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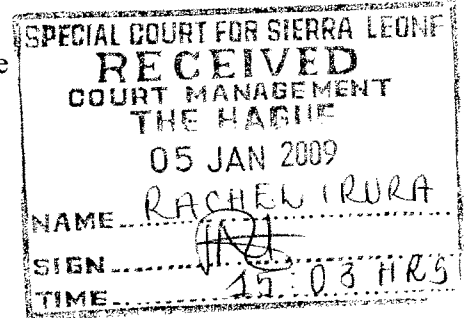
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SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

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

Registrar: Mr. Herman von Hebel

Date filed: 5 January 2009



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

**PROSECUTION REPLY TO DEFENCE RESPONSE TO PROSECUTION MOTION FOR ADMISSION OF
DOCUMENTS OF CERTAIN INTERGOVERNMENTAL ORGANISATIONS & OF CERTAIN
GOVERNMENTS**

Office of the Prosecutor:
Ms. Brenda J. Hollis
Ms. Julia Baly

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

I. INTRODUCTION

1. The Prosecution files this Reply to the “Public Defence Response to Prosecution Motion for Admission of Certain Intergovernmental Organisations & of Certain Governments”.¹

II. REPLY

Applicable Legal Principles

2. In its Response, the Defence incorporates by reference arguments contained in separate filings regarding the legal principles to be applied to the admission of documents.² The Prosecution has filed replies to the separate filings addressing those arguments.³ Accordingly, the Prosecution relies on and incorporates by reference its submissions made therein.
3. The Prosecution emphasizes, though, that the matter at issue is the ability of the Parties to bring relevant evidence before this Chamber. The Defence arguments contained in the Response are fundamentally flawed as they ignore the fact that two rules are used at the ICTY and ICTR for the introduction of evidence other than through live testimony – Rules 89 and 92bis.⁴ These rules are used in tandem. Nonetheless, the Defence seeks to impose on the SCSL the interpretation and use made by the ICTY and ICTR of Rule 92bis without also extending to the SCSL these tribunals’ interpretation and use of Rule 89(C).

Admission under Rules 89(C) & 92bis

Acts and conduct of the Accused

4. In paragraph 4 of the Response, the Defence claims that the documents go “directly to the acts and conduct of the Accused and therefore it would be highly prejudicial for the documents to be admitted without a witness who could speak to their contents and authenticity.” The Defence further submits that many of the documents talk directly about the Accused and his involvement in the Sierra Leonean conflict. This claim is

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-695, “Public Defence Response to Prosecution Motion for Admission of Documents of Certain Intergovernmental Organisations & of Certain Governments,” 12 December 2008 (“**Response**”).

² Response, para. 3.

³ *Prosecutor v. Taylor*, SCSL-03-01-T-670, “Public Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies,” 17 November 2008 (“**UN Documents Reply**”).

⁴ In the context of the current issue, Rules 92ter and 92quater are not relevant and so are not discussed.

incorrect. None of the material that the Prosecution seeks to have admitted speaks directly of the involvement of the Accused. Despite this error, the Prosecution has acknowledged at paragraph 16 of the Motion that the documents do contain evidence which might be considered acts and conduct of the Accused as defined and limited by the jurisprudence. However, as discussed in paragraphs 9 and 10, that fact does not dictate that the documents are not admissible in the absence of a witness.

Evidence going to a critical element of the Prosecution case

5. The Defence arguments at paragraphs 6 through 8 of the Response should be dismissed. The Defence claim that the documents contain evidence that goes to a “critical element” of the Prosecution’s case is entirely contradicted by what is claimed in the annex to the Response, namely that every document is “Not sufficiently significant”. The documents cannot be both critical and not significant.
6. However, the “significance” of the evidence is overstated by the Defence. While it is important, it is not in and of itself critical. In this regard, the ICTR Appeals Chamber’s dicta in *Karemera* regarding the type of facts which might properly be the subject of judicial notice is helpful in considering this type of objection and which facts properly fall within its scope:

“The Appeals Chamber ... has never gone so far as to suggest that judicial notice under Rule 94(B) cannot extend to facts that “go directly or indirectly” to the criminal responsibility of the accused (or that “bear” or “touch” thereupon). With due respect to the Trial Chambers that have so concluded, the Appeals Chamber cannot agree with this proposition, as its logic, if consistently applied, would render Rule 94(B) a dead letter. The purpose of a criminal trial is to adjudicate the criminal responsibility of the accused. Facts that are not related, directly or indirectly, to that criminal responsibility are not relevant to the question to be adjudicated at trial, and, as noted above, thus may neither be established by evidence nor through judicial notice. So judicial notice under Rule 94(B) is in fact available *only* for adjudicated facts that bear, at least in some respect, on the criminal responsibility of the accused.”⁵

It is clear that the documents are not central themselves to determining the liability of the Accused for the crimes set out in the Second Amended Indictment.

7. The Prosecution also notes that, in paragraph 7 of the Response, the Defence relies on

⁵ *Prosecutor v. Karemera*, ICTR-98-44-AR73(C), “Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice”, Appeals Chamber, 16 June 2006, para. 50.

dicta from the *Kenema Decision* which is itself concerned with the admission of statements and/or testimony in lieu of live testimony and is based on jurisprudence from the ICTY relating to its Rule 92bis, which applies only to statements or testimony of witnesses, in particular sub-part (C) which deals with statements of persons not available for a variety of reasons.⁶ As noted above, however, evidence which might be considered pivotal or proximate to the Accused and which is not contained in a witness statement or transcript is admitted at the ICTY under a different rule.

8. Should, *arguendo*, the Chamber decide that: (i) the documents do contain evidence which goes to proof of the acts and conduct of the Accused (as defined and limited by the jurisprudence) or evidence which goes to a critical element of the Prosecution case and is therefore proximate to the Accused; and (ii) such evidence may not be admitted, then such information may be redacted from the documents.⁷

Documents may be tendered absent a witness

9. The Defence argument that a witness is required to speak to the contents and relevance of the Documents is without merit.⁸ The Prosecution has replied to this argument in the context of a similar reply⁹ and, therefore, relies on and incorporates by reference its submissions made therein at paragraph 5, substituting any reference therein to “RUF Documents” with a reference to “Intergovernmental and Government Documents”. The parties will have every opportunity to address the significance of the documents and the weight that should be afforded to them and the Trial Chamber is perfectly able to determine the significance and weight, based on the content of the documents themselves in the context of all the evidence in the case and based on the parties’ submissions.
10. Therefore, as noted above and in the RUF Documents Reply, as authenticity is not a

⁶ This decision cites to *Prosecutor v. Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92bis(C), 7 June 2002.

⁷ This procedure conforms to the procedure adopted at the ICTR. At the ICTR, statements tendered pursuant to Rule 92bis are reviewed. Where a statement is tendered which includes information that falls within Rule 92bis and information that falls outside the Rule, the statement is admitted, but the paragraphs or information that fall outside the Rule are simply not admitted into evidence. See, for example, *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, “Decision on Prosecutor’s Motion for the Admission of Written Witness Statements Under Rule 92bis,” 9 March 2004. This procedure has now been adopted at the SCSL – see *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1049, “Decision on Defence Application for the Admission of the Witness Statement of DIS-192 under Rule 92bis or, in the alternative, under Rule 92ter,” 12 March 2008.

⁸ Response, paras. 4, 9-11.

⁹ *Prosecutor v. Taylor*, SCSL-03-01-T-680, “Public Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents Seized from RUF Office, Kono District”, 1 December 2008 (“**RUF Documents Reply**”).

condition of admission under either Rule 89(C) or Rule 92bis, the Defence argument should be dismissed.

Probative value of the documents is not substantially outweighed by their prejudicial effect

11. The bases for exclusion identified by the Defence in paragraphs 12 through 14 of the Response are without merit. The Defence's second ground repeats the argument made in another similar response.¹⁰ Therefore, the Prosecution relies on and incorporates by reference its submissions made in reply thereto at paragraph 10.¹¹

Admission under Rule 89(C)

12. As noted in previous submissions, the exclusionary conditions set out in the *Kordić* and *Čerkez* case are legally and factually irrelevant to the matters at issue and should not be applied to the admission of the instant Documents.¹² In relation to the application of this ICTY case to the current proceedings, the Prosecution refers the Chamber to its previous submissions.¹³
13. First, the Defence objects to the document at Tab 1 of the Motion on the basis that this document has already been considered by the Trial Chamber.¹⁴ The Defence is correct that this document has been "considered," applying the broadest sense of the word, by the Trial Chamber in the context of a previous motion seeking its admission.¹⁵ However, this Chamber dismissed the 2007 Motion without prejudice, establishing certain criteria for future consideration.¹⁶ Therefore, while this document has been considered previously, no decision has been made as to its exclusion or admission in the current proceedings.
14. Second, the Defence objection that the documents are not sufficiently significant¹⁷ runs contrary to their arguments at paragraphs 6 through 8 of the Response that the documents are by their very nature "critical and proximate." Setting aside the inherent inconsistency

¹⁰ See para. 17 of *Prosecutor v. Taylor*, SCSL-03-01-T-677, "Public Defence Response to Prosecution Motion for Admission of Documents Seized from RUF Office, Kono District," 24 November 2008.

¹¹ RUF Documents Reply, para. 10.

¹² Response, para. 22 and the Annex to the Response. Paragraph 22 of the Response refers to arguments set out in Annex B. However, the Prosecution observes that there is only one annex to the Response which has the cover sheet "Annex A" but the annex itself is actually headed "Annex B".

¹³ See UN Documents Reply, para. 7.

¹⁴ Response, para. 16.

¹⁵ The Prosecution requested admission of these documents in *Prosecutor v. Taylor*, SCSL-03-01-PT-241,

"Prosecution Motion for Admission of Material Pursuant to Rules 92bis and 89C," 17 May 2007 ("**2007 Motion**").

¹⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-369, "Decision on Prosecution's Motion for Admission of Material Pursuant to Rules 89(C) and 92bis," 7 December 2007.

¹⁷ Response, para. 16.

of the Defence approach, the significance of the Documents is stated in the Annex to the Motion. Even assuming, *arguendo*, the evidence is not individually significant, as noted by the Appeal Chamber in the *Fofana* Bail Appeals Decision¹⁸, the fact that isolated items of evidence have “some relevance means that they must be available for counsel to weave into argument and for the Judge to have before him in deciding what to make of the overall factual matrix.”¹⁹

15. Further, the Defence contends that a number of the documents contain “cumulative” evidence and therefore should be excluded²⁰. Yet the exclusion of documents that repeat evidence already adduced at trial, as the Defence suggests, is unimaginable. The evidentiary concepts of corroboration and confirmation of evidence rely in part on consistency of evidence from more than one source. In addition, exclusion of evidence is only considered where it is **unduly** cumulative and so risks prolonging the trial. This is not a relevant consideration in this instance.
16. The Defence also argues that the documents are outside the scope of the Indictment and therefore should be excluded.²¹ . The Prosecution relies upon arguments presented in previous replies to similar motions²² and reiterates that such evidence is clearly relevant and admissible.
17. The Defence also argues for exclusion of the documents because the information comes from “Anonymous/ hearsay”²³ sources. The Prosecution relies upon arguments presented in previous replies to similar motions²⁴. The Defence fails to identify where the documents contain anonymous sources and ignore the fact that there is no rule excluding hearsay evidence. Such evidence is clearly relevant and admissible.
18. In addition to the above objections to the application of the *Kordić and Čerkez* Decision, the Prosecution observes that the Defence interpretation of, and reliance on, this decision is further flawed for the reasons identified and set out in a previous filing. The Prosecution respectfully refers the Trial Chamber to this previous filing’s arguments

¹⁸ *Prosecutor v. Norman et al.*, SCSL 04-14-T, “Fofana – Appeal against Decision Refusing Bail,” 11 March 2005 (“**Fofana Bail Appeals Decision**”).

¹⁹ *Fofana* Bail Appeals Decision, para. 23.

²⁰ Response, para. 16.

²¹ Response, para. 16.

²² UN Documents Reply, para. 14; *Prosecutor v. Taylor*, SCSL-03-01-T-696, “Public Prosecution Reply to Defence Response to Prosecution Motion for Admission of Newspaper Articles Obtained from the Catholic Justice And Peace Commission Archive in Monrovia, Liberia,” 12 December 2008 (“**JPC Documents Reply**”), paras. 6, 7.

²³ Response, para. 16; Response, Annex.

²⁴ UN Documents Reply, paras. 18,19; JPC Documents Reply, paras. 8, 9.

concerning the Defence's misinterpretation and misapplication of the *Kordić and Čerkez* Decision.²⁵

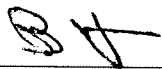
III. CONCLUSION

19. For the reasons set out in the Motion and above, the Prosecution requests that the Trial Chamber admit into evidence the Documents identified in Annex A and provided in Annex B of the Motion pursuant to: (i) Rule 89(C); or in the alternative, (ii) Rules 89(C) and 92*bis* (Rule 92*bis* being interpreted as set out in paragraphs 15-16 of the UN Documents Motion²⁶).
20. The Prosecution further requests that the arguments contained in the Response be dismissed.

Filed in The Hague,

05 January 2009

For the Prosecution,



Brenda J. Hollis
Principal Trial Attorney

²⁵ *Prosecutor v. Taylor*, SCSL-03-01-T-676, "Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents Seized from Foday Sankoh's House," 24 November 2008, paras. 13-17.

²⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-650, "Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies," 29 October 2008 ("**UN Documents Motion**").

LIST OF AUTHORITIES

Prosecutor v. Taylor, SCSL-03-01-T

Prosecutor v. Taylor, SCSL-03-01-PT-241, “Prosecution Motion for Admission of Material Pursuant to Rules 92*bis* and 89C,” 17 May 2007.

Prosecutor v. Taylor, SCSL-03-01-T-369, “Decision on Prosecution’s Motion for Admission of Material Pursuant to Rules 89(C) and 92*bis*,” 7 December 2007.

Prosecutor v. Taylor, SCSL-03-01-T-650, “Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies,” 29 October 2008.

Prosecutor v. Taylor, SCSL-03-01-T-669, “Prosecution Reply to Defence Response to Prosecution Motion for Admission of Extracts of the Report of the Truth and Reconciliation Commission of Sierra Leone,” 17 November 2008.

Prosecutor v. Taylor, SCSL-03-01-T-670, “Public Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies,” 17 November 2008.

Prosecutor v. Taylor, SCSL-03-01-T-676, “Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents Seized from Foday Sankoh’s House,” 24 November 2008.

Prosecutor v. Taylor, SCSL-03-01-T-677, “Public Defence Response to Prosecution Motion for Admission of Documents Seized from RUF Office, Kono District,” 24 November 2008.

Prosecutor v. Taylor, SCSL-03-01-T-680, “Public Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents Seized from RUF Office, Kono District,” 1 December 2008.

Prosecutor v. Taylor, SCSL-03-01-T-695, “Public Defence Response to Prosecution Motion for Admission of Documents of Certain Intergovernmental Organisations & of Certain Governments,” 12 December 2008.

Prosecutor v. Taylor, SCSL-03-01-T-696, “Public Prosecution Reply to Defence Response to Prosecution Motion for Admission of Newspaper Articles Obtained from the Catholic Justice and Peace Commission Archive in Monrovia, Liberia,” 12 December 2008.

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

Prosecutor v. Norman et al., SCSL 04-14-T, “Fofana – Appeal against Decision Refusing Bail,” 11 March 2005.

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

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

Prosecutor v. Kordić and Čerkez, IT-95-14/2, “Decision on Prosecutor’s Submissions concerning “Zagreb Exhibits” and Presidential Transcripts,” 1 December 2000.
<http://www.un.org/icty/kordic/trialc/decision-e/01211AE514285.htm>

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

(Copy provided in previous filing - see Prosecutor v. Taylor, SCSL-03-01-T-510, “Public Prosecution Motion for Admission of Document Pursuant to Rule 89(C)”, 19 May 2008)

ICTR Cases

Prosecutor v. Karemera, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, Appeals Chamber, 16 June 2006.
<http://69.94.11.53/ENGLISH/cases/Karemera/decisions/160606.htm>

Prosecutor v. Bagosora et al., ICTR-98-41-T, “Decision on Prosecutor’s Motion for the Admission of Written Witness Statements Under Rule 92*bis*,” 9 March 2004.
<http://69.94.11.53/ENGLISH/cases/Bagosora/decisions/040309.htm>

ANNEX

ANNEX

REPLY TO OBJECTIONS RE. ADMISSION OF DOCUMENTS OF CERTAIN INTERGOVERNMENTAL ORGANISATIONS & OF CERTAIN GOVERNMENTS
PURSUANT TO RULE 89(C) OR, IN THE ALTERNATIVE, RULES 89(C) & 92bis

	Title/Description	Defence Objections	Prosecution's Reply
1.	Sierra Leone, The Forgotten Crisis	<ul style="list-style-type: none"> • Already produced / Admitted in Annex A, p. 3, Motion 241 • Not sufficiently significant (relates to crime-based evidence and outside scope of Indictment) • Cumulative • Anonymous / hearsay 	<ul style="list-style-type: none"> • In its Decision on Motion 241, the Trial Chamber dismissed the motion <u>without prejudice to future filings on the same issue.</u>¹ • See para. 14, 16 of Reply. • See para. 15 of Reply. • See para. 17 of Reply.
2.	Report of U.S. Department of State, "Human Rights Practices for 1998 Report", Sierra Leone	<ul style="list-style-type: none"> • Not sufficiently significant (relates to crime-based evidence) • Cumulative • Anonymous / hearsay 	<ul style="list-style-type: none"> • See para. 14 of Reply. • See para. 15 of Reply. • See para. 17 of Reply.
3.	Final Communiqué of ECOWAS Extraordinary Meeting of the Committee of Five on Sierra Leone	<ul style="list-style-type: none"> • Not sufficiently significant (relates to crime-based evidence) • Cumulative 	<ul style="list-style-type: none"> • See para. 14 of Reply. • See para. 15 of Reply.

¹ *Prosecutor v Taylor*, SCSL-03-01-T-369, "Decision on Prosecution's Motion for Admission of Material Pursuant to Rules 89(C) and 92bis", 7 December 2007.

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ANNEX

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PURSUANT TO RULE 89(C) OR, IN THE ALTERNATIVE, RULES 89(C) & 92bis

	Title/Description	Defence Objections	Prosecution's Reply
4.	U.S. Department of State, Country Reports on Human Rights Practices: Liberia 2001	<ul style="list-style-type: none"> • Not sufficiently significant (outside the scope of the Indictment) • Cumulative • Anonymous / hearsay 	<ul style="list-style-type: none"> • See para. 14, 16 of Reply. • See para. 15 of Reply. • See para. 17 of Reply.
5.	U.S. Department of State, Sierra Leone: Country Reports on Human Rights Practices - 2000	<ul style="list-style-type: none"> • Not sufficiently significant (relates to crime-based evidence) • Cumulative 	<ul style="list-style-type: none"> • See para. 14 of Reply. • See para. 15 of Reply.
6.	African (Banjul) Charter on Human and People's Rights; Ratification / Accession by Liberia	<ul style="list-style-type: none"> • Not sufficiently significant (unclear how this relates to the Indictment) 	<ul style="list-style-type: none"> • As set out in Tab 5 of Annex B of the Prosecution Motion, this document is evidence of Notice to the Accused and goes to proof of Individual Criminal Responsibility, showing the Accused had intent, knowledge and awareness that his actions during his Presidency contravened not only customary international law but this specific Charter, which Liberia ratified / acceded to on 31 January 1983. The Charter articulates specific human rights which the government of Liberia was obligated to honour as of 31 January 1983.

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ANNEX

REPLY TO OBJECTIONS RE. ADMISSION OF DOCUMENTS OF CERTAIN INTERGOVERNMENTAL ORGANISATIONS & OF CERTAIN GOVERNMENTS
PURSUANT TO RULE 89(C) OR, IN THE ALTERNATIVE, RULES 89(C) & 92bis

	Title/Description	Defence Objections	Prosecution's Reply
7.	U.S. Department of State: Liberia Country Report on Human Rights Practices for 1999	<ul style="list-style-type: none">• Not sufficiently significant (outside the scope of the Indictment)• Cumulative	<ul style="list-style-type: none">• See paras. 14, 16 of Reply.• See paras. 15 of Reply.

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