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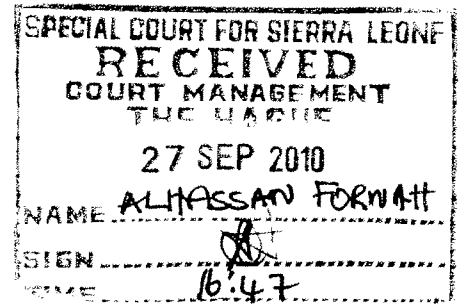
**SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR**

**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: 27 September 2010



**THE PROSECUTOR**

**Against**

**Charles Ghankay Taylor**

Case No. SCSL-03-01-T

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**PUBLIC**

**PROSECUTION OBJECTIONS TO PUBLIC WITH ANNEX A DEFENCE MOTION FOR ADMISSION OF DOCUMENTS PURSUANT TO RULE 92bis – NEWSPAPER ARTICLE**

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

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 Documents Pursuant to Rule 92bis – Newspaper Article”.<sup>1</sup>
2. The Defence has properly crossed out all portions of a newspaper article except for three paragraphs it wishes the Court to admit, as the crossed out portions contain improper public comment by the lead Defence Counsel. As for the three paragraphs sought to be admitted pursuant to Rule 92bis (the “**Newspaper Extract**”), the Prosecution opposes their admission as they do not satisfy the requirements of Rule 92bis.

## II. ARGUMENT

### Newspaper Extract does not satisfy the requirements of Rule 92bis

#### *Evidence is irrelevant*

3. The Defence arguments that the Newspaper Extract is relevant are based on a misrepresentation of Prosecution submissions, Prosecution evidence and the Prosecution case. The Defence erroneously assert that “the issue of Mr. Taylor’s travel to South Africa in order to purchase arms is one of the central issues of the Prosecution’s case” and cite in support paragraph 2 of the Prosecution’s motion to call three additional witnesses.<sup>2</sup> A plain reading of the Motion to Reopen indicates that the Defence’s assertion is completely inaccurate. The Prosecution’s “central issue” is clearly identified as “the Accused’s possession of rough diamonds.”<sup>3</sup> At paragraph 15 of the Motion to Reopen further detail is provided regarding how the Accused’s trip to South Africa was part of a larger itinerary encompassing travel to Libya and Burkina Faso. It is clearly stated in this paragraph 15 that the Prosecution’s claim is that the Accused arranged the shipment of arms *from Burkina Faso*.
4. In seeking to bolster its specious argument, the Defence cites to the evidence of Dr. Ellis.<sup>4</sup> It is not entirely clear what the thrust of the Defence’s argument is regarding this expert’s evidence. However, it would appear, at best, that the Defence is suggesting Dr. Ellis

<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1087, Public with Annex A Defence Motion for Admission of Documents Pursuant to Rule 92bis – Newspaper Article, 24 September 2010 (“**Motion**”).

<sup>2</sup> Motion, para. 9, footnotes 6 & 7. The Prosecution motion cited is *Prosecutor v Taylor*, SCSL-03-01-T-962, Public with Confidential Annexes A and B Prosecution Motion to Call Three Additional Witnesses, 20 May 2010, hereinafter referred to as the “**Motion to Reopen**”.

<sup>3</sup> Motion to Reopen, para. 2.

<sup>4</sup> Motion, para. 10.

claimed the Accused purchased arms from South Africa. A clear reading of this witness' evidence demonstrates that he made no such claim.<sup>5</sup> Dr. Ellis simply testified that the Accused had a "contractual relationship with military operatives from South Africa" (in respect of which see further submissions below) and that the Accused (himself) "facilitated the import of weapons" from places unspecified by Ellis. No mention is made by Dr. Ellis of the Accused doing business with South African arms manufacturers.

5. Indeed, looking at the evidentiary record in this case as a whole, it is clear that the Accused's purchase of arms from South African arms manufacturers is not a central tenet of the Prosecution case. Evidence has been led during the Prosecution and Defence case regarding the Accused's links with the South African military operative, Fred Rindel, who trained the ATU and SSS, and the South African citizen, Nico Shefer. However, no other evidence regarding South African military involvement has been led. While it is the Prosecution's position that the Accused received arms and ammunition from, through, or with the active assistance of, several governments in Africa, including Burkina Faso and Libya, the Prosecution has never posited that the government of South Africa was involved in any war materiel transactions. The Newspaper Extract, therefore, bears absolutely no relevance to this case.
6. Further, if, *arguendo*, the Trial Chamber finds the Defence assertion to be correct (which is denied) that there is a live issue that the Accused travelled to South Africa in order to purchase arms there, then there is certainly no suggestion that the Accused would have made such purchase legitimately such that it would have been recorded in the National Conventional Arms Control Committee records. For this additional reason, the Newspaper Extract is irrelevant.

*Evidence is not susceptible of confirmation*

7. Additionally, the Newspaper Extract should not be admitted as its reliability is not susceptible of confirmation. The Defence argument under this head relies on the

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<sup>5</sup> In Court, Prosecution Counsel referred Dr. Ellis to a section of his expert report. The relevant section is as follows: "The weight of the evidence suggests that President Taylor paid close personal interest in relations with the RUF and that he supervised the trade in diamonds from Sierra Leone to Liberia notwithstanding his statements to the contrary. He also had a contractual relationship with military operatives from South Africa and elsewhere who were acting in support of the RUF. He facilitated the import of weapons, some of which appear to have been transmitted to the RUF to aid the latter's war effort" (see Trial Transcript, 16 January 2008, p. 1448, lines 17-24).

corroboration it asserts is provided by Prosecution witnesses.<sup>6</sup> However, as is evident from the above discussion, no such evidence has been led which is capable of corroborating the statements of the South African Justice Minister contained in the Extract. It is acknowledged that this Trial Chamber has stated that the “capable of corroboration” test does not require every point of evidence tendered under Rule 92bis to be corroborated by other evidence adduced at trial’.<sup>7</sup> However, this element is still a necessary part of the Rule 92bis standard for admission and cannot be ignored. It is common sense that, if in the closing stages of the trial there is no evidence currently (nor is there likely to be) on record to support it, it will not be capable of corroboration in due course.<sup>8</sup>

*Evidence goes to proof of the acts and conduct of the Accused*

8. The limitation that Rule 92bis evidence cannot go to the acts and conduct of the Accused applies equally to Defence submissions under that Rule.<sup>9</sup> The Newspaper Extract clearly contains evidence of the acts and conduct of the Accused relevant to proving his liability as charged in the indictment and so should be refused admission.<sup>10</sup> The thrust of the Extract is not “merely ... the South African arms authorization.”<sup>11</sup> Indeed, if it was, it would seem pointless for the Defence to seek to have it admitted. Rather, the focus of the Extract is the denial that the Accused has ever done business with South Africa or its arms manufacturers.<sup>12</sup>
9. The jurisprudence is clear that “conduct” includes an omission to act.<sup>13</sup> This Trial Chamber has also found that:

“Rule 92bis excludes any written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish that the accused planned, instigated, ordered, or committed any of the crimes charged, or aided and abetted in the planning, preparation or execution of

<sup>6</sup> Motion, para. 12.

<sup>7</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-739, Decision on Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies, 20 February 2009, para. 37.

<sup>8</sup> Based on current Defence indications, no further live witnesses will be led, although it is acknowledged that no definitive statement on this has been made.

<sup>9</sup> *Prosecutor v. Sesay et al*, SCSL-04-15-T-1125, Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements under Rule 92bis, 15 May 2008.

<sup>10</sup> The type of acts and conduct excluded by Rule 92bis is set out in *Prosecutor v. Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92bis(C), 7 June 2002 (“*Galić Decision*”), para. 10.

<sup>11</sup> Motion, para. 13.

<sup>12</sup> See paras. 2 & 3 of the Newspaper Extract.

<sup>13</sup> *Galić Decision*, para. 11.

such crimes ... Where the prosecution alleges that the accused participated in a joint criminal enterprise, Rule 92bis excludes any written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish that he had participated in that joint criminal enterprise.”<sup>14</sup>

10. The Defence is seeking the admission of the Newspaper Extract to counter the Prosecution’s allegations that he is liable for the commission of crimes as encapsulated in the paragraph above. As such, the evidence goes to proof of the acts and conduct of the Accused relevant to at least one form of criminal liability, and is thus inadmissible under Rule 92bis.

### III. CONCLUSION

11. As set out above, the Prosecution objects to the admission of the Newspaper Extract. Accordingly, the Motion should be refused.

Filed in The Hague,

27 September 2010,

For the Prosecution,



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Brenda J. Hollis,

The Prosecutor

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<sup>14</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-736, Decision on Prosecution Motion for Admission of Liberia Search Documents, 18 February 2009, para. 20 (footnotes omitted).

**INDEX OF AUTHORITIES****SCSL*****Prosecutor v. Taylor, SCSL-03-01-T***

*Prosecutor v Taylor*, SCSL-03-01-T, Trial Transcript, 16 January 2008

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

*Prosecutor v. Taylor*, SCSL-03-01-T-739, Decision on Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies, 20 February 2009

*Prosecutor v Taylor*, SCSL-03-01-T-962, Public with Confidential Annexes A and B Prosecution Motion to Call Three Additional Witnesses, 20 May 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-1087, Public with Annex A Defence Motion for Admission of Documents Pursuant to Rule 92*bis* – Newspaper Article, 24 September 2010

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

*Prosecutor v. Sesay et al*, SCSL-04-15-T-1125, Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements under Rule 92*bis*, 15 May 2008

**ICTY**

*Prosecutor v. Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C), 7 June 2002  
(See URL in Motion)