter’s war effort.⁸
11. It is, therefore, self-evident that the information contained in the newspaper articles, in particular the two paragraphs identified above, attached to this motion (DCT-463) is relevant to this proceeding, in particular to the allegations made against the Accused and satisfied the test of relevance set out in Rule 92*bis* of the Rules.

⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-962, “Public with Confidential Annexes A and B Prosecution Motion to Call Three Addition Witnesses”, 20 May 2010, para.2.

⁷ *Ibid.*

⁸ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 16 January 2008, p. 1448, ln. 15-26.

The Evidence is Susceptible of Confirmation

12. Rule 92bis also requires the material(s) referred to in this notice to be susceptible of confirmation. The Defence, at this point in time, is only required to show that the reliability of the evidence is susceptible to confirmation and does not have to prove that the evidence is actually reliable.⁹ The Appeals Chamber in *Norman et al* has further interpreted that “susceptible of confirmation” does not require proof of reliability before admission, but does require that the information is capable of corroboration in due course.¹⁰ This Trial Chamber has noted that reliability is to be assessed at the end of the trial, in light of the totality of the evidence presented at trial, and what weight, if any, and should be attached to it.¹¹ The Defence submits that the issue is not novel to the Prosecution and has been corroborated by Prosecution’s witnesses as mentioned and referred to above.

The Evidence Does Not Go to Proof of the Acts and Conduct of the Accused

13. The Defence acknowledges that Rule 92bis explicitly excludes written statements or transcripts which go to proof of the acts and conduct of the Accused.¹² The Defence submits that the paragraphs submitted here do not go to proof of the acts and conduct of the Accused and merely focus on the South African arms authorisation, and thus satisfy the requirements of admission through Rule 92bis.

⁹ *Prosecutor v. Norman et al.*, SCSL-2004-14-AR73, “Fofana – Decision on Appeal against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, 16 May 2005, para. 27.

¹⁰ *Prosecutor v. Norman et al.*, SCSL-2004-14-AR73, “Fofana – Decision on Appeal against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, 16 May 2005, para. 26.

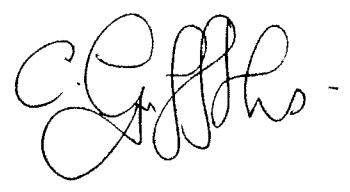
¹¹ *Prosecutor v. Taylor*, SCSL-03-01-750, “Decision on Prosecution Motion for Admission of Newspaper Articles Obtained from the Catholic Justice and Peace Commission Archive in Monrovia, Liberia” 27 February 2009, paragraph 27 quoting so and so.

¹² There is a distinction between “the acts and conduct of those others who commit the crimes for which the Indictment alleges that the accused is individually responsible” and “the acts and conduct of the accused as charged in the Indictment which establish his responsibility for the acts and conduct of others;” and that only written statements which go to proof of the latter are excluded by Rule 92bis. See: *Prosecutor v. Galic*, IT-98-29-AR73.2, “Decision on Interlocutory Appeal Concerning Rule 92bis(C)”, 8 June 2002, para. 9. See also *Prosecutor v. Sesay et al.*, SCSL-04-15-1049, “Decision on Defence Application for the Admission of the Witness Statement of DIS-192 Under Rule 92bis or, in the alternative, Under Rule 92ter”, 12 March 2008, p.2-3., See also *Prosecutor v. Galic*, IT-98-29-AR73.2, “Decision on Interlocutory Appeal Concerning Rule 92bis(C)”, 8 June 2002, para. 9.

IV. CONCLUSION

14. For the reasons stated above, the Defence respectfully requests the Trial Chamber, in exercising its discretion, to admit into evidence, pursuant to Rule 92*bis*, the newspaper article annexed to this motion.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 24th Day of September 2010
The Hague, The Netherlands

TABLE OF AUTHORITIES

Prosecutor v Taylor

Prosecutor v. Taylor, SCSL-03-01-T-556, “Decision on Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Kenema District and on Prosecution Notice Under Rule 92bis for the Admission of the Prior Testimony of TF1-036 Into Evidence”, 15 July 2008.

Prosecutor v. Taylor, SCSL-03-01-721, “Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’”, 6 February 2009.

Prosecutor v. Taylor, SCSL-03-01-750, “Decision on Prosecution Motion for Admission of Newspaper Articles Obtained from the Catholic Justice and Peace Commission Archive in Monrovia, Liberia”, 27 February 2009.

Prosecutor v. Taylor, SCSL-03-01-T-962, “Public with Confidential Annexes A and B Prosecution Motion to Call Three Addition Witnesses”, 20 May 2010.

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcript, 16 January 2008

CDF

Prosecutor v. Norman et al., SCSL-2004-14-AR73, “Fofana – Decision on Appeal against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, 16 May 2005.

Prosecutor v. Norman et al., SCSL-04-14-T-447, “Decision on Prosecution’s Request to Admit into Evidence Certain Documents Pursuant to Rule 92bis and 89(C)”, 14 July 2005.

AFRC

Prosecutor v. Brima et al., SCSL-04-16-T, “Decision on Joint Defence Application for Leave to Appeal from Decision n Defence Motion to Exclude All Evidence from Witness TF1-277”, 2 August 2005.

Prosecutor v. Brima et al., SCSL-04-16-T, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92bis”, 18 November 2005.

RUF

Prosecutor v. Sesay et al., SCSL-04-15-1049, “Decision on Defence Application for the Admission of the Witness Statement of DIS-192 Under Rule 92*bis* or, in the alternative, Under Rule 92*ter*”, 12 March 2008.

ICTY

Prosecutor v. Galic, IT-98-29-AR73.2, “Decision on Interlocutory Appeal Concerning Rule 92*bis*(C)”, 7 June 2002.

[http://sim.law.uu.nl/sim/caselaw/tribunalen.nsf/eea9364f4188dcc0c12571b500379d39/a2755cfb491f7363c12571fe004be529/\\$FILE/Galic%20ACD%207-06-2002.pdf](http://sim.law.uu.nl/sim/caselaw/tribunalen.nsf/eea9364f4188dcc0c12571b500379d39/a2755cfb491f7363c12571fe004be529/$FILE/Galic%20ACD%207-06-2002.pdf)

ANNEX A

We don't want to write to fall. We want excellent results even if it means we are arrested and jailed for our rights
— Congress of SA Students general secretary Shophiso Shazi, following the disruption of preliminary exams

66

Capetonian puts the SA braai in the record book

Smoked and the kind of mixed meats without...
...the world's longest braai ever...
...the Guinness World Record Association...

...the Guinness World Record Association...
...the Guinness World Record Association...
...the Guinness World Record Association...

...the Guinness World Record Association...
...the Guinness World Record Association...
...the Guinness World Record Association...

...the Guinness World Record Association...
...the Guinness World Record Association...
...the Guinness World Record Association...

...the Guinness World Record Association...
...the Guinness World Record Association...
...the Guinness World Record Association...

...the Guinness World Record Association...
...the Guinness World Record Association...
...the Guinness World Record Association...



Patients at the Chris Hani Baragwanath Hospital stand in long queues for medication. Some of them come from as far away as Sebokeng and surrounding areas. When City Press visited Bara Pharmacy there were patients who had been in queues since 4am. Most had been turned away from their own clinics and told to go to Bara to get their medication. The CEO of Bara, Johanna More, said they were overloaded and told many to return to their community clinics. **PHOTO: LUCKY NKUMBAHO**

News

Union owns stake in sweat shop

Union is accused of hypocrisy as local firms shed workers

ANNA-MARIA LOMBARD
investigation@medi24.com

The South African Clothing and Textile Workers' Union's (SACTWU) role in enforcing minimum wages while it is heavily invested in a company that operates in Lesotho's low-wage economy has been stung as hypocritical.

Thousands of textiles industry jobs in South Africa are on the line and hundreds of factories might close as a result of the Clothing Manufacturing Bargaining Council's enforcing minimum pay agreements.

SACTWU has condemned non-compliance and it has called for prosecution.
Fashion economist and analyst Dorcas Palmu, of The Redress Consultancy, said that SACTWU was the only union represented on the bargaining council and it would have an interest in seeing competitors fail.

"It owns shares in Sactred, a major manufacturer which has been... was in a 60-day consultation to see

Kriel said that the investment worth around 2350 million, where 20 per cent was prepared to invest, had saved jobs.

"The point was not to make a profit. We remain proud and unapologetic," he said. "Beylwe Clothing" was established by the previous Sactred management prior to the takeover, so Sactwu cannot be accused of betraying local jobs," said Kriel.

"It pays above the legal minimum wage and competes with all other Lesotho labour laws. Our role, together with our Lesotho counterparts, is to advance our agenda for decent work in southern Africa, including in Lesotho."

Kriel said that "dismantling" unions, ever lower prices demanded by retail customers and customers fraud perpetrated by "importers" were causing Sactred's ongoing struggles.

The company announced in July that another division, Intimate Apparel, would be closing down, shedding another 800 jobs.

Queen, confirmed that Sactred

Taylor a victim of 'neo-colonial conspiracy'

KHADJIA BRADLOW
kbradlow@ruffpress.co.za

engaged in an 11-year campaign of terror, murder, sexual violence and mutilation, among other things. The RUF's calling card, portrayed in many books and documentaries about the way, was the severing of limbs. Tens of thousands were killed or mutilated in the war.

Charles Taylor's lawyer, a household name since his grilling earlier this month of supermodel Naomi Campbell on the witness stand, wished that his client's trial had instead been on South African soil.

"This is to avoid the unfortunate resultant imagery of a black African man being taken to Europe to stand trial," says Griffiths.

"International criminal justice today is motivated by politics and power," he says.

Although it has not been raised in the trial and is supporting evidence could be produced, Griffiths claims Taylor is the victim of a neo-colonial conspiracy to unseat him because he refused to allow US-backed companies to exploit Liberia's oil wealth.

He also suggests racism is behind Taylor's prosecution. Griffiths lambasted the International Criminal Court (ICC) for what he terms selective prosecution. Justices in the court, he says, are like US judges, but not against former US president George W Bush and

former British prime minister Tony Blair for what many have labelled war crimes committed in Iraq and Afghanistan.

The special court was initially convened in Freetown but moved to The Hague in 2007 amid security concerns. The court, though UN sanctioned, does not fall under the jurisdiction of the ICC, widely hailed as setting a new standard of "accountability for atrocity".

It was set up by a newly elected president that Charles Taylor first visited South Africa in 1997 and attended the now-famous dinner hosted by Nelson Mandela, where he allegedly exchanged hands.

The testimony of Naomi Campbell at The Hague once again threw a spotlight on the South African connection to the trial. The indictments make reference several times to the involvement of former South African Special Forces fighters in both Sierra Leone's civil war.

And Griffiths now wants to question South African authorities about the claim made by the prosecution that former president

Thabo Mbeki was instrumental in pressuring Taylor to step down from power in 2001.

He also plans to further explore the "blood diamonds" conspiracy since it is central to the prosecution's claim that Taylor exchanged the gems for arms during his visit in 1997.

The National Conventional Arms Control Committee authorises arms by government and South African arms manufacturers. The committee has in the past been criticised by organisations like Amnesty for selling weapons to countries with stretchy human rights records, and for failing to keep a proper database of where South African-made arms eventually end up.

This week, Justice Minister Jeff Radebe, who heads the committee, denied the country of its arms manufacturers had ever done business with Taylor.

Ministerial spokespersons that reflected there were "no applications for issuance of contracting or export permits" on behalf of either Taylor, government, Liberia or the RUF.



Charles Taylor's lawyer Courtney Griffiths // PHOTO: MUMTU VILAMAZ

retailer importing cheap products were making it impossible to continue profitably. The division was likely to close by year-end.

The Resigning Council's Leon Deetlefs defended the bargaining process as "sincere" and said there were too many roles players on the council for any one to influence the direction of decisions.

Alan Jarvis, chief executive director of Tery Sportswear, a division of Roponosa Holdings, said it had shifted production to Lesotho and more factories would be forced to do so not only because of pay, but also productivity.

Earlier this year the massive Roponosa Group moved its business to Swaziland to take advantage of lower labour costs to compensate for a drop in sales during the recession.

Jarvis said the government in Lesotho was supportive and the union had engaged in above-floor negotiations.

In Lesotho no-one pays below the minimum wage - but that minimum is R160 a week, whereas in South Africa the same job would pay R460 a week.

Trade and Industry Minister Rob Davies this week launched the Clothing and Textile Competitive Programme, which has a provision to allow H&M to raise funds except through H&M at the behest of Swazulu, in 2008.

Minister general secretary Andre

receive any subsidies or grants. It does cater, however, for the affordable markets. This also includes inner city retail developments.

2. Home Ownership

Home ownership is achieved through the provision of mortgage bonds for either buying an existing home or building one.

Partnership with Banks

Through co-financing and risk-entitlement mechanisms, banks lending in this segment of the market is increased and sustained.

Non-banking Retail Intermediaries

NHFC provides loans to non-banking retail intermediaries, who on-lend to households in

institutions that provide various housing tenure options other than ownership. The types of rental products are as follows:

Social Housing Rental

This type of rental accommodation is more affordable than private/commercial accommodation and is provided by social housing institutions, which are Section 21 companies (not for profit).

Subsidies are allocated to the project by the provincial government and capital restructuring grants are available for the National Department of Human Settlements.

Private Rental

This type of rental accommodation is provided by private landlords who do not

range is R1 500 - R15 000 and are South African.

How does the NHFC deliver on its mandate?

The NHFC achieves its mandate through the provision of wholesale financing of the three following housing options for households:

- A. Rental housing;
- B. Home ownership through mortgage;
- C. Incremental housing.

The choice of the option depends on the customer's affordability at the time.

1. Rental Housing

This entails the provision of loans to Target Market Households whose income

NATIONAL HOUSING FINANCE CORPORATION (NHFC) - Innovator, Financier, Facilitator

Mandate

The National Housing Finance Corporation (NHFC) was established by the National Department of Housing as a Development Finance Institution (DFI) in 1996, with the principal mandate of broadening and deepening access to affordable housing finance for the low to middle income South African households.

Visions

To be the leader in the development of the low to middle income housing market. NHFC's Target Market Households whose income

3. Incremental Housing

Funding is made available via intermediaries to end-users whose household income ranges from R1 500 to R15 000 for loans, usually of between R1 000 and R20 000. The end-user may use these loans to:

- Obtain building supplies;
- Buy land on which to build;
- Service loans;
- Pay for building works;
- Fund any form of use relating to housing that is permanent (not furnishing, etc.)



Physical address: PO Box 21376 BRAAMFONTEIN 2017
Postal address: PO Box 21376 BRAAMFONTEIN 2017
Telephone: 011 644 6400
E-mail: info@nhfc.co.za
Website: www.nhfc.co.za

