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SCSL-03-01-T
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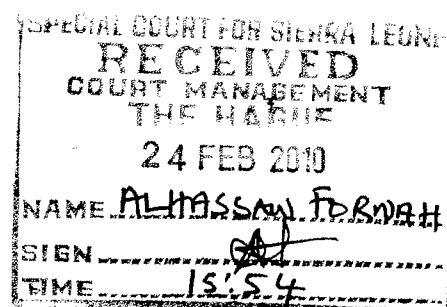
**SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR**

TRIAL CHAMBER II

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

Registrar: Ms. Binta Mansaray

Date filed: 24 February 2010



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

**PUBLIC WITH ANNEX 1 AND 2
PROSECUTION RESPONSE TO DEFENCE MOTION FOR ADMISSION INTO EVIDENCE OF
DOCUMENTS MARKED FOR IDENTIFICATION DURING THE TESTIMONY OF CHARLES TAYLOR**

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. In accordance with the Trial Chamber's Orders,¹ the Prosecution files this response in relation to the 301 documents and photographs presented and marked for identification during the testimony of Charles Taylor which are sought to be admitted by the Defence ("**Defence documents**").²
2. The Prosecution objects to the admission into evidence of the Defence documents listed in **Annex 1** attached to this response.
3. The Prosecution's **Annex 3** attached to its list of documents sought to be admitted lists those Defence documents that the Prosecution also seeks to admit and therefore the Prosecution may be taken to be in agreement with the Defence regarding the admission of those documents.³ Nonetheless, to ensure clarity and to assist the Trial Chamber, the Prosecution has provided a full list of the Defence documents to which it does not object as **Annex 2** attached to this response.

II. ARGUMENT

4. Contrary to the arguments advanced by the Defence during the Prosecution case-in-chief, the test for admissibility now adopted by the Defence is the correct one. The test to be applied is one of relevance as provided in Rule 89(C) of the Special Court Rules.⁴ During the Prosecution case-in-chief, the Trial Chamber set a standard that required a sufficient foundation to be laid going beyond relevance before a document could be used in conjunction with a witness and tendered through that witness.⁵ In

¹ *Prosecutor v. Taylor*, Trial Transcript, 15 February 2010, 34881; *Prosecutor v. Taylor*, Trial Transcript, 17 February 2010, 35165.

² *Prosecutor v. Taylor*, SCSL-03-01-T-909, Public with Annexes A and B, "Defence Motion for the Admission into Evidence of 301 Documents and Photographs Marked for Identification during the Evidence-in-Chief of the Accused", ("**Defence Motion**"), 19 February 2010.

³ See *Prosecutor v. Taylor*, SCSL-03-01-911, "Prosecution List of Documents Marked for Identification during the Testimony of Charles Taylor sought to be Admitted into Evidence", 19 February 2010, Annex 3.

⁴ According to Rule 89(C): "A Chamber may admit any relevant evidence." See also *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T-371, "Fofana – Appeal against Decision Refusing Bail", 11 March 2005, para. 26; *Prosecutor v. Taylor*, SCSL-2003-01-AR73-721, "Decision on 'Prosecution Notice of Appeal and Submissions concerning the Decision regarding the Tender of Documents'", 6 February 2009 ("**Tender of Documents Decision**"), para. 37: "At the admissibility stage, the only test is that of relevance".

⁵ *Prosecutor v. Taylor*, Trial Transcript, 21 August 2008, 14253.

resolving the issue of whether the Trial Chamber had used the proper foundational standard in respect of material the Prosecution sought to use and have admitted during its case-in-chief, the Special Court Appeals Chamber found that the question of a foundation for tendering a document is linked to that of relevance at the admissibility stage. A document's relationship to the witness at hand was considered to form part of the relevance test.⁶ The Appeals Chamber held as follows:

Undoubtedly, the Trial Chamber in exercising its unfettered discretion under Rule 89(C) ("may admit any relevant evidence") as to whether or not the proposed evidence is relevant, cannot properly do so in thin air. When determining the relevance of a document, the Trial Chamber must require the tendering party to lay a foundation of the witness's competence to give evidence in relation to that document".⁷

5. The Appeals Chamber went on to say that a sufficient foundation needed to be laid to enable the Trial Chamber, in properly exercising its discretion, to come to the conclusion that the evidence was *prima facie* relevant, indicating that the question of a sufficient foundation was significant both at the stage of presenting a document and at the admissibility stage.⁸ Applying this standard, the Trial Chamber did not permit documents to be tendered through the custodian of the Prosecution archives.⁹
6. Taking account of the fact that the Accused was giving evidence on his own behalf in relation to a large number of events spanning a wide time frame, the Trial Chamber adopted a permissive approach to the use of documents by the Defence. However, the fact that documents were used during the examination of a witness does not automatically make those documents admissible. To ensure procedural equality and fairness to the Prosecution, in order for documents to be admitted into evidence the Trial Chamber ought to require that contested documents meet the foundational requirements mandated by the Appeals Chamber which in turn reflected the Trial Chamber's approach during the Prosecution case-in-chief. Material which does not

⁶ Tender of Documents Decision, para. 38.

⁷ Tender of Documents Decision, para. 40.

⁸ Tender of Documents Decision, para. 42.

⁹ The Prosecution was not permitted to tender for admission into evidence documents within the control of the custodian of the Prosecution archive, Mr Tariq Malik, although he had read the documents, had knowledge of the circumstances under which the documents had come into the possession of the Prosecution and had received the documents in the regular course of his duties as head of the Prosecution Evidence Unit. See *Prosecutor v. Taylor*, Trial Transcript, 19-20 January 2009, especially 20 January 2009, 23109-23119. See also *Prosecutor v. Taylor*, SCSL-03-01-T-736, "Decision on Prosecution Motion for Admission of Liberia Search Documents", 18 February 2009, paras 23-25.

meet this standard, but which was used with the witness during his testimony, may simply be disregarded by the Trial Chamber when deliberating.

7. There is insufficient foundation for the admission of a document through the Accused in circumstances where (i) his connection to the document is that it was part of his Presidential archive and he has simply read it;¹⁰ (ii) his connection to the document is that it was supplied to him by the Prosecution and he has simply read it;¹¹ and (iii) his connection to the document is that it was supplied to him by members of the Defence team including his investigators and he has simply read it.
8. In particular, the Accused's "Presidential archive" appears to have been used as a catch-all category to encompass all documents shown to the Accused during his examination-in-chief, irrespective of the origin of the documents or the circumstances of their acquisition. It emerged during the course of the Accused's testimony that this "archive" contains not only documents supposedly selected by him during his presidency for historical purposes, but also documents selected before he left Liberia with a future prosecution in mind and documents which are the fruits of the lengthy investigation conducted by his Defence team on his behalf in preparation for trial.¹² Given the inconsistent and confusing nature of the Accused's testimony regarding what constitutes his archive, his claim that a particular document belonged therein is not sufficient in all instances to demonstrate a sufficient foundation for the admissibility of the document.
9. The Prosecution objects to the admission of some documents on the basis that a sufficient foundation for tendering the document through the witness, the Accused,

¹⁰ See for example *Prosecutor v. Taylor*, Trial Transcript, 4 November 2009, 31180 – 31181.

¹¹ See for example *Prosecutor v. Taylor*, Trial Transcript, 5 November 2009, 31420 – 31422.

¹² The Accused initially described his Presidential archive as containing "almost every piece of historical document that I was putting together to form a library for posterity": *Prosecutor v. Taylor*, Trial Transcript, 21 July 2009, 24919 and see arguments at 24910-24921. The Accused later explained how documents from the Special Representative of the UN in Monrovia came to be in his archives: *Prosecutor v. Taylor*, Trial Transcript, 19 August 2009, 27125-27127. The Accused described further during cross-examination how he had preserved certain documents before leaving Liberia and how his Defence teams had subsequently gathered boxes of documents on his behalf: *Prosecutor v. Taylor*, Trial Transcript, 16 November 2009, 31692-31698. See also his reactions during cross-examination at *Prosecutor v. Taylor*, Trial Transcript, 1 February 2010, 34509-34510. During re-examination, when the Accused was asked about his investigators in the context of the many questions he had been asked about the source of various documents placed before the Court, the Accused indicated that the function of his international investigator was to go anywhere and everywhere to search for and find any and all documents that could assist the Court, such as the UN headquarters in New York, the ECOWAS headquarters in Abuja, the AU headquarters in Addis Ababa, and government ministries in Sierra Leone, and the Accused stated that documents were obtained from these various places and shown to him: *Prosecutor v. Taylor*, Trial Transcript, 16 February 2010, 35141-35144.

has not been laid. These Defence documents are listed in Annex 1. The relationship between the Accused and the document has not been established so as to meet the standard set by the Appeals Chamber.

10. Annex 1 additionally lists those documents sought to be admitted by the Defence which are already exhibits in this case.
11. Annex 2 lists those Defence documents that the Prosecution agrees to admit into evidence, notwithstanding the absence of a sufficient foundation with respect to certain of those documents. Annex 2 also lists certain documents (mainly photographs) which lack relevance to the issues in the case and risk cluttering the evidentiary record unnecessarily, but which are not objectionable to the Prosecution should the Trial Chamber find them useful.
12. The Prosecution has noted the observations in Annex B attached to the Defence motion. The Prosecution has not responded to these observations as it is aware that the Defence has until close of business on 24 February 2010 to file any more complete objections or additional objections to the Prosecution motion. Therefore, the Prosecution reserves the right to make a full reply to the Defence objections, as appropriate, in accordance with the Trial Chamber's orders concerning the filing timetable¹³ upon receipt of any additional observations in the Defence response.
13. Finally, should the Prosecution have, through administrative oversight, omitted to mention a Defence document in the attached Annex 1 and Annex 2, this may be taken to mean that there is no objection to its admission.

¹³ See note 1 above.

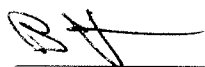
III. CONCLUSION

14. For these reasons, the Prosecution objects to the admission into evidence of the documents listed in Annex 1. The Prosecution does not object to the admission into evidence of the documents listed in Annex 2.

Filed in The Hague,

24 February 2010,

For the Prosecution,



Brenda J. Hollis
The Prosecutor

INDEX OF AUTHORITIES

SCSL

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T-909, Public with Annexes A and B, “Defence Motion for the Admission into Evidence of 301 Documents and Photographs Marked for Identification during the Evidence-in-Chief of the Accused”, 19 February 2010.

Prosecutor v. Taylor, SCSL-03-01-911, “Prosecution List of Documents Marked for Identification during the Testimony of Charles Taylor sought to be Admitted into Evidence”, 19 February 2010, Annex 3.

Prosecutor v. Taylor, SCSL-2003-01-AR73-721, “Decision on ‘Prosecution Notice of Appeal and Submissions concerning the Decision regarding the Tender of Documents’”, 6 February 2009

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

Prosecutor v. Taylor, Trial Transcript, 15 February 2010, 34881.

Prosecutor v. Taylor, Trial Transcript, 17 February 2010, 35165.

Prosecutor v. Taylor, Trial Transcript, 4 November 2009, 31180 – 31181.

Prosecutor v. Taylor, Trial Transcript, 5 November 2009, 31420 – 31422.

Prosecutor v. Taylor, Trial Transcript, 21 July 2009, 24919 and see arguments at 24910-24921.

Prosecutor v. Taylor, Trial Transcript, 19 August 2009, 27125-27127.

Prosecutor v. Taylor, Trial Transcript, 16 November 2009, 31692-31698.

Prosecutor v. Taylor, Trial Transcript, 16 February 2010, 35141-35144.

Prosecutor v. Taylor, Trial Transcript, 19-20 January 2009, especially 20 January 2009, 23109-23119.

Prosecutor v. Taylor, Trial Transcript, 21 August 2008, 14253.

Prosecutor v. Norman, Fofana, Kondewa

Prosecutor v. Norman, Fofana, Kondewa, SCSL-04-14-T-371, “Fofana – Appeal against Decision Refusing Bail”, 11 March 2005.

ANNEX 1

ANNEX 1: List of Defence documents and Prosecution objections

Defence MFI	Grounds for objection
7	Insufficient foundation.
11	Insufficient foundation.
13	Objection to pages 3-5, 10-20 – Insufficient foundation.
26	Insufficient foundation.
98	Insufficient foundation.
149	Insufficient foundation.
163	Insufficient foundation, document has DPKO stamp indicating likelihood it was obtained from the UN in New York in preparation for trial.
198	Insufficient foundation.
221	Insufficient foundation.
222	Insufficient foundation.
227	Insufficient foundation.
236	Insufficient foundation.
243	Insufficient foundation.
245	Insufficient foundation, document has DPKO stamp indicating likelihood it was obtained from the UN in New York in preparation for trial.
248	Insufficient foundation, document has DPKO stamp indicating likelihood it was obtained from the UN in New York in preparation for trial.
249	Insufficient foundation, document has DPKO stamp indicating likelihood it was obtained from the UN in New York in preparation for trial.
252	Insufficient foundation, document has DPKO stamp indicating likelihood it was obtained from the UN in New York in preparation for trial.
257	Insufficient foundation.
258	Insufficient foundation, document has DPKO stamp indicating likelihood it was obtained from the UN in New York in preparation for trial.
275	Insufficient foundation or relevance to issues in the case.
277	Insufficient foundation – if admitted but insufficient <i>in toto</i> include pages 1, para. 3.18 at page 18 for completeness.
278	Insufficient foundation.
279	Insufficient foundation.
281	Insufficient foundation.
282	Insufficient foundation.
283	Insufficient foundation.
284	Insufficient foundation.
293A	Insufficient foundation.
300	Insufficient foundation.

Cumulative documents (see paragraph 10 of the Prosecution response):

Defence MFI	Existing Exhibit Number
21	Last three pages of Exhibit P-298
49	Exhibit D-7
69	Exhibit D-34

ANNEX 2

ANNEX 2: List of Defence documents where no Prosecution objection to admission

MFI 1
MFI 2
MFI 3
MFI 4
MFI 5
MFI 6
MFI 8
MFI 9E, G, H
MFI 10
MFI 12
MFI 13 (Taylor interview portion at pages 6-9)
MFI 14
MFI 15
MFI 16
MFI 17
MFI 18
MFI 19
MFI 20
MFI 22
MFI 23
MFI 24
MFI 25
MFI 27
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MFI 39
MFI 40
MFI 41
MFI 42
MFI 45
MFI 46
MFI 50
MFI 57
MFI 58
MFI 62
MFI 63
MFI 64
MFI 65
MFI 66
MFI 67

MFI 68
MFI 70
MFI 71
MFI 72 (incomplete: Defence should be ordered to produce the rest of the document)
MFI 73
MFI 74
MFI 75
MFI 76
MFI 77
MFI 78
MFI 79
MFI 80
MFI 81 (same as MFI 242, Defence should select one (MFI 242 is clearer version))
MFI 82
MFI 83
MFI 84
MFI 85
MFI 86
MFI 87
MFI 88 I, Y, AE, AF, AL
MFI 89
MFI 90
MFI 91
MFI 92
MFI 93
MFI 94
MFI 95
MFI 96
MFI 97
MFI 99
MFI 100
MFI 101
MFI 102
MFI 103
MFI 104 (pages 49 – 50, 67, 78 – 80, second page of photos at the back)
MFI 105
MFI 106
MFI 107
MFI 108
MFI 109
MFI 110
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MFI 112
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MFI 172
MFI 173
MFI 174
MFI 181
MFI 184A
MFI 189
MFI 190
MFI 191
MFI 192 (including footnotes)
MFI 193
MFI 194
MFI 195
MFI 196
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MFI 230
MFI 231
MFI 232
MFI 233
MFI 234
MFI 235
MFI 237
MFI 238
MFI 239
MFI 240
MFI 241
MFI 242 (same as MFI 81, Defence should select one (MFI 242 is clearer version))
MFI 244
MFI 246
MFI 247
MFI 250
MFI 251
MFI 253 (including Report of Opposition Parties Delegation)
MFI 254

MFI 255
MFI 256
MFI 259
MFI 260
MFI 261
MFI 262
MFI 263
MFI 264
MFI 265
MFI 271
MFI 272
MFI 273
MFI 274
MFI 276
MFI 280
MFI 285
MFI 286
MFI 287
MFI 288
MFI 289
MFI 290 (*Confidential*)
MFI 291
MFI 292
MFI 293 B
MFI 294
MFI 295
MFI 296
MFI 297
MFI 298
MFI 299
MFI 301

The following are deemed by the Prosecution to lack relevance (see paragraph 11 of the Prosecution response) but the Prosecution does not object to their admission:

MFI 9A-D, F, I-K

MFI 31

MFI 33

MFI 34

MFI 43

MFI 44

MFI 47

MFI 48

MFI 52

MFI 53

MFI 54

MFI 55

MFI 56

MFI 59

MFI 60

MFI 61

MFI 88, A – H, J – X, Z-AD, AG-AK, AM

MFI 104, pages 51-66, 68-77, 81-89, first page of photos at the back

MFI 175

MFI 176

MFI 177

MFI 178

MFI 179

MFI 180

MFI 182

MFI 183

MFI 184, B-H

MFI 185

MFI 186

MFI 187

MFI 188

MFI 209

MFI 210

MFI 211

MFI 212

MFI 213

MFI 214

MFI 215

MFI 216

MFI 217

MFI 218

MFI 219

MFI 220

MFI 266

MFI 267

MFI 268

MFI 269
MFI 270