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SCSL-03-01-T
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THE SPECIAL COURT FOR SIERRA LEONE

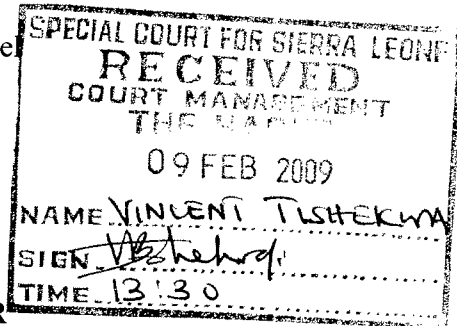
In Trial Chamber II

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

Registrar: Mr. Herman von Hebel

Date: 9 February 2009

Case No.: SCSL-2003-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**DEFENCE APPLICATION FOR JUDICIAL NOTICE OF ADJUDICATED FACTS
FROM THE AFRC TRIAL JUDGEMENT PURSUANT TO RULE 94(B)**

Office of the Prosecutor:

Ms. Brenda J. Hollis

Counsel for Charles G. Taylor:

Mr. Courtenay Griffiths, Q.C.

Mr. Terry Munyard

Mr. Andrew Cayley

Mr. Morris Anyah

I. Introduction

1. Pursuant to Rule 94(B) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“Rules”), the Defence requests that the Trial Chamber exercise its discretion by taking judicial notice of certain facts which have been adjudicated in *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T (“AFRC Case”), and which are relevant to the modes of liability with which Mr. Taylor is charged in the Second Amended Indictment.
2. The Defence submits that the fifteen adjudicated facts from the AFRC Trial Judgement¹ and set out in Annex A are neither contentious nor do they involve legal conclusions. Furthermore, the admission of these facts would enable the Defence to streamline the evidence that they would need to present during the Defence case, and the Prosecution would also be able to streamline the evidence that they would need to address in their closing brief. Thus by taking judicial notice of the proposed facts, this Chamber would promote judicial economy and the harmonization of the judgements of this Court.

II. Applicable Legal Principles

3. Rule 94(B) states:

At the request of a party or of its own motion, a Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Special Court relating to the matter at issue in the current proceedings.

4. Trial Chamber I has found that Rule 94 has a two-fold rationale: 1) to promote judicial economy² by dispensing with the need for the parties to lead evidence in order to prove supplementary facts or allegations already proven in past proceedings and 2) to harmonise judgements in relation to certain factual issues that arise in multiple cases before the Special Court.³
5. The Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) both contain

¹ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T, Trial Judgement, 20 June 2007 (“**AFRC Judgement**”).

² Rule 26 also requires the Chambers to ensure that the trial is both fair and expeditious.

³ *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-1184, Decision on Sesay Defence Application for Judicial Notice to be taken of Adjudicated facts under Rule 94(B), 23 June 2008 (“**Sesay Adjudicated Facts Decision**”), para. 17.

similar provisions for taking judicial notice of adjudicated facts.⁴ Thus guidance can be sought, persuasively from the jurisprudence of those Tribunals in interpreting Rule 94(B).⁵

6. Rule 94(B) creates a “well-founded presumption for the accuracy of [the adjudicated] fact, which therefore does not have to be proven again at trial, but which, subject to that presumption, may be challenged at that trial.”⁶ Rule 94(B) is designed to relieve the party making the application of the burden of proving certain facts that have already been adjudicated in other proceedings before this Court. Notwithstanding, the opposite party may put such facts in question by leading “reliable and credible evidence to the contrary.”⁷
7. While Rule 94(B) does not explicitly define what constitutes an “adjudicated fact,” there is settled international jurisprudence on this matter. The following legal criteria have been adopted as standards which must be met before a Trial Chamber can exercise its discretion to admit a proposed fact as an adjudicated fact:
 - a. The fact must be distinct, concrete and identifiable;
 - b. The fact must be relevant and pertinent to an issue in the current case;
 - c. The fact must not contain legal conclusions, nor may it constitute a legal finding;
 - d. The fact must not be based on a plea agreement or upon facts admitted voluntarily in an earlier case;
 - e. The fact clearly must not be subject to pending appeal, connected to a fact subjected to pending appeal, or have been settled finally on appeal;
 - f. The fact must not go to proof of the acts, conduct or mental state of one of the accused persons;
 - g. The fact must not be sufficient, in itself, to establish the criminal responsibility of an accused person; and
 - h. The fact must not have been re-formulated by the party making the Application in a substantially different or misleading fashion; that is to say, the fact must not differ

⁴ Rule 94(B) of the ICTY provides: “At the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of the adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to the matter at issue in the current proceedings.” Rule 94(B) of the ICTR provides: “At the request of a party or *proprio motu*, a Trial Chamber, after hearing the parties, may decide to take judicial notice of adjudicated facts or documentary evidence from other proceedings of the Tribunal relating to the matter at issue in the current proceedings.”

⁵ Sesay Adjudicated Facts Decision, para. 16.

⁶ Sesay Adjudicated Facts Decision, para. 18, citing *Prosecutor v. Slobodan Milosevic*, No. IT-02-54-AR73.5, Decision on the Prosecution’s Interlocutory Appeal Against the Trial Chamber’s 10 April 2003 Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 28 October 2003, p. 2 and Separate Opinion Judge Shahabuddeen, 31 October 2006, para. 6.

⁷ Sesay Adjudicated Facts Decision, para. 32, citing *Prosecutor v. Karamera et al.*, No. ICTR-98-44-AR73(C) Appeal Chamber Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006, para. 42 (stating that adjudicated facts are presumed accurate but may be challenged), and *Prosecutor v. Aleksovski*, IT-95-14/1-A, Decision on Prosecutor’s Appeal on Admissibility of Evidence, 16 February 1999, paras. 24-25.

significantly from the way the fact was expressed when adjudicated in the previous proceedings, it must not have been abstracted from the context of the original judgement in an unclear or misleading manner, and it must not be unclear or misleading in the context in which it is placed in the Application.⁸

III. Submissions

The Facts Promote Fairness and Judicial Economy

8. The Special Court is an *ad hoc* court of limited temporal and geographic jurisdiction, and the cases before the Special Court necessarily overlap in terms of their factual background. As such, the Trial Chamber could promote fairness and judicial economy if it were to accept the proposed facts in Annex A and consequently narrow the factual issues that are in dispute.⁹ The Defence does not wish to delay proceedings by bringing witnesses to testify to facts that have already been tested and adjudicated and thus do not need to be re-litigated.¹⁰
9. Rule 94(B) does not specify at which stage in the proceedings an application for judicial notice must be brought. Instead, if testimony has already been heard on a particular proposed fact, the Chamber should determine if taking judicial notice will advance the objective of expediency without compromising the rights of the accused. In this instance, the rights of the accused will be upheld by ensuring that the trial is not unnecessarily long.
10. The Prosecution would not be disadvantaged if this Chamber decided to judicially note these adjudicated facts. The Prosecution may have already led evidence to challenge the rebuttable presumption that would be established if the Trial Chamber judicially notes these facts. Alternatively, the Prosecution could in the future, arguably move this Chamber to call witnesses to challenge any rebuttable presumption that would be created. (In this regard, it

⁸ Sesay Adjudicated Facts Decision, para. 19.

⁹ *Prosecutor v. Dusko Sikirica, Damir Dosen, Dragan Kolundzija*, IT-95-8, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts, 27 September 2000 (“**Sikirica Adjudicated Facts Decision**”).

¹⁰ See *Prosecutor v. Dragomir Milosevic*, IT-98-29/1-T, Trial Chamber Decision on Prosecution’s Motion for Judicial Notice of adjudicated facts and Prosecution’s catalogue of agreed facts with Dissenting Opinion of Judge Harhoff, 10 April 2007 (“**Dragomir Milosevic Adjudicated Facts Decision**”), para. 28; *Prosecutor v. Želiko Mejakić*, IT-02-65-PT, Decision on Prosecution Motion for Judicial Notice Pursuant to Rule 94(B), 1 April 2004, p. 5; *Prosecutor v. Momčilo Krajišnik*, IT-00-39-T, Decision on Third and Fourth Prosecution Motion for Judicial Notice of Adjudicated Facts, 24 March 2005, para. 12; *Prosecutor v. Ntakirutimana et al.*, ICTR-96-10-T & ICTR-96-17-T, Decision on the Prosecutor’s Motion for Judicial Notice of Adjudicated Facts, 22 September 2001, para. 28; Sikirica Adjudicated Facts Decision, p. 4.

is noteworthy that a Trial Chamber of the ICTR took judicial notice of certain facts even after the Defence had presented most of its evidence.)¹¹

The Facts are Distinct, Concrete and Identifiable

11. The Defence submits that the proposed facts in the Annex are distinct, concrete, and identifiable. The facts do not contain ambiguities or vague references.

The Facts are Relevant to Issues in the Current Case

12. Rule 94 is not a mechanism that may be employed to circumvent the ordinary requirement of relevance and thereby “clutter” the record with matters that would not otherwise be admitted.¹² All of the fifteen adjudicated facts are relevant to the relationship between the leaders of the AFRC and RUF and/or the command structure of the two. Specifically, the facts relate to the relationship between the AFRC and RUF as it pertains to the Freetown invasion in January 1999. As the case against Mr. Taylor is dependent on the actions of members of the AFRC and/or RUF, the relationship between the two is obviously a relevant issue.

The Facts are Not Legal Characterisations or Conclusions

13. Factual findings may have legal aspects to them; therefore, each proposed adjudicated fact must be considered individually to determine whether it contains findings or characterisations which are essentially legal in nature.¹³ The Defence submits that the relevant facts in the Annex are not of a legal character as they deal solely with the factual analysis of the relationship between the AFRC and the RUF and the fact that the RUF did not come into Freetown as a cohesive organization between about 21 December 1998 and 28 February 1999.

The Facts are Not Taken Out of Context and Were Not Altered on Appeal

¹¹ *Prosecutor v. Bizimungu et al*, ICTR-99-50-T, Decision on Prosecutor’s Motion for Judicial Notice, 22 September 2006, para. 10.

¹² *Prosecutor v. Semanza*, ICTR-97-20-A, Judgement, 20 May 2005, para. 189.

¹³ Sesay Adjudicated Facts Decision, para. 26; Dragomir Milosevic Adjudicated Facts Decision, para 22.

14. The adjudicated facts in Annex A have been formulated or excerpted from the original judgement in a manner consistent with the facts as they were adjudicated and as it appeared in the original judgement. In fact, most of the facts are taken verbatim from the Judgement. Furthermore, none of the relevant facts set out in this motion were contradicted by any finding of the Appeals Chamber in its Judgment¹⁴.

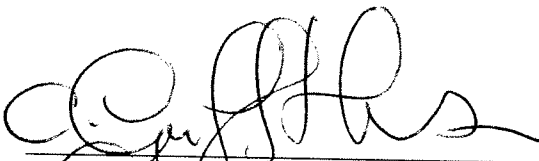
Discretionary Considerations

15. In determining whether to exercise its discretion to take judicial notice of a proposed adjudicated fact, the Trial Chamber must consider whether doing so would serve the interests of justice.¹⁵ As the *Krajisnik* Trial Chamber emphasised, the first concern is always to ensure that the Accused is offered a fair trial. As long as this principle is accomplished, the Chamber is under a duty to avoid that unnecessary time and resources are wasted on undisputed facts.¹⁶

IV. Conclusion

16. For the above reasons, the Defence respectfully requests the Trial Chamber to take judicial notice of the proposed adjudicated facts in Annex A.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 9th Day of February 2009
The Hague, The Netherlands

¹⁴ Prosecutor v. *Brima, Kamara, Kanu*, SCSL-2004-16-A, Appeals Judgement, dated 22 February 2008; filed 3 March 2008.

¹⁵ *Dragomir Milosevic* Adjudicated Facts Decision, para 28.

¹⁶ *Prosecutor v. Momcilo Krajisnik*, IT-00-39-PT, Decision on Prosecution's Motion for Motion for Judicial Notice of Adjudicated Facts and for Admission of Written statements of Witnesses Pursuant to Rule 92bis, 28 February 2003, paras. 11-12.

Table of Authorities

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Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-T, Trial Judgement, 20 June 2007

Prosecutor v. Brima, Kamara, Kanu, SCSL-2004-16-A, Appeals Judgement, dated 22 February 2008; filed 3 March 2008

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Prosecutor v. Momčilo Krajišnik, IT-00-39-T, Decision on Third and Fourth Prosecution Motion for Judicial Notice of Adjudicated Facts, 24 March 2005

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Prosecutor v. Ntakirutimana et al., ICTR-96-10-T & ICTR-96-17-T, Decision on the Prosecutor's Motion for Judicial Notice of Adjudicated Facts, 22 September 2001

Prosecutor v. Semanza, ICTR-97-20-A, Judgement, 20 May 2005

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Annex A

Annex of Adjudicated Facts
From Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-T, Trial Judgement, 20 June 2007

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Fact #	Para(s).	Adjudicated Fact
Junta Period		
1.	169	As the founders of the AFRC belonged to the Sierra Leone Army and therefore had been fighting the RUF since 1991, the coalition between the two factions following the 1997 coup was not based on longstanding common interests. Both factions officially declared that they were joining forces to bring peace and political stability to Sierra Leone.
2.	171	From the earliest days there were tensions between the two factions (AFRC and RUF) and relations deteriorated over time. In October 1997, Johnny Paul Koroma ordered the arrest of two RUF leaders on charges that they were plotting with the CDF to overthrow his government. Not long after this incident, Koroma ordered the arrest of Issa Sesay, another top RUF commander, for his part in looting the Iranian Embassy in Freetown. In response the RUF stopped attending joint meetings. In January 1998 Sam Bockarie, formally Vice-Chairman of the AFRC government in Foday Sankoh's absence, left Freetown for Kenema District because of his discontent with AFRC commanders.
3.	1655	The RUF and AFRC were allied in one Government and worked together during the AFRC period, but the individuals continued to identify themselves as either RUF or SLA and that at an organizational level, separate commanders for each group co-existed in the Districts.
4.	1656	The Supreme Council did not have the collective ability to effectively control the military, as the military retained its own distinct chain of command and organizational structure.
Retreat: From Freetown to Kabala/Kono		
5.	175, 176	The retreat from Freetown, following the reinstatement of President Kabbah in March 1998, was uncoordinated and without any semblance of military discipline. AFRC soldiers and RUF fighters fled with their families using either civilian cars or army vehicles. The fleeing troops passed through the villages of Lumley, Goderich, York and Tumbo. From Tumbo they crossed Yawri Bay to Fo-gbo. They then proceeded to newtown and Masiaka (Port Loko District). It took three to four days for the troops to reach Masiaka. This period is often referred to as "the intervention".
6.	180, 181	When SAJ Musa learned about Koroma's decision – that the AFRC soldiers should be subordinate to RUF command as part of the plan to recapture of Kono District – he was furious. He would not accept the notion that untrained RUF fighters could be in charge of former soldiers, and insisted that the purpose of his group was

Annex of Adjudicated Facts
From Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-T, Trial Judgement, 20 June 2007

Fact #	Para(s).	Adjudicated Fact
		to reinstate the army and that the RUF could not lead such a mission. In addition, before the operation to recapture Kono took place, a dispute erupted over command and control issues resulting in hostilities between the two factions and the deaths of several fighters. As a result, SAJ Musa and a significant number of AFRC troops loyal to him, opted not to participate in or support the operation.
Movement of AFRC: On to Freetown		
7.	185, 188	Johnny Paul Koroma departed Koidu Town around 4 March 1998 for Kailahun District, where he believed he would be welcomed by the RUF. However, when he arrived in Kailahun he encountered a hostile RUF leadership. He was arrested by Sam Bockarie, Issa Sesay and other RUF fighters. Bockarie placed Koroma under house arrest in Kagama village near Buedu where he remained until mid 1999. Koroma did not have any contact whatsoever with any of his former associates during the remaining period covered by the Indictment.
8.	190, 379	At a meeting in Koinadugu District, various AFRC commanders met with SAJ Musa to discuss the future and develop a new military strategy. The commanders agreed that the troops who had arrived from Kono District should act as an advance troop which would establish a base in north western area Sierra Leone in preparation for an attack on Freetown. The purpose was to "restore the Sierra Leone Army". The RUF was not involved in these deliberations.
9.	193, 384	From Colonel Eddie Town, in or around September 1998, AFRC troops staged a number of attacks on ECOMOG positions in order to supplement their dwindling stocks of arms and ammunition.
10.	197	In October 1998, following an armed clash with Dennis Mingo, SAJ Musa left Koinadugu District to join the advance team and prepare for an attack on Freetown. SAJ Musa did not follow the same route taken by the advance teams in his journey to the west.
11.	198	Upon his arrival in Colonel Eddie Town in November 1998, SAJ Musa assumed command. He emphasised his disenchantment with the RUF and stressed that it was vital that his troops arrive in Freetown before the RUF. SAJ Musa reorganised the troops and began the advance towards Freetown. The troops passed through the villages of Mange, Lunsar, Masiaka and Newton before arriving in Benguema in the Western Area in December 1998. Throughout the advance, the troops withstood frequent attacks by ECOMOG.
12.	200	On one occasion during the advance, SAJ Musa and the AFRC troops heard the British Broadcasting

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Annex of Adjudicated Facts
From Prosecutor v. Brima, Kamara, Kanu, SCSL-04-16-T, Trial Judgement, 20 June 2007

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Fact #	Para(s).	Adjudicated Fact
13.	201	<p>Corporation (BBC) interview Sam Bockarie over the radio. Bockarie revealed the position of the AFRC fighting forces and explained that it was RUF troops who were approaching Freetown. Soon after, ECOMOG bombarded the area. Musa immediately contacted Bockarie, insulted him and told him that he had no right to claim that the troops approaching Freetown were RUF troops.</p> <p>On 23 December 1998, shortly after the arrival in Benguema, SAJ Musa was killed in an explosion during an attack on an ECOMOG weapons depot.</p>
AFRC Attack on Freetown: January 1999		
14.	202, 398	<p>Following the death of SAJ Musa, the troops reorganised. On 5 January 1999, the Accused Brima gathered the troops in Allen Town and told them the time had come to attack Freetown. On 6 January 1999, they invaded Freetown.</p>
15.	206	<p>Following heavy assaults from ECOMOG, the troops were forced to retreat from Freetown. This failure marked the end of the AFRC offensive as the troops were running out of ammunition. While the AFRC managed a controlled retreat, engaging ECOMOG and Kamajor troops who were blocking their way, RUF reinforcements arrived in Waterloo. However, the RUF troops were either unwilling or unable to provide the necessary support to the AFRC troops.</p>