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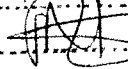
(22943-22955)

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

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

Registrar: Mr. Herman von Hebel

Date filed: 12 December 2008

SPECIAL COURT FOR SIERRA LEONE	
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THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

**PROSECUTION REPLY TO DEFENCE RESPONSE TO PROSECUTION MOTION FOR ADMISSION OF
LIBERIA SEARCH DOCUMENTS**

Office of the Prosecutor:
Ms. Brenda J. Hollis
Ms. Leigh Lawrie

Counsel for the Accused:
Mr. Courtenay Griffiths Q.C.
Mr. Andrew Cayley
Mr. Terry Munyard
Mr. Morris Anyah

I. INTRODUCTION

1. The Prosecution files this Reply to the “Public Defence Response to Prosecution Motion for Admission of Liberia Search Documents.”¹

II. REPLY

Applicable Legal Principles

2. In the Response, the Defence incorporate by reference arguments contained in a separate filing regarding the legal principles to be applied to the admission of documents.² The Prosecution has filed a reply to that separate filing addressing those arguments.³ Accordingly, the Prosecution relies on and incorporates by reference its submissions made therein at paragraphs 2 to 11 in reply to those submissions incorporated by reference in the Response.
3. The Prosecution emphasizes, though, that the matter at issue is the ability of the Parties to bring relevant evidence before this Chamber. The Defence arguments contained in the Response are fundamentally flawed as they ignore the fact that two rules are used at the ICTY and ICTR for the introduction of evidence other than through live testimony – Rules 89 and 92bis.⁴ These rules are used in tandem. Nonetheless, the Defence seek to impose on the SCSL the interpretation and use made by the ICTY and ICTR of Rule 92bis without also extending to the SCSL these tribunals’ interpretation and use of Rule 89(C).

General matters relevant to admission under Rule 89(C) alone or Rule 89(C) & Rule 92bis

Legibility of Documents

4. In the Annex to the Response, the Defence erroneously identify three documents as illegible. In relation to the first, Document 7, this document is legible but is handwritten. To assist, the Prosecution transcribed verbatim in Annex A of the Motion the message

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-688, “Public Defence Response to Prosecution Motion for Admission of Liberia Search Documents,” 8 December 2008 (“**Response**”).

² Response, para. 3.

³ *Prosecutor v. Taylor*, SCSL-03-01-T-670, “Public Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies,” 17 November 2008 (“**UN Documents Reply**”).

⁴ In the context of the current issue, Rules 92ter and 92quater are not relevant and so are not discussed.

taken from this document which it seeks to be admitted.⁵ The fact of this transcription is further noted in relation to this document in the column headed “Reference Page & Para.” in Annex A. However, the Defence ignore this fact. As regards the second, Document 8, the colour copy of the document provided by the Prosecution and circulated to the parties by Court Management Service addresses all the concerns regarding legibility.⁶ Finally, the copy of Document 11 is clear and legible. It is a handwritten document and so any issues which the Defence might have arise because of this fact. However, the relevant sections of the document are written clearly. This fact aside, for ease of reference, the Prosecution provides in the Annex to this Reply a typed unofficial version of the document.

Documents may be tendered absent a witness

5. The Defence argument that a witness is required to speak to the contents and relevance of the Taylor Documents⁷ is without merit.⁸ The Prosecution has replied to this argument in the context of a similar reply⁹ and, therefore, relies on and incorporates by reference its submissions made therein at paragraph 5, substituting any reference therein to “RUF Documents” with a reference to “Taylor Documents”.
6. Contrary to the Defence arguments otherwise, issues of reliability and probative value are not conditions of admission under either Rules 89(C) or 92*bis* at the SCSL. The documents found at Tabs 5, 7, 8, and 11 are generally relevant as stated in Annex A of the Motion. First, save in respect of the undated Document 11, these documents relate to events that occurred during the indictment period in Sierra Leone and Liberia. Second, the information contained within these documents pertains, respectively, to a list of subordinates of Charles Taylor and an upcoming trip to Libya; a notebook entry recording a message from Johnny Paul Koroma’s wife to the “chief”; records of supplies and “bags” being received by sub-ordinates of the Accused; and finally, a handwritten document regarding the grant of immunity to persons including “Montgomery”, “V.

⁵ *Prosecutor v. Taylor*, SCSL-03-01-T-681, “Motion for Admission of Liberia Search Documents”, 1 December 2008 (“**Motion**”).

⁶ See Motion, Annex A – in relation to Document 8, the Prosecution states that a colour copy without ERN is to be circulated to the Parties. This colour copy was provided to guard against any issues regarding legibility which might occur when the document was scanned as part of the filing process.

⁷ As such term is defined at paragraph 1 of the Motion.

⁸ Response, paras.4, 9-11.

⁹ *Prosecutor v. Taylor*, SCSL-03-01-T-680, “Public Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents Seized from RUF Office, Kono District”, 1 December 2008 (“**RUF Documents Reply**”).

- Sheriff” and “John Smythe” for crimes committed during the Liberian civil war.
7. Additionally, the Defence request that the signatures on the Taylor Documents be attested¹⁰ is without merit. The Prosecution has replied to this argument in the context of a similar reply¹¹ and, therefore, relies on and incorporates by reference its submissions made therein at paragraph 7, substituting any reference therein to “RUF Documents” with a reference to “Taylor Documents”.
 8. Therefore, as noted above and in the RUF Documents Reply, as authenticity is not a condition of admission under either Rule 89 or Rule 92*bis*, the Defence argument at paragraph 4 of the Response should be dismissed.
 9. Finally, the Defence argument in paragraph 12 of the Response as to the timing of the Motion is without foundation and ignores the practice in other proceedings. The Prosecution has addressed this point in other similar submissions and, therefore, in order to avoid repetition respectfully refers the Chamber to those submissions.¹²

Chain of custody

10. The Taylor Documents are relevant on their face and, thus, are admissible on their face. None of the Defence’s arguments concerning chain of custody justify exclusion of the evidence, rather they are issues going to weight.¹³ Indeed, these issues of weight will be addressed by the evidence of Mr. Tariq Malik which is the subject of a separate filing. The Prosecution has replied to a similar argument in the context of a similar reply¹⁴ and, therefore, relies on and incorporates by reference its submissions made therein at paragraph 9, substituting any reference therein to “RUF Documents” with a reference to “Taylor Documents”.

Probative value of the documents is not substantially outweighed by their prejudicial effect

11. The bases for exclusion identified by the Defence in paragraph 18 of the Response are those identified and considered in paragraphs 3 to 10 above. As stated, these arguments

¹⁰ Response, para. 11.

¹¹ RUF Documents Reply.

¹² See *Prosecutor v. Taylor*, SCSL-03-01-T-669, “Prosecution Reply to Defence Response to Prosecution Motion for Admission of Extracts of the Report of the Truth and Reconciliation Commission of Sierra Leone,” 17 November 2008, para. 20.

¹³ Response, paras. 13-17.

¹⁴ RUF Documents Reply.

are without merit. The Defence's second ground repeats the argument made in another similar response.¹⁵ Therefore, the Prosecution relies on and incorporates by reference its submissions made in reply thereto at paragraph 10.¹⁶

Admission under Rule 89(C)

12. The Prosecution assumes that the Defence objection set out in paragraph 21 of the Response was included in error as it refers to a document included in a separate unrelated filing and not a document referred to in the Motion. On this basis, the objection should be ignored.
13. As noted in previous submissions, the exclusionary conditions set out in the *Kordić and Čerkez* case are legally and factually irrelevant to the matters at issue and should not be applied to the admission of the Taylor Documents.¹⁷ In relation to the application of this ICTY case to the current proceedings, the Prosecution refers the Chamber to its previous submissions subject to the amendment that the Taylor Documents are not publicly available, but have been disclosed to the Defence for at least well over a year.¹⁸
14. In addition to this fundamental objection to the application of the *Kordić and Čerkez* Decision¹⁹ to the Taylor Documents, the Defence's objections based on this ground are also flawed for the following reasons. First, the Defence object to the documents at Tabs 1, 2, 3, 5, and 9 of the Motion on the basis that these documents have already been considered by the Trial Chamber.²⁰ The Defence are correct that these documents have been "considered," applying the broadest sense of the word, by the Trial Chamber in the context of a previous motion seeking their admission.²¹ However, this Chamber dismissed the 2007 Motion without prejudice, establishing certain criteria for future

¹⁵ See paragraph 17 of *Prosecutor v. Taylor*, SCSL-03-01-T-677, "Public Defence Response to Prosecution Motion for Admission of Documents Seized from RUF Office, Kono District," 24 November 2008.

¹⁶ RUF Documents Reply, para. 10.

¹⁷ Response, para. 22 and the Annex to the Response. Paragraph 22 of the Response refers to arguments set out in Annex B. However, the Prosecution observes that there is only one annex to the Response which has the cover sheet "Annex A" but the annex itself is actually headed "Annex B".

¹⁸ See UN Documents Reply, para. 7.

¹⁹ *Prosecutor v. Kordić and Čerkez*, IT-95-14/2, "Decision on Prosecutor's Submissions concerning 'Zagreb Exhibits' and Presidential Transcripts", 1 December 2000 ("**Kordić and Čerkez Decision**").

²⁰ Response, para. 22.

²¹ The Prosecution requested admission of these documents in *Prosecutor v. Taylor*, SCSL-03-01-PT-241, "Prosecution Motion for Admission of Material Pursuant to Rules 92bis and 89C," 17 May 2007 ("**2007 Motion**").

- consideration.²² Therefore, while these documents have been considered previously, no decision has been made as to their exclusion or admission in the current proceedings.
15. Second, the Defence objection that the documents are not sufficiently significant²³ runs contrary to their arguments at paragraphs 6 through 8 of the Response that the Taylor Documents are by their very nature “critical and proximate.” Indeed, the Documents at Tabs 3 and 6 feature in both conflicting arguments. Setting aside the inherent inconsistency of the Defence approach, the significance of the Documents at Tabs 3, 6 and 11 is stated in the Annex to the Motion. Even assuming, *arguendo*, the evidence is not individually significant, as noted by the Appeal Chamber in the *Fofana* Bail Appeals Decision²⁴, the fact that isolated items of evidence have “some relevance means that they must be available for counsel to weave into argument and for the Judge to have before him in deciding what to make of the overall factual matrix.”²⁵
 16. Further, the Annex to the Response painstakingly identifies previous witnesses and exhibits mentioning facts similar to those contained in the Taylor Documents listed in paragraph 22 of the Response. Yet, the exclusion of documents that repeat evidence already adduced at trial, as the Defence suggests, is unimaginable. The fact that one of the Taylor Documents, not identical to previous evidence, mentions similar operations or command structure details²⁶ cannot be a ground for exclusion. The evidentiary concepts of corroboration and confirmation of evidence rely in part on consistency of evidence from more than one source. In addition, exclusion of evidence is only considered where it is **unduly** cumulative and so risks prolonging the trial. This is not a relevant consideration in this instance.
 17. In addition to the above objections to the application of the *Kordić and Čerkez* Decision, the Prosecution observes that the Defence interpretation of, and reliance on, this decision is further flawed for the reasons identified and set out in a previous filing. The Prosecution respectfully refers the Trial Chamber to this previous filing’s arguments concerning the Defence’s misinterpretation and misapplication of the *Kordić and Čerkez*

²² *Prosecutor v. Taylor*, SCSL-03-01-T-369, “Decision on Prosecution’s Motion for Admission of Material Pursuant to Rules 89(C) and 92bis”, 7 December 2007.

²³ Response, para. 22.

²⁴ *Prosecutor v. Norman et al.*, SCSL 04-14-T, “Fofana – Appeal against Decision Refusing Bail”, 11 March 2005 (“**Fofana Bail Appeals Decision**”).

²⁵ *Fofana* Bail Appeals Decision, para. 23.

²⁶ Response, Annex.

Decision.²⁷

Admission under Rules 89(C) & 92bis

Acts and conduct of the Accused

18. The Defence objection regarding “acts and conduct of the accused” concerns the fact that the Taylor Documents were seized from White Flower.²⁸ However, according to the jurisprudence, the mere fact that the Documents were seized from Charles Taylor’s former residence does not of itself implicate the acts and conduct of the Accused. The Defence attempt to make the location of evidence seizure affect the evidence seized by bringing it within the Rule 92bis exclusion²⁹ is without merit and unsupported by any jurisprudence or practice. Notwithstanding this error, the Prosecution has acknowledged at paragraph 15 of the Motion that the Taylor Documents do contain evidence which might be considered acts and conduct of the Accused (as defined and limited by the jurisprudence).

Evidence going to a critical element of the Prosecution case

19. Finally, the Defence arguments at paragraphs 6 through 8 of the Response should be dismissed as being overly broad. Further, as stated above, the evidence cannot be at the same time both “critical” and not “sufficiently significant”.
20. However, the “significance” of the evidence is overstated by the Defence. While it is important, it is not in and of itself critical. In this regard, the ICTR Appeals Chamber’s dicta in *Karemura* regarding the type of facts which might properly be the subject of judicial notice is helpful in considering this type of objection and which facts properly fall within its scope:

“The Appeals Chamber ... has never gone so far as to suggest that judicial notice under Rule 94(B) cannot extend to facts that “go directly or indirectly” to the criminal responsibility of the accused (or that “bear” or “touch” thereupon). With due respect to the Trial Chambers that have so concluded, the Appeals Chamber cannot agree with this proposition, as its logic, if consistently applied, would render Rule 94(B) a dead letter. The purpose of a criminal trial is to adjudicate the criminal responsibility of the

²⁷ *Prosecutor v. Taylor*, SCSL-03-01-T-676, “Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents Seized from Foday Sankoh’s House,” 24 November 2008, paras. 13-17.

²⁸ Response, para. 4.

²⁹ Response, para. 4.

accused. Facts that are not related, directly or indirectly, to that criminal responsibility are not relevant to the question to be adjudicated at trial, and, as noted above, thus may neither be established by evidence nor through judicial notice. So judicial notice under Rule 94(B) is in fact available *only* for adjudicated facts that bear, at least in some respect, on the criminal responsibility of the accused.”³⁰

21. On this basis, it is clear that the Documents are not central themselves to determining the liability of the Accused for the crimes set out in the Second Amended Indictment.
22. The Prosecution also notes that, in paragraph 7 of the Response, the Defence relies on dicta from the Kenema Decision which is itself based on jurisprudence from the ICTY.³¹ As noted above, however, evidence which might be considered pivotal or proximate to the Accused and which is not contained in a witness statement or transcript is admitted at the ICTY under a different rule.
23. Should, *arguendo*, the Chamber decide that: (i) the Taylor Documents do contain evidence which goes to proof of the acts and conduct of the accused (as defined and limited by the jurisprudence) or evidence which goes to a critical element of the Prosecution case and is therefore proximate to the Accused; and (ii) such evidence may not be admitted, then such information may be redacted from the documents.³²

III. CONCLUSION

24. For the reasons set out in the Motion and above, the Prosecution requests that the Trial Chamber admit into evidence the Taylor Documents identified in Annex A and provided in Annex B of the Motion pursuant to: (i) Rule 89(C); or in the alternative, (ii) Rules 89(C) and 92*bis* (Rule 92*bis* being interpreted as set out in paragraphs 15-16 of the UN Documents Motion³³).

³⁰ *Prosecutor v. Karemera*, ICTR-98-44-AR73(C), “Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice”, App. Ch., 16 June 2006, para. 50.

³¹ This decision cites to *Prosecutor v. Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C), 7 June 2002.

³² This procedure conforms to the procedure adopted at the ICTR. At the ICTR statements tendered pursuant to Rule 92*bis* are reviewed. Where a statement is tendered that includes information that falls within Rule 92*bis* and information that falls outside the Rule, the statement is admitted but the paragraphs or information that fall outside the Rule are simply not admitted into evidence. See for example *Prosecutor v. Bagosora et al*, ICTR-98-41-T, “Decision on Prosecutor’s Motion for the Admission of Written Witness Statements Under Rule 92*bis*,” 9 March 2004. This procedure has now been adopted at the SCSL – see *Prosecutor v. Sesay et al.*, SCSL-04-15-T-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.

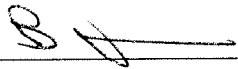
³³ *Prosecutor v. Taylor*, SCSL-03-01-T-650, “Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies,” 29 October 2008 (“UN Documents Motion”).

25. The Prosecution further requests that the arguments contained in the Response be dismissed.

Filed in The Hague,

12 December 2008

For the Prosecution,



Brenda J. Hollis
Principal Trial Attorney

LIST OF AUTHORITIES

Prosecutor v. Taylor, SCSL-03-01-T

Prosecutor v. Taylor, SCSL-03-01-PT-241, “Prosecution Motion for Admission of Material Pursuant to Rules 92*bis* and 89C,” 17 May 2007

Prosecutor v. Taylor, SCSL-03-01-T-369, “Decision on Prosecution’s Motion for Admission of Material Pursuant to Rules 89(C) and 92*bis*”, 7 December 2007

Prosecutor v. Taylor, SCSL-03-01-T-650, “Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies,” 29 October 2008

Prosecutor v. Taylor, SCSL-03-01-T-669, “Prosecution Reply to Defence Response to Prosecution Motion for Admission of Extracts of the Report of the Truth and Reconciliation Commission of Sierra Leone,” 17 November 2008

Prosecutor v. Taylor, SCSL-03-01-T-670, “Public Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies,” 17 November 2008

Prosecutor v. Taylor, SCSL-03-01-T-677, “Public Defence Response to Prosecution Motion for Admission of Documents Seized from RUF Office, Kono District,” 24 November 2008

Prosecutor v. Taylor, SCSL-03-01-T-676, “Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents Seized from Foday Sankoh’s House,” 24 November 2008

Prosecutor v. Taylor, SCSL-03-01-T-680, “Public Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents Seized from RUF Office, Kono District”, 1 December 2008

Prosecutor v. Taylor, SCSL-03-01-T-681, “Motion for Admission of Liberia Search Documents”, 1 December 2008

Prosecutor v. Taylor, SCSL-03-01-T-688, “Public Defence Response to Prosecution Motion for Admission of Liberia Search Documents,” 8 December 2008

Prosecutor v. Norman et al., SCSL 04-14-T

Prosecutor v. Norman et al., SCSL 04-14-T, “Fofana – Appeal against Decision Refusing Bail”, 11 March 2005

Prosecutor v. Sesay et al., SCSL-04-15-T

Prosecutor v. Sesay et al., SCSL-04-15-T-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 Cases

Prosecutor v. Kordić and Čerkez, IT-95-14/2, “Decision on Prosecutor’s Submissions concerning “Zagreb Exhibits” and Presidential Transcripts”, 1 December 2000
<http://www.un.org/icty/kordic/trialc/decision-e/01211AE514285.htm>

Prosecutor v. Galić, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92bis (C), 7 June 2002
(Copy provided in previous filing - see Prosecutor v. Taylor, SCSL-03-01-T-510, “Public Prosecution Motion for Admission of Document Pursuant to Rule 89(C)”, 19 May 2008)

ICTR Cases

Prosecutor v. Karemera, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, App. Ch., 16 June 2006
<http://69.94.11.53/ENGLISH/cases/Karemera/decisions/160606.htm>

Prosecutor v. Bagosora et al, ICTR-98-41-T, “Decision on Prosecutor’s Motion for the Admission of Written Witness Statements Under Rule 92bis,” 9 March 2004
<http://69.94.11.53/ENGLISH/cases/Bagosora/decisions/040309.htm>

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ANNEX

Typed version of document ERN 00028939

Immunity is hereby (*sic*) from both civil & criminal proceedings against all persons, officials, representative warring factions and combatants within the jurisdiction of Liberia from all acts and/or crime committed by them during the 14 years of the civil war covering the period Dec. 1989 to Aug. 2003.

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|----|-----------------|-----------------------------------|
| 7. | Eli Willie, | Dep. Director Tech. Services S.S. |
| 6. | John Smythe, | Dep. M.D. (Port) Operations |
| | Morris Solee | Dep. Comm. Imm (Naturalization) |
| | Montgomery | |
| 1. | V. Sheriff, | Dep. Comm. Operations |
| 2. | Mr. Gorpu Mason | Dep. Comm Administration |
| 3. | Andy Gunnie | Ass. Minister (***) for Trade |
| 4. | Nyah Martin | Dep. Minister for Comm. |
| 5. | Morris Myers | Ass. Comm. (***) Operations |