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SCSL-03-01-T
(30611-30616)

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THE SPECIAL COURT FOR SIERRA LEONE

Trial Chamber II

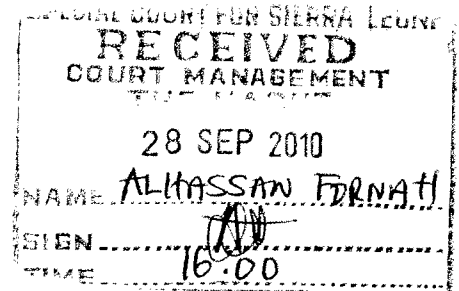
Before: Justice Julia Sebutinde, Presiding
Justice Richard Lussick,
Justice Teresa Doherty,
Justice El Hadji Malick Sow, Alternate

Registrar: Ms. Binta Mansaray

Date: 28 September 2010

Case No.: SCSL-03-01-T

THE PROSECUTOR
-v-
CHARLES GHANKAY TAYLOR



PUBLIC

**DEFENCE REPLY TO PROSECUTION OBJECTIONS TO
DEFENCE MOTION FOR ADMISSION OF DOCUMENTS
PURSUANT TO RULE 92BIS – NEWSPAPER ARTICLE**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Ms. Leigh Lawrie

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 reply to the Prosecution's objections¹ to the Defence's *Motion for Admission of Documents Pursuant to Rule 92bis – Newspaper Article*.²
2. The Prosecution objects on the basis that the selected portions of the newspaper article ("**Newspaper Extract**") for which the Defence seeks admission are irrelevant, not capable of corroboration and contain evidence of the acts and conduct of the Accused. These objections are incorrect and have no merit and thus the document is admissible under Rule 92bis.

II. SUBMISSIONS

The Evidence is Relevant

3. The Prosecution states that no evidence, other than that relating to Fred Rindel and Nico Shefer, has been led regarding South African military involvement with Mr. Taylor, and therefore the Newspaper Extract is irrelevant.³ In making this claim however, the Prosecution conveniently overlooks Prosecution Exhibit P-461D, which is an excerpt from a book titled ECOMOG, A Sub-Regional Experience in Conflict Resolution Management and Peacekeeping in Liberia from a chapter titled "Political Progress and Setback, 1990-92", written by Lieutenant Colonel Festus B Aboagy.⁴ Part of this excerpt reads as follows:

"The FC [Field Commander] was seriously disturbed that **following the visit of President Taylor to South Africa in late 1997, the President was reported to have returned with a consignment of arms and ammunition** of which ECOMOG should have been officially informed before they were quickly removed from the Freeport." [emphasis added]⁵

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-1091, Prosecution Objections to Defence Motion for Admission of Documents Pursuant to Rule 92bis – Newspaper Article, 27 September 2010 ("**Response**").

² *Prosecutor v. Taylor*, SCSL-03-01-T-1087, Public with Annex A Defence Motion for Admission of Documents Pursuant to Rule 92bis – Newspaper Article, 24 September 2010 ("**Motion**").

³ Response, para. 5.

⁴ Festus B Aboagy was described by Prosecutor Brenda Hollis as "a military officer who took part in the operations of the peacekeeping forces"; he was not the Force Commander. *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 January 2010, p. 33366.

⁵ The Defence notes that the Exhibit was admitted into evidence for impeachment purposes only, pursuant to *Prosecutor v. Taylor*, SCSL-03-01-T-929, Decision on Public with Annexes A and B Defence Motion for Admission into Evidence of 301 Documents and Photographs Marked for Identification During the Evidence-in-Chief of the Accused and on Prosecution List of Documents Marked for Identification During the Testimony of Charles Taylor Sought to be Admitted into Evidence, 18 March 2010. Exhibit P-461 had been referred to as MFI-371 during Mr. Taylor's

4. Prosecutor Brenda Hollis put to Mr. Taylor during cross-examination that he “had a problem with the force commander for ECOMOG, General Malu, after [he] had been in South Africa” and that “after [he] had been to South Africa General Malu was seriously concerned that [he] had brought war materials back from South Africa”.⁶ Mr. Taylor emphatically denied this and stated that he did not bring back any weapons from South Africa.⁷
5. In addition to Prosecution Exhibit P-461D and the related questioning, the Prosecutor Brenda Hollis further asked Mr. Taylor during cross-examination whether he, while in South Africa in September 1997: arranged for the transport of arms with Nico Shefer; arranged for the acquisition of arms with Nico Shefer; used a large amount of cash money received from Libya while in South Africa to facilitate the procurement of weapons.⁸
6. Consequently, it is clear that whether Mr. Taylor brought arms back from South Africa in relation to his 1997 visit is a live issue before the Trial Chamber, if only for purposes impacting on the credibility of the Accused. Therefore, information in the Newspaper Extract stating that the head of the National Conventional Arms Control Committee in South Africa denies that the South African government and/or South African arms manufacturers ever did business with Mr. Taylor is relevant.

The Evidence is Susceptible of Confirmation

7. The Prosecution concedes that not all evidence tendered under Rule 92*bis* need be corroborated by other evidence at trial.⁹ Certainly there are other ways to test whether a document’s reliability is susceptible of confirmation. Even so, Mr. Taylor himself during cross-examination stated that he did not procure weapons from South Africans such as Nico Shefer while in South Africa in September

testimony and portions of the exhibit were read on following dates: 14 and 21 January 2010 and 17 February 2010.

⁶ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 January 2010, p. 33360.

⁷ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 January 2010, p. 33360-1.

⁸ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 January 2010, p. 33349.

⁹ Response, para. 7.

1997.¹⁰ He further stated that Victor Malu never raised the issue of importing weapons from South Africa with him and that he (Mr. Taylor) in fact never brought back weapons from South Africa.¹¹

8. Thus the Newspaper Extract corroborates Mr. Taylor's testimony and vice-versa.

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

9. The Prosecution argues that the Newspaper Extract clearly contains evidence of the acts and conduct of the Accused relevant to proving his liability as charged in the Indictment and so should be refused admission.¹² However, the Prosecutor Brenda Hollis, in relation to this same issue, has previously argued that "it was not part of the Prosecution's case as to how this accused acquired the weapons that he used to provide to the RUF, nor need [*sic*] we have proven that".¹³ Thus unless the Prosecution is once again changing the goal-posts as to what its case against the Accused actually is, the Prosecution can not now argue that whether the South African government or arms manufacturers did business with Charles Taylor is proof of acts and conduct of the Accused such that it should be barred from admission under Rule 92*bis*. Surely the Prosecution is not now suggesting that the acquisition of arms from South Africa is acts or conduct of the Accused upon which it can rely to establish that Mr. Taylor participated in a joint criminal enterprise¹⁴ as charged in the Indictment.
10. Likewise, the Prosecution's reliance on *Galic*,¹⁵ to suggest that acts and conduct including those of "omission" by the Accused are barred under Rule 92*bis*, is misplaced. The jurisprudence from *Galic* is framed in terms of acts and conduct including those of "omission" on which the prosecution relies to prove guilt.

¹⁰ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 January 2010, p. 33349.

¹¹ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 January 2010, p. 33361.

¹² Response, para. 8.

¹³ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 January 2010, p. 33365.

¹⁴ See the Prosecution's reliance on previous case law from this Trial Chamber, at paragraph 9 of its Response, in which the Trial Chamber held that Rule 92*bis* excludes any written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish that he had participated in a joint criminal enterprise as charged. *Prosecutor v. Taylor*, SCSL-03-01-T-736, Decision on Prosecution Motion for Admission of Liberia Search Documents, 18 February 2009, para. 20.

¹⁵ Response, para. 8.

11. In any event, the statement by the head of the National Conventional Arms Control Committee in South Africa in the Newspaper Extract is in relation to acts and conduct of the Committee and not the Accused.

III. CONCLUSION

12. For the reasons stated above, the Defence respectfully requests the Trial Chamber, in exercising its discretion, to admit into evidence, pursuant to Rule 92bis, the Newspaper Extract annexed to the Motion.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 28th Day of September 2010
The Hague, The Netherlands

TABLE OF AUTHORITIES**Prosecutor v. Taylor**

Prosecutor v. Taylor, SCSL-03-01-T-1091, Prosecution Objections to Defence Motion for Admission of Documents Pursuant to Rule 92*bis* – Newspaper Article, 27 September 2010

Prosecutor v. Taylor, SCSL-03-01-T-1087, Public with Annex A Defence Motion for Admission of Documents Pursuant to Rule 92*bis* – Newspaper Article, 24 September 2010

Prosecutor v. Taylor, SCSL-03-01-T-929, Decision on Public with Annexes A and B Defence Motion for Admission into Evidence of 301 Documents and Photographs Marked for Identification During the Evidence-in-Chief of the Accused and on Prosecution List of Documents Marked for Identification During the Testimony of Charles Taylor Sought to be Admitted into Evidence, 18 March 20

Prosecutor v. Taylor, SCSL-03-01-T-736, Decision on Prosecution Motion for Admission of Liberia Search Documents, 18 February 2009