

1067)

SCSL-03-01-T  
(30043 - 30049)

30043



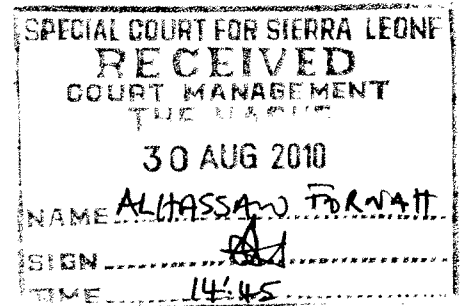
**SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR**

**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: 30 August 2010



**THE PROSECUTOR**

**Against**

**Charles Ghankay Taylor**

Case No. SCSL-03-01-T

---

**PUBLIC**

**PROSECUTION OBJECTIONS TO PUBLIC WITH ANNEX A DEFENCE MOTION FOR ADMISSION OF  
DOCUMENT PURSUANT TO RULE 92bis – ICTJ REPORT ON LIBERIAN TRUTH AND  
RECONCILIATION COMMISSION**

---

Office of the Prosecutor:

Ms. Brenda J. Hollis  
Ms. Leigh Lawrie  
Mr. Nathan Quick

Counsel for the Accused:

Mr. Courtenay Griffiths, Q.C.  
Mr. Terry Munyard  
Mr. Morris Anyah  
Mr. Silas Chekera  
Mr. James Supuwood

## I. INTRODUCTION

1. The Prosecution files these objections to the “Public with Annex A Defence Motion for Admission of Document Pursuant to Rule 92bis – ICTJ Report on Liberian Truth and Reconciliation Commission.”<sup>1</sup>
2. The Prosecution objects to the admission of extracts of the International Center for Transitional Justice report<sup>2</sup> as requested in the Motion as such admission does not satisfy the requirements of Rule 92bis. In the alternative, the Prosecution requests that: (i) the entire ICTJ Report be admitted,<sup>3</sup> as the proposed extract evidence cannot properly be read without reference to the Report in its entirety; and (ii) the entire Liberian Truth and Reconciliation Report<sup>4</sup> (“**Liberian TRC Report**”) be admitted in order to evaluate whether the ICTJ Report is accurate.

## II. ARGUMENT

### The Proposed Evidence is Irrelevant

3. The proposed evidence is irrelevant to the two stated purposes for which it is submitted.<sup>5</sup>
4. In relation to the first purpose, the extracts taken from the ICTJ Report do not undermine the reliability and probative value of evidence which was admitted purely for impeachment and memory refreshing purposes.<sup>6</sup> Contrary to the Defence’s assertions, the Prosecution cannot simply ignore the clear rulings of this Trial Chamber regarding the purpose for which each of the seven extracts of the Liberian TRC Report<sup>7</sup> were admitted and rely upon the evidence contained in them to prove a “consistent pattern of conduct” under Rule 93<sup>8</sup> or any other substantive fact related to the charges against the Accused. The rulings on admission in respect of *each* of the seven TRC Exhibits are clear. They were admitted for the limited

<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1060, Public with Annex A Defence Motion for Admission of Document Pursuant to Rule 92bis – ICTJ Report on Liberian Truth and Reconciliation Commission, 25 August 2010 (“**Motion**”).

<sup>2</sup> “Beyond the Truth and Reconciliation Commission: Transitional Justice Options in Liberia,” International Center for Transitional Justice, May 2010 (“**ICTJ Report**”).

<sup>3</sup> The full ICTJ Report can be found at: [http://www.ictj.org/static/Publications/ICTJ\\_LBR\\_BeyondTRC\\_pb2010.pdf](http://www.ictj.org/static/Publications/ICTJ_LBR_BeyondTRC_pb2010.pdf).

<sup>4</sup> The full Liberian TRC Report can be found at: <https://www.trcofliberia.org/reports/final>.

<sup>5</sup> See Motion, paragraphs 6, 10 and 13.

<sup>6</sup> Motion, para. 6.

<sup>7</sup> Exhibits P-412, P-414, P-429, P-451, P-454, P-463A/B/C and P-533 (collectively, “**TRC Exhibits**”).

<sup>8</sup> Motion, para. 11.

purpose of testing the reliability of witness evidence<sup>9</sup> and, indeed, the Defence did not oppose admission of six of them insofar as they were admitted for this limited purpose.<sup>10</sup> Accordingly, contrary to the requirements of Rule 92bis, the extracts of the ICTJ report are not relevant for the purpose stated in paragraphs 6, 10 and 11 of the Motion.

5. Even if documents relevant only to the reliability of impeachment evidence are admissible, the ICTJ Report largely does not undermine the reliability or probative value of the Liberian TRC Report as claimed in the Motion and so is irrelevant to that stated purpose.<sup>11</sup> First, the ICTJ Report focuses primarily on the implementation of the TRC Report's recommendations, not on an analysis of the TRC Report itself.<sup>12</sup> The TRC Exhibits are not taken from the Liberian TRC Report's recommendations. Therefore, the majority of the ICTJ Report's extracts are irrelevant to the TRC Exhibits. Second, the Motion recites at paragraph 7 drafting critiques suggesting that the TRC report could have been better referenced and sourced. Although, as the ICTJ Report's authors point out, such drafting problems could have made the TRC Report more easily substantiated, they *do not prevent* substantiation as much of the missing evidentiary bases are contained in Volume III and the as of yet unpublished, Volume IV of the TRC Report.<sup>13</sup> Third and as the ICTJ Report explains, the constitutional challenge to and public reception of the Liberian TRC Report relate to the "purported binding effect" and implementation of the TRC Report's recommendations,<sup>14</sup> not the reliability of the report or process which produced these recommendations. Therefore, the Defence's argument that the constitutional challenge has any relevance to the "probative

<sup>9</sup> See *Prosecutor v. Taylor*, SCSL-03-01-T-911, Public Prosecution List of Documents Marked for Identification during the Testimony of Charles Taylor sought to be Admitted into Evidence, 19 February 2010, para. 6 & Annex 1- this filing identifies that 6 of the exhibits were admitted for impeachment and memory refreshing purposes only. The subsequent Decision admitted *inter alia* the 6 exhibits for these purposes and did not find that any of them were probative of guilt (*Prosecutor v. Taylor*, SCSL-03-01-T-929, Decision on Public with Annexes A and B Defence Motion for Admission into Evidence of 301 Documents and Photographs Marked for Identification during the Evidence-in-Chief of the Accused And on Prosecution List of Documents Marked for Identification During the Testimony of Charles Taylor Sought to Be Admitted into Evidence, 18 March 2010). In relation to P-533 (which was not covered by the aforementioned Decision), Justice Lussick specifically noted that the exhibit was "introduced to impeach the credit of the witness and...does not go to proof of guilt of the accused" (Trial Transcript, 18 May 2010, p. 41061).

<sup>10</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-915, Public with Annex A Defence Response to Prosecution List of Documents Marked for Identification During the Testimony of Charles Taylor Sought to be Admitted into Evidence, 24 February 2009, para. 7.

<sup>11</sup> Motion, paras. 6-12.

<sup>12</sup> Motion, Annex A, ICTJ Report, pp. 3 (paras. 2, 3, 5), 4 (paras. 4, 6), 14 (paras. 5, 6), 15 (paras. 4, 5, 6), 16, 17.

<sup>13</sup> Motion, Annex A, ICTJ Report, p. 13, para. 1, last 2 sentences which comment on Vol. 4.

<sup>14</sup> Motion, Annex A, ICTJ Report, p. 17, para. 2 – "Ultimately, the key questions regarding constitutionality has to do with the purported binding effect of the TRC's recommendations."

value of the TRC's findings" is misleading.<sup>15</sup> The Defence also misled on the issue of the adoption of the Liberian TRC Report, insinuating that the failure of commissioners to sign has a bearing on "the degree of reliance the Trial Chamber will ultimately want to place on the Prosecution's exhibits"<sup>16</sup>. However, the Defence fails to include in the proposed evidence that portion of the ICTJ Report which explains that the commissioners who did not sign the TRC Report were not only accused by TRC witnesses of "active involvement in Liberia's conflict," but were also not involved in the drafting of the report.<sup>17</sup> Moreover, at least one of their dissents objected to the recommendations concerning prosecution and public sanction and makes no mention of reliability of the report's findings.<sup>18</sup> Finally, the remaining criticisms of the Liberian TRC Report relate to the method of presenting statistics<sup>19</sup> and areas which required further possible exploration.<sup>20</sup> But neither of these observations impact on the reliance which can be placed on the information referred to in the TRC Exhibits.

6. Therefore, even if the ICTJ Report is relevant to the Chamber's consideration of impeachment evidence, it is not relevant to undermining the accuracy, reliability and credibility of the TRC Exhibits which contain only findings and facts, not the recommendations and implementation strategies primarily questioned in the ICTJ Report.
7. Further, evidence relevant only to the *credibility of credibility evidence* is evidence collateral to a degree which makes it irrelevant and thus justifies exclusion. As noted by Trial Chamber I, "questions in cross-examination designed *solely* at discrediting a witness or impeaching the witness' credibility are essentially collateral in nature if they do not touch on an issue which the Court is necessarily required to determine such as an element of the offence."<sup>21</sup> The Prosecution acknowledges that the present situation is not "[t]he typical legal situation calling for the application of the so-called collateral-fact rule".<sup>22</sup> However, the underlying principle of this rule – finality – should be applied to the present application and the proposed evidence

<sup>15</sup> Motion, para. 8.

<sup>16</sup> Motion, para. 12.

<sup>17</sup> See the full ICTJ Report at pp. 9 (para. 4 & footnote 30) and 10 (para. 5).

<sup>18</sup> *Ibid.*, p. 10.

<sup>19</sup> Motion, Annex A, ICTJ Report, p. 14, para. 7.

<sup>20</sup> Motion, Annex A, ICTJ Report, p. 15, para. 2.

<sup>21</sup> *Prosecutor v. Norman et al.*, SCSL-04-14-T-328, Ruling on Defence Oral Application to Call OTP Investigators Who Took Down in Writing Statements of Prosecution Witness TF2-021, 7 December 2004, para. 20 ("**Norman Decision**").

<sup>22</sup> *Ibid.* The typical application of the collateral-fact rule is to prevent evidence being subsequently adduced by the party who asked a question in cross-examination to rebut the answer given by the witness.

excluded.

8. Indeed, the above criticisms apply equally to the Defence's request to have the proposed evidence admitted to corroborate the testimony of the Accused on his views of the authenticity and factual reliability of the TRC Report.<sup>23</sup> As discussed, the ICTJ Report is irrelevant to undermining the findings and facts of the Liberian TRC Report. Further, the Accused's views on the Liberian TRC Report are clearly collateral and "do not touch on an issue which the Court is necessarily required to determine."<sup>24</sup>

*The Proposed Evidence Includes Opinion Evidence*

9. As the Defence correctly states, Rule 92*bis* excludes the admission of opinion evidence.<sup>25</sup> Yet, the majority of the ICTJ Report does not just "tend toward opinion evidence"<sup>26</sup> but clearly is opinion evidence. By definition a review and critique is the author's opinion. For example, the alleged difficulty of implementation,<sup>27</sup> the ICTJ's reservations on some of the recommendations,<sup>28</sup> the view that this is a "crucial moment in the history of the Liberian nation",<sup>29</sup> the "best practices" to be employed by a truth commission,<sup>30</sup> and drafting critiques are just a few of the many opinions contained in the report. Moreover, the authors declare that the purpose of the ICTJ Report as a whole was to make proposals and suggestions – in other words provide opinions - "as a general roadmap on what actors can do to begin...moving forward with further transitional justice efforts."<sup>31</sup> Thus, as the majority of the ICTJ Report is opinion evidence, it cannot be admitted under Rule 92*bis*.

*In the Alternative, the entire ICTJ Report and Liberian TRC Report should be Admitted*

10. Finally, the extracts of the ICTJ Report cannot be fully considered without admission of the entire document. As demonstrated above, portions of the proposed evidence are explained and analyzed in other sections of the ICTJ Report not included in Annex A of the Motion. Moreover, as the executive summary was included in Annex A, all those portions of the

<sup>23</sup> Motion, para. 13.

<sup>24</sup> *Norman* Decision, para. 20.

<sup>25</sup> Motion para. 16.

<sup>26</sup> *Ibid.*

<sup>27</sup> Motion, Annex A, ICTJ Report, p. 15.

<sup>28</sup> Motion, Annex A, ICTJ Report, p. 4, para. 2.

<sup>29</sup> *Ibid.*, p. 4, para. 5.

<sup>30</sup> *Ibid.*, p. 15, para. 5.

<sup>31</sup> *Ibid.*, p. 4, para. 6.

Report summarized therein should be included so as to provide context and reference to those assertions and summaries made. Therefore, should the ICTJ Report be admitted, it should be admitted in its entirety, rather than the piecemeal fashion proposed by the Defence.

11. Likewise, the ICTJ Report cannot be properly evaluated by the Trial Chamber unless the subject of that Report is also admitted into evidence. The ICTJ Report reviews the entire Liberian TRC Report but the TRC Exhibits are only isolated extracts thereof. Should the Trial Chamber be minded to admit the ICTJ Report in whole or in part, the material is not complete unless the Liberian TRC Report itself is also admitted.

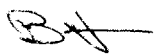
### III. CONCLUSION

12. As set out above, the proposed evidence cannot be admitted pursuant to Rule 92*bis* as it is irrelevant to the stated purposes, is collateral and contains opinion evidence.
13. If the Trial Chamber determines that the ICTJ Report is to be admitted, then: (i) the entire Report; and (ii) the entire Liberian TRC Report, should be admitted as the portions contained in the proposed evidence cannot be properly read, understood and assessed without reference to both these documents in their entirety.

Filed in The Hague,

30 August 2010,

For the Prosecution,



---

Brenda J. Hollis,

The Prosecutor

## INDEX OF AUTHORITIES

### SCSL

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

*Prosecutor v. Taylor*, SCSL-03-01-T-915, Public with Annex A Defence Response to Prosecution List of Documents Marked for Identification During the Testimony of Charles Taylor Sought to be Admitted into Evidence, 24 February 2009

*Prosecutor v. Taylor*, SCSL-03-01-T-929, Decision on Public with Annexes A and B Defence Motion for Admission into Evidence of 301 Documents and Photographs Marked for Identification during the Evidence-in-Chief of the Accused And on Prosecution List of Documents Marked for Identification During the Testimony of Charles Taylor Sought to Be Admitted into Evidence, 18 March 2010

*Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 18 May 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-1060, Public with Annex A Defence Motion for Admission of Document Pursuant to Rule 92*bis* – ICTJ Report on Liberian Truth and Reconciliation Commission, 25 August 2010

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

*Prosecutor v. Norman et al.*, SCSL-04-14-T-328, Ruling on Defence Oral Application to Call OTP Investigators Who Took Down in Writing Statements of Prosecution Witness TF2-021, 7 December 2004