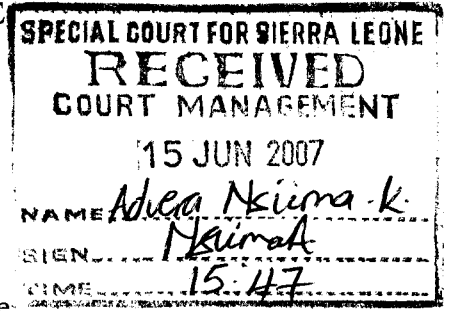


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SCSL-03-01-T
(10206-10215)

10206

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone



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

Acting Registrar: Mr. Herman von Hebel

Date filed: 15 June 2007

THE PROSECUTOR

Against

Charles Taylor

Case No. SCSL-03-01-T

PUBLIC

PROSECUTION’S RESPONSE TO “DEFENCE MOTION TO EXCLUDE, AND IN THE ALTERNATIVE, LIMIT THE ADMITTANCE OF STEPHEN ELLIS’ TESTIMONY AND EXPERT REPORT”

Office of the Prosecutor:
Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Ms. Ann Sutherland

Counsel for the Accused:
Mr. Karim A.A. Khan

Copy to:
Office of the Principal Defender

I. INTRODUCTION

1. Mr. Karim Khan, as lead defence counsel for the Accused, filed the “Defence Motion to Exclude, and in the Alternative, Limit the Admittance of Stephen Ellis’ Testimony and Expert Report.”¹ The Prosecution files this response pursuant to Rule 7 of the Rules of Procedure and Evidence (“Rules”).
2. The Defence request, pursuant to Rules 89(C) and 95 of the Rules, that the Trial Chamber “[e]xclude [Dr.] Ellis’ expert report ... and his intended testimony,”² or “[i]n the alternative, limit his report to his expertise, devoid of any conclusions on the ultimate issue, where he can show that he has a reasonable and verifiable basis for his conclusions.”³ The Defence advance four grounds in support of its Motion, namely:
 - (a) Dr. Ellis’ report and his intended testimony reach unsupported conclusions that trespass the Trial Chamber’s competence to determine “ultimate issues”;⁴
 - (b) Dr. Ellis’ report does not have reasonable bias because:
 - (i) Dr. Ellis is not neutral due to his being a prior litigant in a libel action filed by the Accused;⁵ and
 - (ii) His report relies primarily on secondary sources;⁶
 - (c) Dr. Ellis seeks to introduce hearsay evidence;⁷ and
 - (d) Dr. Ellis’ report exceeds the scope of his expertise as a historian of Liberia.⁸
3. The Motion should be denied for the reasons discussed below.

II. APPLICABLE LAW

4. Rule 89(C) provides that the Chamber may admit any relevant evidence.

¹ *Prosecutor v. Taylor*, SCSL-03-01-PT-272, Defence Motion to Exclude, and in the Alternative, Limit the Admittance of Stephen Ellis’ Testimony and Expert Report (“Motion”), filed on 4 June 2007. The Prosecution received an electronic copy of the same on 5 June 2006 and was served with a hard copy on 6 June 2007.

² Motion, para. 19.

³ *Ibid.*

⁴ Motion, paras. 8-9.

⁵ Motion, paras. 7 and 18.

⁶ Motion, paras. 10-15.

⁷ Motion, para. 16.

⁸ Motion, para. 17.

III. SUBMISSIONS

Definition and Criteria of an Expert

5. This Trial Chamber, relying on ICTY and ICTR jurisprudence, deems the qualitative definition of an expert as one who “must possess relevant specialised knowledge acquired through education, experience or training in the proposed field of expertise” and the defined role of an expert as being “to assist the Chamber to understand or determine an issue in dispute and the context in which the events took place.”⁹
6. Trial Chamber I of the SCSL defined an expert as: “A person whom by virtue of some specialized knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute”.¹⁰ Further, expert testimony is “testimony intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a particular field”.¹¹
7. The ICTR Appeals Chamber has held that the: “purpose of expert testimony is to supply specialized knowledge that might assist the trier of fact in understanding the evidence before it.”¹²
8. As stated by the Defence (Motion, para. 5), in her Separate and Concurring Opinion,¹³ Justice Doherty referred to the four criteria (four pronged test) for the admissibility of an expert report set out in the ICTR case of *Bagosora*:¹⁴
 - a. The subject matter must be [a] proper topic for expert evidence;
 - b. The evidence must be capable of assisting the Trial Chamber to determine the issue in dispute;

⁹ *Prosecutor v. Brima et al.*, SCSL-04-16-T-365, Decision on Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E) and Joint Defence Application to Exclude the Expert Evidence of Zainab Hawa Bangura or Alternatively to Cross-Examine Her Pursuant to Rule 94bis (“*Brima 5 August Decision*”), 5 August 2005, para. 31.

¹⁰ *Prosecutor v. Norman et al.*, SCSL-04-14-T-650, Decision on Fofana Submissions Regarding Proposed Expert Witness Daniel J. Hoffman Ph.D, 7 July 2006, citing *Prosecutor v. Galić*, IT-98-29-T, Decision Concerning the Expert Witness Ewa Tabeau and Richard Phillips, 3 July 2002.

¹¹ *Ibid.*, citing *Prosecutor v. Akayesu*, ICTR-96-4-T, Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness, 9 March 1998.

¹² *Prosecutor v. Semanza*, ICTR-97-20-A, Judgement (Appeals Chamber), 20 May 2005, para. 303.

¹³ *Prosecutor v. Brima et al.*, SCSL-04-16-T-420, Separate and Concurring Opinion of Justice Doherty on Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E) and Joint Defence Application to Exclude the Expert Evidence of Zainab Hawa Bangura or Alternatively to Cross-Examine Her Pursuant to Rule 94bis, 21 October 2005, para. 51.

¹⁴ *Prosecutor v. Bagosora*, ICTR-41-98-T, Transcript, 4 September 2002, 6.

- c. The person purporting to be an expert must have the necessary qualifications and [have] used proper methods in their research;
- d. The person purporting to be an expert must be independent and impartial.

Intended scope of Dr. Ellis' testimony

9. The Defence do not contest that Dr. Ellis is a historian, and in that capacity, an expert on Liberia.¹⁵ The Defence question Dr. Ellis' expertise in relation to the conflict in Sierra Leone. However, one cannot properly understand the Accused's role in the conflict in Sierra Leone without first understanding the Accused's role in the conflict in Liberia. The personnel used by the Accused to take power, and the manner in which the Accused took power in Liberia, primarily the treatment of the civilian population, are relevant to establishing the Accused's participation in the common plan in Sierra Leone, a common plan which included first taking power in Liberia. This evidence is also relevant to the Accused's intent, knowledge, awareness of the acts committed by the RUF, the AFRC/RUF Junta and the AFRC/RUF alliance in Sierra Leone against the civilian population of Sierra Leone, and to prove the foreseeability of the crimes of which the Accused is charged.
10. Dr. Ellis will provide the Trial Chamber with this relevant evidence all of which is well documented and required the work of a qualified researcher to conceptualise, analyse and summarise. The evidence relevant to these proof requirements and which will assist the Trial Chamber to understand the Accused's role in the crimes in Sierra Leone includes:¹⁶
 - (i) the historical background of Liberia, including how the Accused rose to power;
 - (ii) the Accused's connections to other revolutionaries, including those from Sierra Leone, prior to launching the National Patriot Front of Liberia's ("NPFL") attacks in Liberia;
 - (iii) how the Accused organized his military and political structure in Liberia;

¹⁵ Motion, paras. 17 and 18.

¹⁶ The Prosecution acknowledges that Rule 93 evidence is admissible subject to submissions and a ruling by the Chamber.

- (iv) how children were recruited as combatants and organized in “Small Boy Units” in the Accused’s NPFL forces;
 - (v) the role of ECOMOG (“Economic Community of West African States Monitoring Group”) and Sierra Leone in the civil war in Liberia and its interference with the achievement of the common plan;
 - (vi) the Accused’s role in the supply of arms and training from foreign mercenaries and countries either directly or via Liberia to the RUF;
 - (vii) the historical precedence for the smuggling of Sierra Leonean diamonds through Liberia and the Accused’s own ties to diamond trading; and
 - (ix) the Accused’s manner of organizing his government, armed forces, and businesses in the territory he controlled, including his reputation for punishing, or killing, those of his subordinates that he saw as threats, and giving personal rewards to those that pleased him.
11. The expert report does not contain, and the Prosecution does not seek, Dr. Ellis’ opinion on the ultimate issues in this case, i.e. the criminal responsibility of the Accused for the crimes that occurred in Sierra Leone charged in the Second Amended Indictment. The Prosecution submits that Dr. Ellis will offer opinions and information about several key factual issues, such as Charles Taylor’s ties to the RUF (“Revolutionary United Front”). Nothing precludes an expert from offering opinions on key factual issues in a case that help establish the culpability of an accused.
12. As is often the case with an expert witness, Dr. Ellis is not an eyewitness to any of the crimes that occurred and has never met the Accused. The Defence is correct in stating that his testimony, as expected from a historian, is almost entirely based upon what he has read and learned from talking to others.¹⁷ It is well established that the Special Court, like other international criminal tribunals, does not prohibit the use of hearsay evidence. Rule 89(C) of the Rules provides that a Chamber may admit any relevant

¹⁷ Motion, para. 11.

evidence. In any event, his expertise goes beyond merely recounting hearsay evidence and includes an analytical component which is helpful to the Chamber.¹⁸

13. The fact that Dr. Ellis is relying on the statements and writings of others, like other matters raised in the Defence Motion, goes to the weight and not the admissibility of the evidence, and can adequately be tested during cross-examination.¹⁹ Ultimately, the weight to be attributed to expert evidence is to be determined by the Trial Chamber not at this stage, but rather, at the end of the trial and in light of all the evidence adduced.²⁰

*Dr. Ellis is neutral despite his being a prior litigant in libel action filed by the Accused*²¹

14. An expert is expected to be impartial: “the [ICTR] is of the opinion that in order to be entitled to appear, an expert witness must not only be a recognised expert in his field, but must also be impartial in the case”.²²
15. Dr. Ellis’ book, “The Mask of Anarchy”, was first published in 1997. Following publication, Mr. Taylor filed a libel action which he failed to pursue and which was therefore dismissed. The Accused was ordered to pay the defendant’s costs, which he has not done. The case did not go to trial and no litigation is now pending. The alleged libellous statements in the book concerned two paragraphs in the book where Dr. Ellis reported that associates of the Accused had alleged that Taylor had eaten human flesh. In the book Dr. Ellis made no comment on the credibility of these reports. In any event, Dr. Ellis had completed the analysis and summarization contained in his book before the litigation. Any deviation from that analysis and summarization can be tested during his testimony to determine if it

¹⁸ *Prosecutor v. Kovačević*, Case No. IT-97-24-T. In that case, the Trial Chamber admitted an expert report of a judge who, in his report, had summarised, analysed and collated information from 400 witnesses, with the note that, “there is no question of his defendant being convicted on any count on the basis of this evidence. And we shall require other evidence before we consider taking any such course.” Official Transcript, 6 July 1998, pp. 69-71 and 75.

¹⁹ *Brima 5 August Decision*, para. 30. The issues objected to by the Defence in that case are set out in para. 30, sub-paragraphs (a)-(f).

²⁰ *Brima 5 August Decision*, para. 30.

²¹ Motion, paras. 7 and 18.

²² *Prosecutor v. Akayesu*, ICTR-96-4-T, Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness, 9 March 1998.

results from a bias or prejudice stemming from the subsequent litigation. Furthermore, the alleged incidents are not relevant to the present charges and, therefore, are not discussed in the expert report submitted and would not be part of the Prosecution's expected direct examination of Dr. Ellis.

16. "[A]ny concerns relating to the witness' independence and impartiality, the accuracy of his evidence, or the extent to which his evidence will be helpful to this Trial Chamber are matters of weight, not admissibility, and can be properly addressed during cross-examination."²³

*Hearsay evidence is admissible*²⁴

16. As stated above, hearsay is admissible under Rule 89 (C) of the Rules.²⁵ Such evidence is admitted to prove the truth of its contents, if the Trial Chamber is satisfied that it is reliable for that purpose.²⁶ The Trial Chamber considers the probative value of hearsay evidence at the end of the trial when weighing and evaluating the evidence as [a] whole, in light of the context and nature of the evidence itself, including the credibility and reliability of the relevant witness.²⁷
17. No prejudice flows from the absence of cross-examination of the makers of the statements cited by Dr. Ellis, because his evidence can be subjected to cross-examination as to the consistency of the accounts and as to his methodology.

IV. CONCLUSION

18. Dr. Ellis is qualified as an expert historian who can inform the Trial Chamber of matters concerning the context in which the events and crimes alleged in the Second Amended Indictment took place. The Prosecution

²³ *Prosecutor v. Brđanin*, IT-99-36-T, Decision on Prosecution's Submission of Statement of Expert Witness Ewan Brown, 3 June 2003, p. 4.

²⁴ Motion, para. 16.

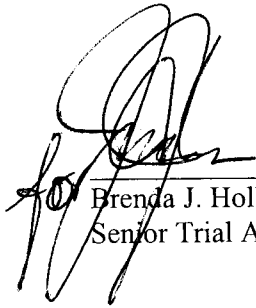
²⁵ *Prosecutor v. Brima et al.*, Decision on Joint Defence Evidence to Exclude All Evidence from Witness TF1-277 Pursuant to Rule 89(C) and/or Rule 85, 24 May 2005 ("*Brima* 24 May Decision"), para. 12; *Prosecutor v. Norman et al.*, Case No. SCSL-04-14-AR65, Fofana – Appeal Against Decision Refusing Bail, App. Ch., 11 March 2005, para. 29.

²⁶ *Prosecutor v. Norman et al.*, SCSL-04-14-T, Fofana – Decision on Application for Bail Pursuant to Rule 65, Tr. Ch., 5 August 2004, para. 52, citing *Prosecutor v. Aleksovski*, Case No. IT-95-14/1-A, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 February 1999, para. 15.

²⁷ *Brima* 24 May Decision, para. 15.

respectfully requests that the Trial Chamber deny the Motion for the reasons stated above.

Filed in Freetown,
15 June 2007
For the Prosecution,



Brenda J. Hollis
Senior Trial Attorney

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