

SPECIAL COURT FOR SIERRA LEONE

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Document: **DEFENCE RESPONSE TO PROSECUTION MOTION FOR ADMISSION OF DOCUMENT PURSUANT TO RULE 89(C)**

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Signed:



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THE SPECIAL COURT FOR SIERRA LEONE

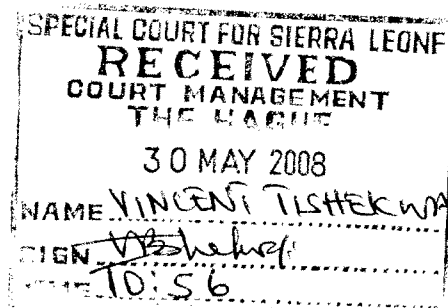
In Trial Chamber II

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

Registrar: Mr. Herman von Hebel, Registrar

Date: 29 May 2008

Case No.: SCSL-2003-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**DEFENCE RESPONSE TO PROSECUTION MOTION
FOR ADMISSION OF DOCUMENT PURSUANT TO RULE 89(C)**

Office of the Prosecutor

Ms. Brenda J. Hollis

Ms. Leigh Lawrie

Counsel for Charles G. Taylor

Mr. Courtenay Griffiths Q.C.

Mr. Terry Munyard

Mr. Andrew Cayley

Mr. Morris Anyah

I. Introduction

1. On 19 May 2008, the Prosecution filed a *Motion for Admission of Document Pursuant to Rule 89(C)* (“Motion”),¹ seeking admission of United Nations Security Council Resolution 1315 (2000) pursuant to Rules 73 and 89(C) of the Special Court Rules of Procedure and Evidence (“Rules”).
2. The Prosecution unsuccessfully attempted to admit the same Resolution 1315 during the course of trial on 14 May 2008 through witness TF1-571, to whom the Prosecution claims the document is relevant.²
3. The Defence maintains its initial objection to the admission of Resolution 1315, namely, that the document should not be submitted “through thin air”.³ The Prosecution should not now be allowed to admit this document through the “back door” via Rule 89(C). To allow the admission of Resolution 1315 under Rule 89(C) would be to manifestly prejudice the accused for reasons elaborated hereinafter.

II. Submissions

Admission of Documents Under Rules 89(C) and 92bis

4. The Prosecution cannot seek admission of Resolution 1315 solely on the basis of Rule 89(C). The Prosecution state in the Motion that any evidence admitted under Rule 89(C) must not be overly prejudicial or bring the administration of justice into serious disrepute.⁴ In this instance the admission of resolution 1315 under Rule 89(C) would manifestly prejudice the accused.

¹ *Prosecutor v. Taylor*, SCSL-03-1-T-510, Prosecution Motion for Admission of Document Pursuant to Rule 89(C), 19 May 2008 (“Motion”).

² Motion, para. 2.

³ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 May 2008, pg. 9781, ln. 22.

⁴ Motion, para. 9.

5. While the Rules may “favour a flexible approach” to the admission of evidence,⁵ this does not rob the Trial Chamber of its roles as the guardian of fairness in the trial and the ultimate arbiter of what evidence should or should not be admitted for consideration.
6. The Prosecution recognizes that Rule 92*bis* is titled “Alternative Proof of Facts” and that the Presiding Judge, when denying the admission of Resolution 1315 through witness TF1-571, specifically stated “There are provisions in the rules of alternative proof of facts and we do not consider this tender through this witness is an appropriate procedure in this instance”.⁶ Yet, the Prosecution avoids attempting to submit the document via this Rule.
7. The Prosecution avoids seeking the admission of Resolution 1315 through Rule 92*bis* because the amended rule now requires that such evidence “do(es) not go to the proof of the acts and conduct of the accused”. The Prosecution have stated that they wish to introduce Resolution 1315 in relation to the issue of “public notice [to the Accused] of the atrocities in Sierra Leone”,⁷ which goes to an element of the Accused’s alleged state of mind or conduct. Such evidence would necessarily be excluded under Rule 92*bis*.

The Relevance and Prejudice of Resolution 1315

8. On 14 May 2008, the Prosecution attempted the submission of Resolution 1315 into evidence after completing the re-examination of witness TF1-571. In doing so, the Prosecution wanted to provide support for the reliability of the conversation between the witness and Sam Bockarie, regarding the pressure Mr. Taylor was facing from the international community to hand over Sam Bockarie to the Government of Sierra Leone. They attempted to link the pressure on Mr. Taylor to Mr. Taylor’s potential knowledge of the existence of the Special Court via Resolution 1315.
9. The real issue here was whether witness TF1-571 was aware of Resolution 1315 himself, or whether witness TF1-571 was aware that Mr. Taylor was aware of Resolution 1315 at

⁵ Motion, paras. 6 and 7.

⁶ Motion, para. 11; *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 May 2008, pg. 9784, lns. 1-3.

⁷ Motion, para. 16.

the time of his alleged conversation with Sam Bockarie. Witness TF1-571 stated on cross-examination that he was not aware of the Security Council, much less Resolution 1315.⁸ Furthermore, witness TF1-571 did not give any testimony as to whether Mr. Taylor knew about Resolution 1315.

10. Thus, the Prosecution's witness gave unsupported hearsay evidence about a potentially incriminating conversation between Sam Bockarie and Mr. Taylor. The Defence cannot ask Sam Bockarie about whether the conversation actually took place, as Sam Bockarie is dead. Consequently, it is prejudicial to attempt to increase the evidentiary weight of the conversation by tendering a document which was never put to the witness. The Trial Chamber was quite right in not allowing the admission of the document through witness TF1-571.⁹
11. Moreover, the document cannot be used to indirectly demonstrate the state of mind or knowledge of Mr. Taylor, since the witness did not know about the document himself and made no comment as to whether Mr. Taylor knew about Resolution 1315 at the time of the alleged conversation between Mr. Taylor and Sam Bockarie.
12. Thus, the prejudicial effect of admitting this document to make an unfounded inference about Mr. Taylor's state of mind or knowledge during a conversation between a dead person and the Accused, for which witness TF1-571 was not even present, would manifestly outweigh its probative value. Such extreme prejudice is prohibited by Special Court jurisprudence.¹⁰ To admit this document for this purpose would impact adversely and unfairly upon the integrity of the proceedings before the Court.¹¹
13. The Prosecution have argued that for evidence to be admitted, it must only be found relevant, and that the probative nature of the evidence should only be considered after

⁸ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 May 2008, pg. 9757, lns. 4-11.

⁹ *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 May 2008, pg. 9783, lns. 28 – 29.

¹⁰ Motion, para. 9.

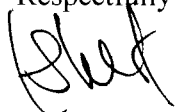
¹¹ Motion, para. 9; *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-391, Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker, 23 May 2005, para. 8.

admission.¹² However, the consideration of the probative value against the prejudicial effect of admitting Resolution 1315 must be considered prior to admission into evidence.

III. Conclusion

14. Resolution 1315 is inadmissible under Rule 89(C) because its admission would manifestly prejudice the accused. The Defence respectfully requests the Trial Chamber should dismiss the Prosecution motion and should exclude Resolution 1315 from admission into evidence.

Respectfully Submitted,



SCUPS CARRERA

Mr. Courtenay Griffiths, QC
Lead Counsel for Mr. Charles Taylor
Dated this 29th Day of May 2008
The Hague, The Netherlands

¹² Motion, para. 8.

Table of Authorities

Prosecutor v. Taylor, SCSL-03-01-T-510, Prosecution Motion for Admission of Document Pursuant to Rule 89(C), 19 May 2008

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcript, 14 May 2008

Prosecutor v. Sesay, Kallon, Gbao, SCSL-04-15-T-391, Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker, 23 May 2005

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