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SPECIAL COURT FOR SIERRA LEONE

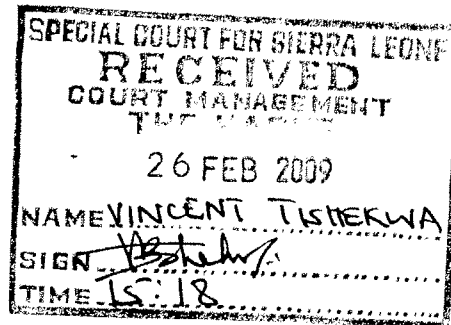
TRIAL CHAMBER II

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

Registrar: Herman von Hebel

Case No.: SCSL-03-1-T

Date: 26 February 2009



PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON PROSECUTION MOTION FOR ADMISSION OF DOCUMENTS OF CERTAIN INTERGOVERNMENTAL ORGANISATIONS & OF CERTAIN GOVERNMENTS

Office of the Prosecutor:
Brenda J. Hollis

Defence Counsel for Charles G. Taylor:
Courtenay Griffiths, Q.C.
Terry Munyard
Andrew Cayley
Morris Anyah

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);

SEISED of the “Prosecution Motion for Admission of Documents of Certain Intergovernmental Organisations & of Certain Governments”, filed on 2 December 2008, (“Motion”);¹

NOTING the “Defence Response to Prosecution Motion for Admission of Documents of Certain Intergovernmental Organisations & of Certain Governments”, filed on 12 December 2008, (“Response”);²

NOTING ALSO the “Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents of Certain Intergovernmental Organisations & of Certain Governments” filed on 5 January 2009 (“Reply”);³

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”) and Rules 26bis, 73, 89(C), 92bis and 95 of the Rules of Procedure and Evidence (“Rules”);

HEREBY DECIDES AS FOLLOWS based solely on the written submissions of the parties pursuant to Rule 73(A).

I. SUBMISSIONS

Motion

1. The Prosecution moves the Trial Chamber to admit into evidence the portions of documents of certain intergovernmental organisations and certain governments identified in Annex A and provided in Annex B of the Motion (“Documents”) pursuant to Rule 89(C) or, in the alternative, Rules 89(C) and 92bis, should the Trial Chamber find that Rule 92bis is also applicable.⁴
2. The Prosecution submits, notwithstanding a decision of the Trial Chamber to the contrary, that the Documents are admissible under Rule 89(C) alone because: (i) Rule 89(C) is the general rule

¹ SCSL03-01-T-684.

² SCSL03-01-T-695.

³ SCSL03-01-T-701.

⁴ Motion, paras 1, 5.

of evidence and has been used to tender documents without a witness in other proceedings; (ii) Rule 92bis, as amended, now only applies to witness statements and transcripts; and (iii) Rule 92bis does not apply to documents which were not prepared for the purposes of legal proceedings.⁵

3. In the alternative, the Prosecution submits that if Rule 92bis applies, then the requirements of Rules 89 and 92bis must be satisfied. For evidence comprising public documents to be admitted pursuant to both Rules, it must be relevant, its reliability susceptible of confirmation and its admission not unfairly prejudicial to the Accused.⁶

4. The Prosecution relies upon and incorporates by reference its submissions on admission under Rule 89(C) made in a recent similar filing, "Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies" ("UN Documents Motion"),⁷ and, in the alternative, its submissions made in the same filing on admission under Rules 89(C) and 92bis.⁸ The Trial Chamber refers to its summary of these submissions in its recent Decision on the same filing, "Decision on Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies" ("UN Documents Decision").⁹

5. In support of its application for admission of the documents under Rule 89(C), the Prosecution states that the documents relate to: (i) the chapeau requirements of the crimes charged; (ii) the several forms of liability alleged by the Prosecution in this case; (iii) the crime base; and (iv) evidence of a consistent pattern of conduct under Rule 93. The Prosecution further states that the documents are also relevant as they corroborate evidence on the court record.¹⁰ The Prosecution points out that the documents are public and originate from certain governments and certain intergovernmental bodies. Therefore, the material does not impact adversely and unfairly upon the integrity of the proceedings nor is it of such a nature that its admission would bring the administration of justice into serious disrepute.¹¹ The Prosecution argues that no undue prejudice to the Accused arises from the fact that a document is produced without calling a witness, since the Trial Chamber has discretion under Rule 89(C) to admit any relevant evidence and "the inability of the Defence to cross-examine such

⁵ Motion, para. 3.

⁶ Motion, para. 5.

⁷ Motion, para. 4 citing *Prosecutor v. Taylor*, SCSL03-01-T-650, "Public Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies", 29 October 2008 ("UN Documents Motion") at paras 4-13.

⁸ Motion, paras 5-6 citing UN Documents Motion at paras 15-17.

⁹ *Prosecutor v. Taylor*, SCSL03-01-T-739, "Decision on Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies", 20 February 2009, ("UN Documents Decision").

¹⁰ Motion, para. 8.

¹¹ Motion, para. 9.

witnesses is a matter that goes to the weight of the evidence, not its admissibility".¹²

6. In support of its alternative application for admission of the documents under Rules 89(C) and 92bis, the Prosecution submits that the documents are relevant,¹³ their reliability is susceptible of confirmation¹⁴ and that their admission would cause no undue prejudice to the Accused.¹⁵ The Prosecution has also indicated by underlining in Annexes A and B those portions of the documents which go to the acts and conduct of the Accused, assuming that such qualification "is still applicable to documents not prepared for the purposes of legal proceedings".¹⁶ Further, while the Prosecution acknowledges that the documents "do concern the acts and conduct of those who might be considered the Accused's immediately proximate subordinates", it claims that "it is in the interests of justice that this relevant evidence is brought before the Chamber, and that the Chamber be allowed to assess the appropriate weight to be given to it at the conclusion of the case".¹⁷

Response

7. The Defence opposes the Motion on the grounds that the documents are not admissible under Rule 89(C) alone and can only be admissible under Rule 89(C) in conjunction with Rule 92bis, under which rules the documents should be excluded because they go to the acts and conduct of the Accused or his allegedly subordinate groups, "and/or their probative value is outweighed by their prejudicial effect".¹⁸

8. The Defence relies upon its "Response to Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies" ("UN Documents Response")¹⁹ for its articulation of the correct legal principles to be applied. The Trial Chamber refers to its summary of these submissions in the "UN Documents Decision".²⁰

9. The Defence submits specifically that the documents are inadmissible because (i) the documents, in many instances, talk directly about the Accused and his involvement in the Sierra

¹² Motion, para. 10.

¹³ Motion, para. 12.

¹⁴ Motion, para. 13.

¹⁵ Motion, para. 14.

¹⁶ Motion, paras 7, 15.

¹⁷ Motion, para. 16.

¹⁸ Response, paras 2, 17.

¹⁹ *Prosecutor v. Taylor*, SCSL03-01-T-664, "Defence Response to Public Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies", 10 November 2008 ("UN Documents Response") paras 3-19. The Defence also refers to its Responses filed to recent similar Motions.

²⁰ *Prosecutor v. Taylor*, SCSL03-01-T-739, "Decision on Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies", 20 February 2009 ("UN Documents Decision").

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Leone conflict and “it would be highly prejudicial for the Documents to be admitted without a witness who could speak to their contents and authenticity”;²¹ (ii) the Prosecution seeks to admit evidence material to command responsibility or joint criminal enterprise without giving the Defence an opportunity for cross-examination;²² (iii) many of the documents refer to subordinates of the Accused, and where evidence is close to subordinates “it would not be fair to the accused to permit the evidence to be given in written form”;²³ (iv) if the documents are not offered through a witness the Trial Chamber would not be able to decipher their context, and a lack of context can render documents inadmissible as lacking sufficient indicia of reliability²⁴; and (v) the documents are produced at such a late stage in the proceedings that witnesses who have previously testified cannot be challenged on the contents or accuracy of the documents, although the Prosecution has already called a number of witness who could have commented on the contents of the documents.²⁵

Reply

10. The Prosecution relies on and incorporates by reference its submissions made in its “Reply to Defence Response to Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies” (“UN Documents Reply”).²⁶ The Trial Chamber refers to its summary of these submissions in the “UN Documents Decision”.²⁷

11. In addition, the Prosecution disputes the objections of the Defence and, in particular, it claims that none of the material it seeks to have admitted speaks directly of the involvement of the Accused in the Sierra Leonean conflict.²⁸ The Prosecution acknowledges that certain evidence might be considered acts and conduct of the Accused as defined and limited by jurisprudence but submits that this fact does not dictate that the documents are not admissible in the absence of a witness.²⁹

12. The Prosecution submits that the Defence claim that the Documents contain evidence which goes to a “critical element” of the Prosecution’s case is entirely contradicted by its claims that the Documents are “not sufficiently significant” and should be dismissed. It submits the Documents are

²¹ Response, paras 4, 5.

²² Response, para. 6.

²³ Response, para. 7.

²⁴ Response, paras 9, 10.

²⁵ Response, para. 12.

²⁶ Reply, para. 2 citing *Prosecutor v. Taylor*, SCSL03-01-T-670, “Reply to Defence Response to Public Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies”, 17 November 2008 (“UN Documents Reply”).

²⁷ *Prosecutor v. Taylor*, SCSL03-01-T-739, “Decision on Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies”, 20 February 2009 (“UN Documents Decision”).

²⁸ Reply, para. 4.

²⁹ Reply para. 4.

not central themselves to determining the liability of the Accused and therefore are not “critical” as argued by the Defence. Should, *arguendo*, the Trial Chamber find the Documents contain evidence which goes to proof of the acts and conduct of the Accused or which goes to a critical element of the Prosecution case and is therefore proximate to the Accused, the Prosecution submits such evidence may be redacted from the Documents.³⁰

13. The Prosecution submits that the Documents may be tendered absent a witness and that the probative value of the documents is not substantially outweighed by their prejudicial effect.³¹

14. If the Documents are admitted under Rule 89(C) the Prosecution submits that the exclusionary conditions set out in the *Kordic and Cerkez* case are legally and factually irrelevant and should not be applied.³²

II. APPLICABLE LAW

10. The general rules of evidence are contained in Rule 89, which provides:

Rule 89: General Provisions

- (A) The rules of evidence set forth in this Section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence.
- (B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.
- (C) A Chamber may admit any relevant evidence.

11. Rule 92*bis* is the specific rule relating to alternative proof of facts, that is, proof of facts other than by oral evidence. Rule 92*bis* provides:

Rule 92*bis*: Alternative Proof of Facts

- (A) In addition to the provisions of Rule 92*ter*, a Chamber may, in lieu of oral testimony, admit as evidence in whole or in part, information including written statements and transcripts, that do not go to proof of the acts and conduct of the accused.
- (B) The information submitted may be received in evidence if, in the view of the

³⁰ Reply paras 5-8.

³¹ Reply paras 9-11.

³² Reply paras 12-18.

Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.

- (C) A party wishing to submit information shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.

12. The recent ruling of the Appeals Chamber, “Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’” dated 6 February 2009³³ (“Appeals Chamber Decision”), wherein the Appeals Chamber upheld a decision of the Trial Chamber, confirms that:

By its express terms, Rule 92*bis* applies to information tendered “*in lieu* of oral testimony”. These words must be given their ordinary meaning. Documentary evidence, by its very nature, it tendered *in lieu* of oral testimony.³⁴ [...]

[...]

The procedural scheme established by Rules 89(C) and 92*bis* does not allow a party to circumvent the stringency of the latter rule by simply tendering a document under the former.³⁵ [...]

[...]

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 92*bis* if it is sought to be admitted *in lieu* of oral testimony. For these reasons, we find that the Trial Chamber did not err in law in holding that Rule 92*bis* exclusively controls the admission of a document submitted *in lieu* of oral testimony and that such document must be channelled through a witness in order to be admissible under Rule 89(C).³⁶ [...]

15. The effect of Rule 92*bis* is to permit the reception of information – assertions of fact (but not opinion) including, but not limited to, written statements and transcripts that do not go to proof of the acts and conduct of the accused – if such facts are relevant and their reliability is “susceptible of confirmation”; proof of reliability is not a condition of admission: all that is required is that the information should be capable of corroboration in due course.³⁷ This leaves open the possibility for the Trial Chamber to determine the reliability issue at the end of the trial in light of the totality of

³³ *Prosecutor v. Taylor*, SCSL-03-01-AR73-721, Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’, 6 February 2009 (“Appeals Chamber Decision”).

³⁴ Appeals Chamber Decision, para. 30 (original footnotes omitted).

³⁵ Appeals Chamber Decision, para. 33 (original footnotes omitted).

³⁶ Appeals Chamber Decision, para. 34.

³⁷ *Prosecutor v. Norman, Fofana, Kondewa*, Case No. SCSL-2004-14-AR73, Fofana – Decision on Appeal Against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”, 16 May 2005, para. 26.

the evidence by deciding whether the information is indeed corroborated by other evidence presented at trial,³⁸ and what weight, if any, should be attached to it.³⁹ Simply admitting a document into evidence does not amount to a finding that the evidence is credible.⁴⁰

16. A distinction must be drawn between “the acts and conduct of those others who commit the crimes for which the indictment alleges that the accused is individually responsible” and “the acts and conduct of the accused as charged in the indictment which establish his responsibility for the acts and conduct of others.” Only written statements which go to proof of the latter acts and conduct are excluded by Rule 92bis.⁴¹

17. Thus, 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 such crimes, or that the accused was a superior who actually committed the crimes, or knew or had reason to know that those crimes were about to be or had been committed by his subordinates, or failed to take the necessary and reasonable measures to prevent such crimes or to punish the perpetrators thereof.⁴² 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.⁴³

18. The “conduct” of an accused person necessarily includes his relevant state of mind, so that a written statement which goes to proof of any act or conduct of the accused upon which the

³⁸ *Prosecutor v. Sesay, Kallon & Gbao*, SCSL-04-15-T, Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92bis, 15 May 2008, para. 30.

³⁹ *Prosecutor v. Norman, Fofana & Kondewa*, SCSL-04-14-T, Decision on Prosecution’s Request to Admit Into Evidence Certain Documents Pursuant to Rules 92bis and 89(C), 14 July 2005, p.4; see also *Prosecutor v. Sesay, Kallon & Gbao*, SCSL-04-15-T, Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92bis, 15 May 2008, para. 30.

⁴⁰ *Prosecutor v. Norman, Fofana & Kondewa*, SCSL-04-14-T, Decision on Fofana Request to Admit Evidence Pursuant to Rule 92bis, 9 October 2006, note 32, para. 18; see also *Prosecutor v. Sesay, Kallon & Gbao*, SCSL-04-15-T, Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92bis, 15 May 2008, para. 31.

⁴¹ *Prosecutor v. Galic*, IT-98-29-AR73.2, “Decision on Interlocutory Appeal Concerning Rule 92bis(C)”, 7 June 2002, para 9; see also *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1049, “Decision on Defence Application for the Admission of the Witness Statement of DIS-129 Under Rule 92bis or, in the Alternative, Under Rule 92ter”, 12 March 2008, pp 2,3; see also *Prosecutor v. Taylor*, SCSL-03-1-T, “Decision on Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to Inter Alia Kenema District and on Prosecution Notice Under Rule 92bis for the Admission of the Prior Testimony of TF1-036 Into Evidence”, 15 July 2008, p. 4.

⁴² *Galic*, *ibid.*, para. 10; see also Prosecution’s Second Amended Indictment (“Indictment”), paras 33, 34.

⁴³ *Galic*, *ibid.*, para. 10, see also Indictment, para 33.

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prosecution relies to establish that state of mind is not admissible under Rule 92bis.⁴⁴

19. Where the evidence is “so pivotal to the prosecution case, and where the person whose acts and conduct the written statement describes is so proximate to the accused, the Trial Chamber may decide that it would not be fair to the accused to permit the evidence to be given in written form.”⁴⁵

III. DELIBERATIONS

20. Dealing first with the Prosecution’s application for the documents to be admitted under Rule 89(C), the Trial Chamber finds that the documents must be channelled through a witness competent to give evidence in relation to the documents in order to be admissible under Rule 89(C).⁴⁶ The said documents were tendered in lieu of oral testimony and therefore should have been tendered under Rule 92bis.⁴⁷ Accordingly, the Prosecution application pursuant to Rule 89(C) must fail.

21. Turning now to the Prosecution’s alternative application, the Trial Chamber will consider the admissibility of each of the documents under Rule 92bis.

Document 1: “Sierra Leone: The Forgotten Crisis”, Report to the Minister of Foreign Affairs, the Honourable Lloyd Axworthy, P.C., M.P. from David Pratt, M.P. Nepean-Carleton, Special Envoy to Sierra Leone, 23 April 1999 (extracts as indicated on pages ERN 00020911-00020913, 00020915, 00020923-00020925, 00020927, 00020935, 00020943-00020945, 00020947-00020948)

22. The Prosecution seeks to admit extracts of Document 1 as indicated on pages ERN 00020911-00020913, 00020915, 00020923-00020925, 00020927, 00020935, 00020943-00020945, 00020947-00020948 of Annex B to the Motion.

Extracts on pages ERN 00020927 and 000209235:

23. The Defence objects that the extracts on ERN 00020927 and 000209235 talk directly about the Accused and his involvement in the Sierra Leone conflict.⁴⁸ The Trial Chamber agrees that

⁴⁴ Galic, *ibid.*, para. 11.

⁴⁵ Galic, *ibid.*, para. 13. See also *Prosecutor v. Brdanin & Talic*, IT-99-36-T, “Confidential Decision on the Admission of Rule 92bis Statements”, 1 May 2002, at para. 14.

⁴⁶ Appeals Chamber Decision, para. 34.

⁴⁷ Appeals Chamber Decision, para. 34; see also *Prosecutor v. Taylor*, SCSL-03-1-T, Decision on Prosecution Motion for Admission of Document Pursuant to Rule 89(C), 9 February 2009, p. 3.

⁴⁸ Reponse, para. 4.

unnumbered paragraph 3 on page ERN 00020927 which describes Liberian Military involvement in Sierra Leone and all the paragraphs indicated by the Prosecution on ERN 000209235 which describe small arms trafficking through Liberia and into Sierra Leone and a denial by "Liberia" of involvement in the trade, go to the acts and conduct of the Accused and are not admissible under Rule 92bis.

Remainder of the Document:

24. The Trial Chamber disagrees with the Defence that the remainder of Document 1 contains evidence upon which the Prosecution relies to establish that the Accused was a superior to those who may have committed crimes or that the Accused knew or had reason to know of the crimes.⁴⁹ The Trial Chamber finds, in keeping with its previous ruling,⁵⁰ that only evidence going to the proof of the acts and conduct of the Accused which establish his responsibility for the acts and conduct of others is excluded by Rule 92bis. Evidence of the acts and conduct of those others who commit the crimes for which the Accused is allegedly individually responsible is not excluded by Rule 92bis. While the Trial Chamber agrees with the Defence that Foday Sankoh, Sam Bockarie and Johnny Paul Koroma, all alleged subordinates or associates of the Accused, are named in the extracts,⁵¹ the information is general in nature and the Trial Chamber is satisfied that it does not go to the acts and conduct of the Accused as defined by the jurisprudence.

25. The Defence objects that Document 1 relates to "critical and proximate elements" of the case against the Accused and that, if admitted, a witness who is knowledgeable about its contents should be provided for cross-examination.⁵² The Trial Chamber finds that "critical element" is not a test under Rule 92bis; nevertheless, the Trial Chamber retains discretionary power to reject evidence which is unfairly prejudicial to the accused. According to the *Galić* Appeals Chamber, where evidence

⁴⁹ Response, para. 4.

⁵⁰ *Prosecutor v. Taylor*, SCSL-03-1-T-556, "Decision on Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Kenema District and On Prosecution Notice Under Rule 92bis for the Admission of the Prior Testimony of TF1-036 into Evidence", 15 July 2008, at p. 4.

⁵¹ Response, para. 7.

⁵² Response, paras 8, 11.

is so pivotal to the Prosecution's case, and where the person whose acts and conduct the written statement describes is so proximate to the accused, a Trial Chamber may decide it would not be fair to the Accused to permit the evidence to be given in written form.⁵³ The extracts of Document 1 highlighted by the Prosecution describe a mission undertaken by the Canadian Special Envoy to Sierra Leone in March, 1999. The information therein relates to atrocities committed by rebels, events related to the Abidjan peace agreement, "Operation No Living Thing", Liberians and other mercenaries present during the January 1999 invasion, amputation as a terror tactic by the RUF on the orders of Foday Sankoh in 1996 and further amputations committed throughout the war, abduction of children during the January 1999 invasion, child soldiers, and sexual abuse. The Trial Chamber is of the view that the extracts of Document 1 submitted by the Prosecution do not contain information which is critical to the Prosecution case nor so proximate to the Accused that it would be unfair to the Accused to permit the information to be given in written form.

26. The Defence submits that certain pieces of information contained in the extracts of Document 1 come from anonymous or hearsay sources and should not be admitted.⁵⁴ The Trial Chamber is of the view that this is an issue of weight and not a condition for admission under Rule 92bis. The Trial Chamber finds that the type of information contained in Document 1 may be generally corroborated by other evidence led at trial and that the "nature and source" of the document cited is not anonymous as it has been published by a reliable governmental source, albeit a private Member of Parliament in his capacity as Envoy to Sierra Leone (the Document is not a Government of Canada Report).

27. The Trial Chamber finds that the remaining paragraphs of Document 1 indicated by the Prosecution in Annex B to the Motion are relevant, susceptible to confirmation and do not go to the acts and conduct of the Accused and are therefore admissible.

⁵³ *Prosecutor v. Galic*, IT-98-29-AR73.2 (Appeals Chamber), Decision on Interlocutory Appeal Concerning Rule 92bis(C), 7 June 2002, para. 13.

⁵⁴ Response, Annex B.

Document 2: "Sierra Leone Country Report on Human Rights Practices for 1998", U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, 26 February 1999. (ERN 00025071, para.4; 00025072, para. 6; 00025073 paras 3, 4; 00025074, para. 9; 00025075, para. 2; 00025077, para. 5; 00025072, para. 3)

28. The Trial Chamber refers to its findings with reference to Document 1 and finds, for the same reasons, that the extracts of Document 2 indicated by the Prosecution do not go to the acts and conduct of the Accused as argued by the Defence.⁵⁵ While the Trial Chamber agrees with the Defence that Sam Bockarie is named in the document,⁵⁶ the information is general in nature and the Trial Chamber is satisfied that it does not go to the acts and conduct of the Accused as defined by the jurisprudence. The Trial Chamber also refers to its findings with reference to Document 1 and dismisses for the same reasons the Defence argument that certain pieces of information contained in the extracts of Document 2 should not be admitted as they come from anonymous or hearsay sources.

29. The Trial Chamber finds that the extracts of Document 2 as indicated by the Prosecution in Annex B to the Motion are relevant, susceptible to confirmation and do not go to the acts and conduct of the Accused and are admissible under Rule 92bis.

Document 3: Economic Community of West African States, Extraordinary meeting of the Committee of Five on Sierra Leone, Abidjan, 28 December 1998, Final Communiqué. (Entire)

30. The Defence objects that Document 3 talks directly about the Accused and his involvement in the Sierra Leone conflict.⁵⁷ The Trial Chamber finds that Document 3 describes issues discussed at an extraordinary meeting of the Community of West African States on 28 December 1998 which was attended, *inter alia*, by the "Republic of Liberia". The Trial Chamber also notes that the Prosecution agrees that a portion of paragraph 7 (underlined) goes to the acts and conduct of the Accused. In addition to that, the Trial Chamber finds that the remainder of the paragraph deals with Liberian military support to rebels in Sierra Leone. The Trial Chamber therefore agrees with the Defence that in this context, Document 3 in its entirety goes to the acts and conduct of the Accused and may not

⁵⁵ Response, para. 4.

⁵⁶ Response, para. 7.

⁵⁷ Response, para. 4.

be admitted.

Document 4: “Country Reports on Human Rights Practices: Liberia 2001”, US Department of State, 4 March 2002. (ERN 00101975, para. 2 (part); 000101976, para. 1 (part) and the second paragraph in Section 1.a. following the heading “Respect for Human Rights”; 00101977, para. 6; 00101978, para. 6; 00101980 para. 5; 00101982 paras. 4, 5, 7; 00101983 paras. 2, 4, 7-11; 00101986 para. 6)

Extracts on pages ERN 00101982 and 00101986:

31. The Defence objects that the extracts of Document 4 indicated by the Prosecution on ERN pages 00101982 and 00101986 talk directly about the Accused and his involvement in the Sierra Leone conflict and should be excluded.⁵⁸ The Prosecution argues that none of the material it seeks to admit speaks directly of the involvement of the Accused⁵⁹ The paragraphs indicated by the Prosecution on ERN 00101982 describe “Government” restriction of freedom of speech and press in practice and a general amnesty announced by President Taylor for human rights activists, who nevertheless remained abroad. The Trial Chamber agrees with the Defence that these extracts directly describe the acts and conduct of the Accused and are thus not admissible under Rule 92bis.

32. The paragraph indicated by the Prosecution on ERN 00101986 and underlined in part describes the expulsion of Sam Bockarie and his followers from Liberia, President Taylor’s denial that his Government was training the RUF or supplying them with arms, and speculation that RUF personnel remained part of the Government’s security forces. The Trial Chamber finds that this paragraph goes to the acts and conduct of the Accused and is therefore inadmissible in its entirety.

Second paragraph in Section 1.a. following the heading “Respect for Human Rights” on 000101976 and unnumbered paragraph 6 on 00101977:

33. The Trial Chamber finds that the second paragraph in Section 1.a. following the heading “Respect for Human Rights” as indicated by the Prosecution on ERN page 000101976 which deals with an alleged killing by the police in Bong County is irrelevant and thus inadmissible.

⁵⁸ Response, para. 4, footnote 6. The Defence erroneously refers to “ERN pages 000122820 and 00122824”.

⁵⁹ Reply, para. 4.

34. Further, the Trial Chamber finds that unnumbered paragraph 6 as indicated by the Prosecution on ERN page 00101977 describes “Government security forces” and RUF rebels working together in attacks on the Guinean border. The Trial Chamber finds that this information goes to the acts and conduct of the Accused and is not admissible.

ERN 00101976 para. 1(part), 00101977, para 6; 00101978, para. 6; 00101980 para. 5; 00101982 paras. 4, 5, 7; 00101983 paras. 2, 4, 7-11:

35. The Trial Chamber finds that these extracts of Document 4 discuss intimidation of journalists and other human rights violations in Liberia and are not relevant to the Indictment. It disagrees with the Prosecution assertion that such information may be admitted as being relevant to rebut the Defence assertion in cross-examination that President Taylor allowed freedom of expression in Liberia.⁶⁰ The Trial Chamber is of the view that such information should have been tendered at the time of the *viva voce* testimony of the witness who testified on this subject. The credibility of this witness has already been tested in cross-examination and so to subsequently admit this information would be unfair to the Defence, which now has no chance of cross-examining on the new material. The Trial Chamber accordingly refuses to admit the extracts cited.

Remainder of the Document - ERN 00101975, para. 2(part):

36. The Trial Chamber refers to its findings with reference to Document 1 and finds, for the same reasons, that the remaining extract of Document 4 indicated by the Prosecution does not go to the acts and conduct of the Accused as argued by the Defence.⁶¹ While the Trial Chamber agrees with the Defence that Sam Bockarie is named in the document,⁶² this reference is made in the extract on ERN 00101986 which has already been excluded by the Trial Chamber. The Trial Chamber similarly finds that the information on ERN 00101977 which the Defence argues is “anonymous/hearsay” has

⁶⁰ Motion, Annex A, p. 7. The Prosecution did not name the witness.

⁶¹ Response, para. 4.

⁶² Response, para. 7.

already been excluded.⁶³

37. The Defence objects that Document 4 relates to “critical and proximate elements” of the case against the Accused and that, if admitted, a witness who is knowledgeable about its contents should be provided for cross-examination.⁶⁴ The Trial Chamber refers to its findings with reference to Document 1 and finds, for the same reasons, that the remaining extract of Document 4 submitted by the Prosecution does not contain evidence which is critical to the Prosecution case or so proximate to the Accused that it would be unfair to the Accused to permit it to be given in written form.

38. The Trial Chamber finds the remaining extract of Document 4, namely ERN 00101975, para. 2(part) as indicated by the Prosecution in Annex B to the Motion is relevant, susceptible of confirmation, does not go to the acts and conduct of the Accused and is thus admissible under Rule 92bis.

Document 5: “Country Reports on Human Rights Practices: Sierra Leone, 2000”, US Department of State, Bureau of Democracy, Human Rights and Labor, 23 February 2001 (page 1, paras 1,2; page 2, last para.; page 3, first para., para. 6-7; page 4, paras 1-3, 5, 7-8; page 5, paras 1-2, 5-6; page 6, paras 7-9; page 9, para. 8; page 13, para. 2; page 15, paras 2-3; page 17, paras 4-5; page 18, para. 6)

39. The Prosecution seeks to admit the following extracts of Document 5: page 1, unnumbered paragraphs 1 and 2; page 2, last paragraph; page 3, first paragraph and paragraphs 6 and 7; page 4, paragraphs 1-3, 5, 7-8; page 5, paragraphs 1-2, 5-6; page 6, paragraphs 7-9; page 9, paragraph 8; page 13, paragraph 2; page 15, paragraphs 2-3; page 17, paragraphs 4-5; page 18, paragraph 6.⁶⁵ The Trial Chamber notes that these extracts cited by the Prosecution in Annex A to the Motion do not correspond with the extracts highlighted in Document 5 in Annex B to the Motion. Additionally, the argumentation of the Prosecution set out in Annex A to the Motion does not relate to the content of the extracts of Document 5 highlighted in Annex B to the Motion. The Trial Chamber is therefore

⁶³ Response, Annex B.

⁶⁴ Response, para. 8.

⁶⁵ Motion, Annex A, pp. 9-10.

unable to make any substantive findings in relation to Document 5 and rejects it in its entirety.

Document 6: African [Banjul] Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58(1982) (Articles 1, 4-6, 14)

40. The Defence argues that "it is unclear how [Document 6] relates to the Indictment".⁶⁶ The Prosecution argues that the indicated articles of Document 6 are relevant to individual criminal responsibility, notice of individual human rights - intent, knowledge, awareness of the Accused. The Trial Chamber finds that the Document lays out basic standards regarding human dignity in the region and that it is relevant.

41. The Trial Chamber refers to its findings with reference to Document 1 and finds, for the same reasons, that the extracts of Document 6 indicated by the Prosecution do not go to the acts and conduct of the Accused as argued by the Defence.⁶⁷

42. The Trial Chamber accordingly finds that Articles 1, 4-6 and 14 of Document 6 as indicated by the Prosecution in Annex B to the Motion are relevant, susceptible of confirmation, do not go to the acts and conduct of the Accused and are therefore admissible.

Document 7: "1999 Country Reports on Human Rights Practices: Liberia", US Department of State, Bureau of Democracy, Human Rights and Labor, 25 February 2000. (ERN 00100782, para. 2; 00100785, paras 2-3; 00100790, para. 6)

Paragraphs 2 and 3 on ERN 00100785, paragraph 6 on ERN00100790

43. The Defence argues that Document 7 relates to alleged human rights abuses in Liberia and is therefore outside the scope of the Indictment.⁶⁸ The Trial Chamber finds that the extracts of Document 7 in paragraphs 2 and 3 of ERN 00100785 which describe the practice of torture and the disappearance of suspects in Liberia not only go to the acts and conduct of the Accused but are also irrelevant. These extracts are therefore not admissible under Rule 92bis.

⁶⁶ Response, Annex, p. 6.

⁶⁷ Response, para. 4.

⁶⁸ Reponse, Annex, p. 6.

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44. The extract of Document 7 in paragraph 6 on ERN 00100790 discusses freedom of expression in Liberia. The Trial Chamber dismisses the Prosecution argument that such information is relevant to rebut the Defence assertion in cross-examination that President Taylor allowed freedom of expression in Liberia⁶⁹ for the same reasons given in its findings on Document 4. The Trial Chamber accordingly refuses to admit this extract into evidence.

Remainder of the Document: - Paragraph 2(part) on ERN 00100782

45. The remaining extract of Document 7, namely unnumbered paragraph 2(part) on ERN 00100782 describes the composition of regular security forces in Liberia as including the Special Security Services, a large, heavily armed executive protective force, and asserts that many newly created security services absorbed President Taylor's most experienced civil war fighters and that members of the security forces committed numerous serious human rights abuses. The Prosecution claims that this information is relevant to the individual criminal responsibility of the Accused as evidence of Liberia's security forces - names, composition, and function of some.⁷⁰ The Defence objects that Document 7 relates to "critical and proximate elements" of the case against the Accused and that, if admitted, a witness who is knowledgeable about its contents should be provided for cross-examination.⁷¹

46. The Trial Chamber finds the information in this extract goes to the acts and conduct of the Accused and is therefore not admissible under Rule 92bis.

IV. DISPOSITION

FOR THE ABOVE REASONS, the Trial Chamber

DISMISSES the Prosecution's application for admission of the documents under Rule 89(C);

⁶⁹ Motion, Annex A, p.12.

⁷⁰ Motion, Annex A, p.11.

⁷¹ Response, paras 8.

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GRANTS the Prosecution's alternative application **IN PART** and;

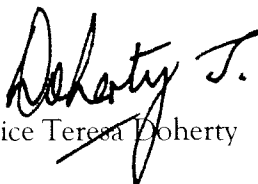
ORDERS the following documents or extracts of documents be admitted into evidence:


Document 1	Extracts as indicated in Annex B to the Motion on pages ERN 00020911-00020913, 00020915, 00020923-00020925, 00020943-00020945, 00020947-00020948.	Admitted as Prosecution Exhibit P-365
Document 2	Extracts as indicated in Annex B to the Motion on pages ERN 00025071, para.4; 00025072, para. 6; 00025073 paras 3, 4; 00025074, para. 9; 00025075, para.2; 00025077, para. 5; 00025072, para. 3.	Admitted as Prosecution Exhibit P-366
Document 4	Extract as indicated in Annex B to the Motion on page ERN 00101975, para. 2 (part).	Admitted as Prosecution Exhibit P-367
Document 6	Articles 1, 4-6, 14.	Admitted as Prosecution Exhibit P-368

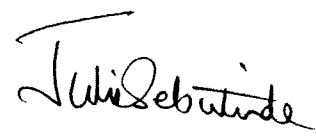
and

DISMISSES the Prosecution's application for admission into evidence of the remaining documents.

Done at The Hague, The Netherlands, this 26th day of February 2009.


Justice Teresa Doherty


Justice Richard Lussick
Presiding Judge


Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]