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SCSL-03-01-T
(29943-29978)

29943



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: 25 August 2010

Case No.: SCSL-03-01-T

THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

SPECIAL COURT FOR SIERRA LEONE	
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**DEFENCE MOTION FOR ADMISSION OF DOCUMENTS PURSUANT TO RULE 92bis –
AUTOPSY REPORT**

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. This is the Defence motion to admit into evidence the annexed documents, pursuant to Rules 92bis of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“Rules”).
2. The proposed materials are relevant to the proceeding; in particular to the allegation put forward by Prosecution Witness TF1-399¹ on the issue of the death of Liberian former Vice-President the late Mr. Enoch Dogolea.
3. The documents annexed to this motion are autopsy reports which were initially included in the list of anticipated exhibits for use during the examination-in-chief of Defence Witness DCT-285² and were disclosed to the Prosecution on 26 May 2010.

II. BACKGROUND

4. The issue of the death of Enoch Dogolea, former Vice President of Liberia, was brought up by the Prosecution Witnesses TF1-399, who testified that the Accused has caused the death of Enoch Dogolea :

“Dogolea was the vice-president to Charles Taylor, but it came to a time he started advocating for Charles Taylor to go to America and negotiate with the American Government. From there I heard from Benjamin Yeaten, the chief security to Charles Taylor, who said that the man was trying to connive. For that reason Charles Taylor gave instruction from him to be dealt with, so he took Enoch Dogolea to the banana bush in front of Benjamin Yeaten’s house. He was beaten up with young banana trees almost to the point of death, and he kept him in Ben’s house after Charles Taylor travelled in two days and the thirds day they said, ‘Charles Taylor sent for Enoch Dogolea to go for some military materials for us’. After he left we heard that he was sick, and he remained in the Ivory Coast until his death and he dies as a result of the beating. I also took part in the beating and that was by Mr. Taylor’s instruction”³

¹ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 12 March 2008, p.5940-5941; 14 March 2008, p.6143-6144.

² *Prosecutor v. Taylor*, SCSL-03-01-T-966, “Public with Annex A and Confidential Annex B Defence Witness Order for the Week 7 June-11 June 2010”, 25 May 2010.

³ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 12 March 2008, p.5940-5941.

5. The Accused has more than one occasion refuted the allegation⁴ and testified that in fact, Enoch Dogolea died of hepatitis⁵, a natural cause which contradicts the allegation made by Witness TF1-399.

III. APPLICABLE LAW

6. Rule 92*bis* states:

- (A) In addition to the provision of Rule 92*ter*, a Chamber may, in lieu of oral testimony, admit as evidence in whole or in part, information including written statements and transcripts, that do not go to proof of the acts and conduct of the accused.
- (B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.
- (C) A party wishing to submit information as evidence shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.

7. Trial Chamber II has ruled that the purpose of Rule 92*bis* is to permit the reception of information—assertions of fact (but not opinion) including, but not limited to, written statements and transcripts that do not go to proof of the acts and conduct of the accused—if such facts are relevant and their reliability is “susceptible to confirmation.”⁶ However, the reliability of a document is not a bar to admission; information may still be admitted where it is capable of corroboration in due course.⁷

⁴ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 30 September 2009, p.29925-29926, 4 November 2009, p.31100-31101

⁵ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 30 September 2009, p.29926, line: 11-12.

⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-556, “Decision on Prosecution Notice Under Rule 92*bis* for the Admission of Evidence Related to *Inter Alia* Kenema District and on Prosecution Notice Under Rule 92*bis* for the Admission of the Prior Testimony of TF1-036 Into Evidence”, 15 July 2008, page 4.

⁷ *Prosecutor v. Norman et al.*, SCSL-2004-14-AR73, “Fofana – Decision on Appeal against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, 16 May 2005, para. 26. In the AFRC trial, the Trial Chamber has stated that “evidence may be excluded because it is unreliable, but it is not necessary to demonstrate the reliability of the evidence before it is admitted.” See *Prosecutor v. Brima et al.*, SCSL-04-16-T, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92*bis*”, 18 November 2005, page 2, citing *Prosecutor v. Brima et al.*, SCSL-04-16-T, “Decision on Joint Defence Application for Leave to Appeal from Decision n Defence Motion to Exclude All Evidence from Witness TF1-277”, 2 August 2005, para. 6. In the same AFRC trial, the Trial Chamber considered the reliability of the evidence to be considered at the end of the trial and be evaluated and weighed as a whole, taking into account the context and nature of the evidence as well as the credibility and reliability of the evidence *See*:

8. The Appeals Chamber of the Special Court for Sierra Leone has ruled that any information not going to proof of the acts and conduct of the accused which is *not tendered through a witness* [emphasis added] should be submitted under Rule 92bis.⁸ Furthermore, the Appeals Chamber has found that by its express terms Rule 92bis applies to information tendered “*in lieu of oral testimony*” and the information to be admitted is *not restricted to written statements or transcripts* [emphasis added].⁹

IV. SUBMISSIONS AND ADMISSIBILITY OF EVIDENCE

9. The Defence submits this application to admit the autopsy reports of the late Enoch Dogoleah pursuant to Rule 92bis. The Defence seeks to admit the four exhibits, namely Defence Exhibits DCT-414, DCT-415, DCT-416 and DCT-418.
10. The issue of the death of Enoch Dogolea, former Vice President of Liberia is relevant to this case with regard to the allegation that was made against the Accused in relation to the cause of death of Enoch Dogoleah. These Defence Exhibits are also submitted to support the evidence given by the Accused and a Defence Witness¹⁰ on such specific allegation and also in order to challenge the credibility of Witness TF1-399.
11. Furthermore, the Defence submits that all the criteria for submission of documents under Rule 92bis have been met as elaborated below:

Prosecutor v. Brima et al., SCSL-04-16-T, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92bis”, 18 November 2005, page 2. *See also: Prosecutor v. Norman et al.*, SCSL-04-14-T-447, “Decision on Prosecution’s Request to Admit into Evidence Certain Documents Pursuant to Rule 92bis and 89(C)”, 14 July 2005, page 3.

⁸ *Prosecutor v. Taylor*, SCSL-03-01-721 “Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’”, 6 February 2009, para. 34.

⁹ *Prosecutor v. Taylor*, SCSL-03-01-721, para 30-31. Subsequent to the Appeals Chamber Decision, Trial Chamber II found that : “The effect of Rule 92bis is to permit the reception of information-assertions of fact (but not opinion) including, but not limited to, written statements and transcripts that do not go to proof of the acts and conduct of the accused- if such facts are relevant and their reliability is “susceptible of confirmation”; proof of reliability is not a condition of admission: all that is required is that the information should be capable of corroboration in due course.”

¹⁰ Witness DCT-285 testified on 11 and 14 June 2010. *Prosecutor v. Taylor*, SCSL-03-01, Trial Transcript 11 June 2010 p.42520-42529 and 14 June 2010.

The Evidence is Relevant

12. Defence Exhibit DCT-414¹¹, “*Rapport D’autopsie Medico-Legale Rapport Provisoire*, 27 June 2000”, is the French (original) version of the autopsy report whilst the Defence Exhibit DCT-415¹² is the translated English version of the autopsy report. Defence Exhibits DCT-414 and DCT-415 (“the autopsy report”) are provided by the Centre Hospitalier Universitaire (C.H.U.) of Treichville, Abidjan, Ivory Coast.
13. The autopsy report is relevant as it provides detailed medical findings of fact and also the cause of death of Enoch Dogolea. In particular it makes clear that there were no external or internal injuries on the body consistent with the involvement of any third party. The autopsy report was done on 27 June 2000 by a Medical Doctor at the C.H.U. of Treichville assigned by the Ordinance of Vice President of the Court of First Instance in Abidjan on the same day. It is an independent report coming from a professional and provides details of the time and place of death as well as the assessment of the corpse in the autopsy theatre.
14. DCT-416¹³ is the “Conclusion of the Medical Report on The Late Enoch Dogolea at the Centre Medico-Chirurgical France- Ivoire” which provides the evaluation of the medical condition of Enoch Dogolea subsequent to the evacuation from Liberia to the Ivory Coast.
15. DCT-418¹⁴ is a “Letter dated 24 June 2000 to Maître TOURE MARAME, Abidjan, from Le Professeur Peter S. Coleman, Minister of Health, Ministry of Health and Social Welfare, Liberia”. The letter represents the request of the Government of Liberia, represented by the Minister of Health, Peter S. Coleman, for the autopsy of Enoch Dogolea.
16. It is, therefore, self-evident that the information contained in the four documents attached to this motion (Defence Exhibits DCT-414, DCT-415, DCT-416 and DCT-418) is relevant to this proceeding, in particular to the allegations made

¹¹ Annex A

¹² Annex B

¹³ Annex C

¹⁴ Annex D

against the Accused and satisfied the test of relevance set out in Rule 92*bis* of the Rules.

The Evidence is Susceptible of Confirmation

17. Rule 92*bis* also requires the material(s) referred to in this notice to be susceptible of confirmation. The Defence, at this point in time, is only required to show that the reliability of the evidence is susceptible to confirmation and does not have to prove that the evidence is actually reliable.¹⁵ The Appeals Chamber in *Norman et al* has further interpreted that “susceptible of confirmation” does not require proof of reliability before admission, but does require that the information is capable of corroboration in due course.¹⁶ This Trial Chamber has noted that reliability is to be assessed at the end of the trial, in light of the totality of the evidence presented at trial, and what weight, if any, should be attached to it.¹⁷ The Defence submits that the issue initially was brought up by the Prosecution witness TF1-399 and therefore the issue is not novel to the Prosecution. It has been also corroborated by the Prosecution witness TF1-561, and the Accused, and Defence Witness DCT-285.¹⁸

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

18. The Defence acknowledges that Rule 92*bis* explicitly excludes written statements or transcripts which go to proof of the acts and conduct of the Accused.¹⁹ The

¹⁵ *Prosecutor v. Norman et al.*, SCSL-2004-14-AR73, “Fofana – Decision on Appeal against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, 16 May 2005, para. 27.

¹⁶ *Prosecutor v. Norman et al.*, SCSL-2004-14-AR73, “Fofana – Decision on Appeal against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, 16 May 2005, para. 26.

¹⁷ *Prosecutor v. Taylor*, SCSL-03-01-750, “Decision on Prosecution Motion for Admission of Newspaper Articles Obtained from the Catholic Justice and Peace Commission Archive in Monrovia, Liberia” 27 February 2009, paragraph 27 quoting so and so.

¹⁸ *Prosecutor v. Taylor*, Trial Transcripts 15 May 2008, p.9922-9923, 30 September 2009 p.29925-29926, 4 November 2009, p.31100-31101, 11 June 2010 and 14 June 2010

¹⁹ There is a distinction between “the acts and conduct of those others who commit the crimes for which the Indictment alleges that the accused is individually responsible” and “the acts and conduct of the accused as charged in the Indictment which establish his responsibility for the acts and conduct of others;” and that only written statements which go to proof of the latter are excluded by Rule 92*bis*. See: *Prosecutor v. Galic*, IT-98-29-AR73.2, “Decision on Interlocutory Appeal Concerning Rule

Defence submits that the materials annexed to this motion self-evidently do not go to proof of the acts and conduct of the Accused, and thus satisfies the requirements of admission through Rule 92*bis*.

V. CONCLUSION

19. For the reasons stated above, the Defence respectfully requests the Trial Chamber, in exercising its discretion, to admit into evidence, pursuant to Rule 92*bis*, the materials annexed to this motion.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 25th Day of August 2010
The Hague, The Netherlands

92*bis*(C)", 8 June 2002, para. 9. See also *Prosecutor v. Sesay et al.*, SCSL-04-15-1049, "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, p.2-3., See also *Prosecutor v. Galic*, IT-98-29-AR73.2, "Decision on Interlocutory Appeal Concerning Rule 92*bis*(C)", 8 June 2002, para. 9.

TABLE OF AUTHORITIES

Prosecutor v Taylor

Prosecutor v. Taylor, SCSL-03-01-T-556, “Decision on Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Kenema District and on Prosecution Notice Under Rule 92bis for the Admission of the Prior Testimony of TF1-036 Into Evidence”, 15 July 2008.

Prosecutor v. Taylor, SCSL-03-01-721, “Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’”, 6 February 2009.

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Prosecutor v. Taylor, SCSL-03-01-T-966, “Public with Annex A and Confidential Annex B Defence Witness Order for the Week 7 June-11 June 2010”, 25 May 2010

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcripts, 12 March 2008.

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcripts, 14 March 2008.

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcripts, 30 September 2009.

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcripts, 4 November 2009.

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CDF

Prosecutor v. Norman et al., SCSL-2004-14-AR73, “Fofana – Decision on Appeal against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, 16 May 2005.

Prosecutor v. Norman et al., SCSL-04-14-T-447, “Decision on Prosecution’s Request to Admit into Evidence Certain Documents Pursuant to Rule 92bis and 89(C)”, 14 July 2005.

AFRC

Prosecutor v. Brima et al., SCSL-04-16-T, “Decision on Joint Defence Application for Leave to Appeal from Decision n Defence Motion to Exclude All Evidence from Witness TF1-277”, 2 August 2005.

Prosecutor v. Brima et al., SCSL-04-16-T, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92*bis*”, 18 November 2005.

RUF

Prosecutor v. Sesay et al., SCSL-04-15-1049, “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

Prosecutor v. Galic, IT-98-29-AR73.2, “Decision on Interlocutory Appeal Concerning Rule 92*bis*(C)”, 7 June 2002.
[http://sim.law.uu.nl/sim/caselaw/tribunalen.nsf/eea9364f4188dcc0c12571b500379d39/a2755cfb491f7363c12571fe004be529/\\$FILE/Galic%20ACD%207-06-2002.pdf](http://sim.law.uu.nl/sim/caselaw/tribunalen.nsf/eea9364f4188dcc0c12571b500379d39/a2755cfb491f7363c12571fe004be529/$FILE/Galic%20ACD%207-06-2002.pdf)



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Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

This certificate replaces the following confidential document which has been filed in the Confidential Case File.

Case Name: **The Prosecutor – v- Charles Ghankay Taylor**

Case Number: **SCSL-03-01-T**

Document Index Number: **1061**

Document Date: **25 August 2010**

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Application

Order

Indictment

Response

Motion

Correspondence

Document Title:

Public with confidential Annexes A, B, C and D Defence motion for admission of documents pursuant to Rule 92bis- Autopsy Report

Name of Officer:

Alhassan Fornah

Signed: