

694)

SCSL-03-01-T
(22956 - 23522)

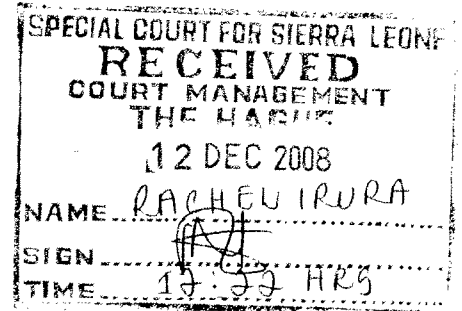
22956

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



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

**PROSECUTION MOTION FOR ADMISSION OF DOCUMENTS OF CERTAIN NON-GOVERNMENTAL
ORGANISATIONS AND ASSOCIATED PRESS RELEASES**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Ms. Julia Baly
Ms. Kathryn Howarth

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 motion under Rule 73 of the Rules of Procedure and Evidence (“**Rules**”) to request that the Trial Chamber admit into evidence certain portions of documents of non-governmental organizations and associated press releases identified in **Annex A** and provided in **Annex B** of this motion (“**NGO Documents**”) pursuant to: (i) Rule 89(C); or, in the alternative, (ii) Rules 89(C) and 92*bis*, should the Chamber find that Rule 92*bis* is also applicable.
2. The Prosecution is mindful of this Chamber’s decision that, where a document is not being tendered through a witness, then the application should be made under Rule 92*bis*.¹ The Prosecution’s motion for leave to appeal that decision is pending.²
3. Notwithstanding the foregoing, in the first instance, the Prosecution maintains that the NGO Documents are admissible under Rule 89(C) alone for three reasons: Rule 89(C) is the general rule governing admission of evidence and has been used to tender documents absent a witness in other proceedings;³ Rule 92*bis* has been amended such that it is now limited to witness statements and transcripts; and Rule 92*bis* as amended and limited does not apply to documents which were not prepared for the purposes of legal proceedings. In the alternative, Rules 89(C) and 92*bis* allow the admission of the documentary evidence discussed herein.

II. APPLICABLE LAW

Admission under Rule 89(C)

4. The Prosecution relies on and incorporates by reference its submissions made under this heading in its recent similar filing, substituting any reference therein to “Documents” with a reference to “NGO Documents”.⁴

Alternative request for relief: Admission under Rules 89(C) and 92*bis*

5. Assuming, *arguendo*, Rule 92*bis* is applicable to the admission of the NGO Documents,

¹ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 21 August 2008, page 14253, lines 1-6.

² *Prosecutor v. Taylor*, SCSL-03-01-T-568, “Confidential Prosecution Application for Leave to Appeal Decision Regarding the Tender of Documents”, 25 August 2008.

³ *Prosecutor v. Sesay et al.*, SCSL-04-15-T-620, “Decision on Prosecution Motion to Admit into Evidence a Document Referred to in Cross-Examination”, 2 August 2006, p. 4 (“**Sesay 89(C) Decision**”).

⁴ *Prosecutor v. Taylor*, SCSL-01-03-T-650, “Public Prosecution Motion for Admission of Documents of the United Nations & United Nations Bodies”, 29 October 2008, paras. 4 – 13 (“**UN Documents Motion**”).

then the requirements of Rules 89 and 92*bis* must be satisfied. For evidence comprising public documents to be admitted pursuant to both Rules, the evidence must be relevant, its reliability susceptible of confirmation and its admission not unfairly prejudice the Accused.

6. The Prosecution relies on and incorporates by reference its submissions made under this heading at paragraphs 15 to 17 of the UN Documents Motion, substituting any reference therein to “Documents” with a reference to “NGO Documents”.

III. SUBMISSIONS ON ADMISSIBILITY OF EVIDENCE

7. As required by SCSL jurisprudence,⁵ the Prosecution has made every effort to save the Court from wading through a mountain of material⁶ or a mass of undigested paperwork.⁷ **Annex A** includes a table describing each NGO Document and indicating the relevant portions to be admitted.⁸ **Annex B** contains copies of the actual NGO Documents, generally in their entirety to provide context, with notations in the margins to highlight the relevant passages in respect of which admission is sought. To further assist the Chamber in evaluating the evidence in light of both the primary and alternative requests for relief, those portions of the NGO Documents that would be accurately considered acts and conduct of the Accused are identified in **Annex A** by underlining the relevant summarized text and in **Annex B** by underlining the actual text. Admission of this evidence is requested under Rule 89(C) or, in the alternative, under Rule 89(C) and Rule 92*bis* (based on the interpretation of Rule 92*bis* advanced in paragraphs 15 and 16 of the UN Documents Motion).

⁵ See the Separate Opinion of Justice Robertson to *Prosecutor v. Norman et al.*, SCSL-04-14-AR73, “Fofana – Decision on Appeal Against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”, 16 May 2005 (“**Fofana Appeals Decision**”) at para. 31: “All relevant material is admissible, but that is not an invitation to the parties to deluge the court [...] The wider admissibility provisions in the SCSL carry a concomitant duty to the parties to narrow the documentary material they seek to introduce and to identify only those passages which are relevant to the case [...]”. See also the direction of this Chamber given in *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, at p.3.

⁶ See *Prosecutor v. Brima et al.*, SCSL-04-16-T-423, Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence, 25 October 2005, para. 71.

⁷ See Separate Opinion of Justice Robertson to the *Fofana Appeals Decision*, para. 30.

⁸ **Annex A** provides (where applicable) the exhibit number of the document given in the Pre-Trial Conference Materials (see the Exhibit Lists provided as part of the filing *Prosecutor v. Taylor*, SCSL-03-01-PT-218, “Public Rule 73*bis* Pre-Trial Conference Materials”, 4 April 2007), describes the document, summarises the relevant information, sets out the relevance of the document or section thereof, relates this relevance to the Indictment and states which portion of the document the Prosecution seeks to have admitted into evidence.

Application for Admission under Rule 89(C)

8. The NGO Documents are relevant on their face to the current proceedings. Further, the relevance of each NGO Document to the current proceedings and the Second Amended Indictment is identified in **Annex A**. As noted therein, the documents relate to: (i) the chapeau requirements of the crimes charged; (ii) the several forms of liability alleged by the Prosecution in this case; (iii) the crime base; and (iv) evidence of a consistent pattern of conduct admissible under Rule 93. The NGO Documents are also relevant as they corroborate and so lend weight to evidence on the court record.
9. The NGO Documents are public and originate from non-governmental bodies and press agencies. Therefore, the material does not impact adversely and unfairly *upon the integrity of the proceedings* nor is it of such a nature that its admission would bring the administration of justice into serious disrepute. In accordance with the AFRC Judgment,⁹ copies are provided as an accurate reproduction of the original.
10. This Chamber has noted that it “has a discretion under Rule 89(C) to admit any relevant evidence” and “the inability of the Defence to cross-examine such witnesses is a matter that goes to the weight of the evidence, not its admissibility.”¹⁰ In addition, at the ICTY, a report from a member of a commission of experts was admitted despite defence complaints that they were being: “denied the right to cross-examine a paper witness.”¹¹ In the face of such objections, the Chamber did “take entirely the point made by the Defence, that they cannot cross-examine the 400 witnesses on whose statements this evidence will be based.” But found that “in this Tribunal we admit all types of evidence. The hearsay rule does not apply, but the issue of how much weight is given to this evidence is very much a matter for the Tribunal.”¹² Trial Chamber I has also admitted evidence on a similar basis as the “Chamber is composed of professional judges who are certainly capable of not drawing inferences without proper evidentiary basis or foundation and that the matter of weight to

⁹ *Prosecutor v. Brima et al.*, SCSL-04-16-T, Judgement, 20 June 2007, para. 140 relying on *Prosecutor v. Norman et al.*, SCSL 04-14-T, “Fofana – Appeal against Decision Refusing Bail”, 11 March 2005, para. 24.

¹⁰ See *Prosecutor v. Taylor*, SCSL-03-01-T-543, “Decision on Defence Application to Exclude the Evidence of Proposed Prosecution Expert Witness Corinne Dufka, or in the alternative, to Limit its Scope And on Urgent Prosecution Request for Decision”, 19 June 2008, para. 25, in relation to Defence objections regarding the admission of witness testimonies collected by Ms Dufka.

¹¹ *Prosecutor v. Kovačević*, IT-97-24, Trial Transcript, 6 July 1998, pp. 74-75 where the Defence elaborated that “We cannot cross-examine a piece of paper, 600 or whatever amount of pages in this record or this tendered exhibit, is nothing more than a paper witness. It's not this witness that is testifying. She has no knowledge of any fact contained in the document.”

¹² *Ibid*, p. 75.

be given to any piece of evidence will be determined at the appropriate time in light of all of the evidence adduced at trial.”¹³ It is, therefore, clear that no undue prejudice to the Accused arises from the fact that a document is produced without calling a witness.¹⁴

11. At the SCSL a relevant factor to admission is the fact that “this type of documentary evidence, and in fact in some cases these identical documents have already been admitted in the other trials before the Special Court”.¹⁵ Therefore, **Annex A** notes where a document has been admitted in other SCSL proceedings.

Alternative request for relief: Application for Admission under Rules 89(C) and 92bis

12. Assuming, *arguendo*, Rule 92bis is applicable, the Prosecution seeks in the alternative to have the NGO Documents admitted under Rules 89(C) and 92bis.
13. In relation to relevance, the Prosecution refers to paragraph 8 above and to **Annex A**.
14. As regards susceptibility of confirmation, the Prosecution is not required to prove that the evidence is in fact reliable at this stage, only that the reliability of the evidence is susceptible of confirmation.¹⁶
15. In relation to “undue prejudice to the Accused”, the Prosecution refers to paragraphs 9–10 above.
16. Assuming further, *arguendo*, that the qualification regarding evidence going to proof of the acts and conduct of the accused is still applicable to documents not prepared for the purposes of legal proceedings notwithstanding the May 2007 amendments, then those portions of the NGO Documents that would be accurately considered acts and conduct of the Accused (as defined and limited by the jurisprudence) are identified in the Annexes as noted in paragraph 7 above.
17. As regards issues of proximity, while the NGO Documents do concern the acts and conduct of those who might be considered the Accused’s immediately proximate subordinates, the Prosecution relies on its arguments incorporated above at paragraphs 4 and 6. Further, the NGO Documents are not being presented to a lay jury, and so will not “impact adversely and unfairly upon the integrity of the proceedings.” Rather, it is in the interests of justice

¹³ *Sesay* 89(C) Decision, p. 4.

¹⁴ See Judge Richard May and Marieke Wierda, *International Criminal Evidence* (Transnational Publishers, Inc., New York: 2002), para. 7.97 which notes that the “procedure [of producing documents without calling a witness] has the advantage of expediting the trial without being detrimental to fairness.”

¹⁵ *Sesay* 92bis Decision, p. 5.

¹⁶ *Fofana* Appeals Decision, para. 27.

that this relevant evidence is brought before the Chamber, and that the Chamber be allowed to assess the appropriate weight to be given to it at the conclusion of the case.

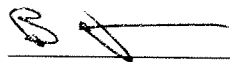
IV. CONCLUSION

18. The Prosecution requests that the Trial Chamber admit into evidence the portions of the NGO Documents identified in **Annex A** and provided in **Annex B** pursuant to: (i) Rule 89(C) as this rule alone has been used at the SCSL to tender documents absent a witness and Rule 92*bis* has been amended such that it is now limited to witness material and does not apply to documents not prepared for legal proceedings; or, in the alternative, (ii) Rules 89(C) and 92*bis*, as Rule 92*bis* is interpreted in paragraphs 15-16 of the UN Documents Motion.

Filed in The Hague,

12 December 2008,

For the Prosecution,



Brenda J. Hollis
Principal Trial Attorney

LIST OF AUTHORITIES

SCSL**Prosecutor v. Taylor – Case No. SCSL-03-01**

Prosecutor v. Taylor, SCSL-03-01-PT-218, “Public Rule 73bis Pre-Trial Conference Materials”, 4 April 2007

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

Prosecutor v. Taylor, SCSL-03-01-T-543, “Decision on Defence Application to Exclude the Evidence of Proposed Prosecution Expert Witness Corinne Dufka, or in the alternative, to Limit its Scope And on Urgent Prosecution Request for Decision”, 19 June 2008

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcript, 21 August 2008

Prosecutor v. Taylor, SCSL-03-01-T-568, “Confidential Prosecution Application for Leave to Appeal Decision Regarding the Tender of Documents”, 25 August 2008

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

Prosecutor v. Brima et al. – Case No. SCSL-04-16

Prosecutor v. Brima et al., SCSL-04-16-T-423, “Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence”, 25 October 2005

Prosecutor v. Brima et al., SCSL-04-16-T, Judgement, 20 June 2007

Prosecutor v. Norman et al. – Case No. SCSL-04-14

Prosecutor v. Norman et al., SCSL-04-14-AR65, “Fofana – Appeal Against Decision Refusing Bail”, 11 March 2005

Prosecutor v. Norman et al., SCSL-04-14-AR73-398, “Fofana – Decision on Appeal Against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, 16 May 2005

Prosecutor v. Sesay et al. – Case No. SCSL-04-15

Prosecutor v. Sesay et al., SCSL-04-15-T-620, “Decision on Prosecution Motion to Admit into Evidence a Document Referred to in Cross-Examination”, 2 August 2006

ICTY Cases

Prosecutor v. Kovačević, IT-97-24, Trial Transcript, 6 July 1998
<http://www.un.org/icty/transe24Kovacevic/980706.htm>

Academic Text

International Criminal Evidence (Transnational Publishers, Inc., New York: 2002), Judge Richard May and Marieke Wierda
(Copy of Chapter 7 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)