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SCSL-03-01-T
(24141-24143)

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THE SPECIAL COURT FOR SIERRA LEONE

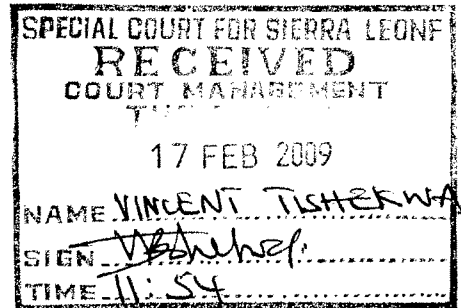
Trial Chamber II

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

Registrar: Mr. Herman von Hebel

Date: 17 February 2009

Case No.: SCSL-2003-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

DEFENCE RESPONSE TO PROSECUTION MOTION FOR ADMISSION OF DOCUMENTS PURSUANT TO RULES 89(C) AND 92BIS

Office of the Prosecutor:
Ms. Brenda J. Hollis
Ms. Ula Nathai-Lutchman

Counsel for the Accused:
Mr. Courtenay Griffiths Q.C.
Mr. Andrew Cayley
Mr. Terry Munyard
Mr. Morris Anyah

I. Introduction

1. This is the Defence's Response to the *Prosecution Motion for Admission of Documents pursuant to Rules 89(C) and 92bis* (the "Motion")¹ filed on 12 February 2009.
2. The Defence opposes the Motion on the basis that the procedure that the Prosecution seeks to adopt to tender the Document at issue is not tenable. It is not possible, as a procedural issue, to tender a document under Rule 89(C) and Rule 92bis conjunctively.

II. Argument

3. The relationship between Rule 89(C) and 92bis has now been clearly explained in the Appeals Chamber *Decision on Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents*.² As the Appeals Chamber opines, '[i]t is not apt to describe Rule 92bis as the *lex specialis* to the *lex generalis* of Rule 89(C) because both do not apply to exactly the same situation.' Although both rules are complementary, they are internally inconsistent.³
4. Rule 92bis establishes specific protections for evidence submitted in the absence of a witness, subject to a number of procedural safeguards. Rule 89(C) on the other hand, does not enact any special procedures because under that Rule information can be admitted as part of oral testimony of a witness provided it is relevant. *'The consequence of this is that any information that does not go to proof of the acts and conduct of the accused not tendered through a witness, should be submitted under Rule 92bis if it is sought to be admitted in lieu of oral testimony.'*⁴
5. In the Motion, the Prosecution overlooks that Rule 92bis is a self contained provision that does not require the importation of the requirement of relevance from Rule 89(C).

¹ *Prosecutor v Taylor*, SCSL-03-01-T-723, "Public Prosecution Motion for Admission of Documents pursuant to Rules 89(C) and 92bis", 12 February 2009

² *Prosecutor v Taylor*, SCSL-03-01-AR73, "Decision on 'Prosecution Notice of Appeal and Submission Concerning the Decision Regarding the Tender of Document'", 6 February 2009 ("the Appeals Chamber Decision")

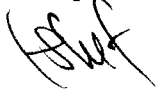
³ *Ibid*, para. 33.

⁴ *Ibid*, para. 34.


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6. On the basis of foregoing, the Motion should be dismissed as the Prosecution has adopted the wrong procedure.

Respectfully Submitted,



SILVAS CHEKELA

 **Courtenay Griffiths Q.C.**
Lead Counsel for Charles G. Taylor
Dated this 17th Day of February 2009
The Hague, The Netherlands