

879)

SCSL-03-01-T  
(26770-26777)

26770



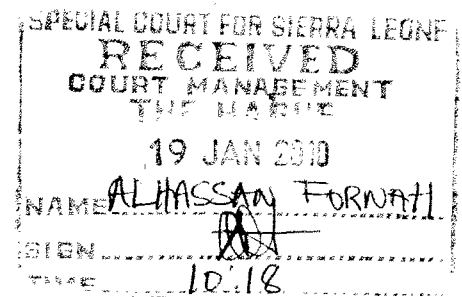
**SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR**

**TRIAL CHAMBER II**

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

Acting Registrar: Ms. Binta Mansaray

Date filed: 19 January 2010



**THE PROSECUTOR**

**Against**

**Charles Ghankay Taylor**

Case No. SCSL-03-01-T

---

**SUPPLEMENTAL FILING OF AUTHORITY AS ANNEX C IN RELATION TO  
URGENT APPLICATION FOR LEAVE TO APPEAL ORAL DECISIONS OF 14 JANUARY 2010 ON USE  
OF DOCUMENTS IN CROSS-EXAMINATION**

---

Office of the Prosecutor:

Ms. Brenda J. Hollis  
Mr. Nicholas Koumjian  
Ms. Nina Jørgensen  
Ms. Kathryn Howarth

Counsel for the Accused:

Mr. Courtenay Griffiths, Q.C.  
Mr. Terry Munyard  
Mr. Andrew Cayley  
Mr. Morris Anyah  
Mr. Silas Chekera  
Mr. James Supuwood

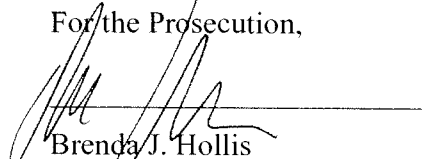
In paragraph 10 of its “Public with Annex A and Confidential Annex B Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-Examination” filed on 18 January 2010 (“**Motion**”) the Prosecution refers to an ICTY decision that at the time of filing was only available in French. Consequently, the ICTY decision was filed in French as Annex A of the Motion accompanied by an unofficial English translation. The Prosecution indicated in footnote 16 of the Motion that the official English translation would be provided to the Defence and the Trial Chamber as soon as it was available. Therefore, the Prosecution hereby files the official English translation as a supplemental **Annex C** to the Motion.

Filed in The Hague,

19 January 2010,

For the Prosecution,

ew

  
Brenda J. Hollis  
Principal Trial Attorney

26772

ANNEX C

26773

**UNITED  
NATIONS**

IT-04-74-T  
D5 - 1/57647 BIS  
18 January 2010

5/57647 BIS  
SF



International Tribunal for the  
Prosecution of Persons Responsible  
for Serious Violations of International  
Humanitarian Law Committed in the  
Territory of the Former Yugoslavia  
since 1991

Case No.: IT-04-74-T  
Date: 12 January 2010  
Original: ENGLISH  
French

**IN TRIAL CHAMBER III**

**Before:** Judge Jean-Claude Antonetti, presiding  
Judge Árpád Prandler  
Judge Stefan Trechsel  
Reserve Judge Antoine Kesia-Mbe Mindua

**Registrar:** Mr John Hocking

**Order of:** 12 January 2010

**THE PROSECUTOR**

v.

**Jadranko PRLIĆ  
Bruno STOJIĆ  
Slobodan PRALJAK  
Milivoj PETKOVIĆ  
Valentin ČORIĆ  
Berislav PUŠIĆ**

***PUBLIC***

**ORDER CLARIFYING DECISION OF 27 NOVEMBER 2008**

**The Office of the Prosecutor:**

Mr Kenneth Scott  
Mr Douglas Stringer

**Counsel for the Accused:**

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić  
Ms Senka Nožica and Mr Karim A.A. Khan for Bruno Stojić  
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak  
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković  
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Čorić  
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

**TRIAL CHAMBER III** ("Chamber") of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 ("Tribunal"),

**SEIZED** of the "Prosecution Motion for Clarification on the Use of 'New' Documents During Cross-Examination", filed publicly by the Office of the Prosecutor ("Prosecution") on 30 November 2009 ("Motion"), in which the Prosecution asks the Chamber to clarify the manner of application of the "Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses" of 27 November 2008 ("Decision of 27 November 2008"), and in particular the procedure related to the use of "new documents" during the cross-examination of defence witnesses,<sup>1</sup>

**NOTING** the "Joint Response of Accused Stojić, Praljak, Petković, Ćorić and Pušić to the Prosecution's 30 November 2009 Motion for Clarification on the Use of "New" Documents During Cross-Examination", filed jointly and publicly by the Defence teams for the Accused Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić ("Joint Defence"<sup>2</sup>) on 8 December 2009 ("Joint Response"), in which the Joint Defence requests that the Chamber reject the Prosecution Motion,<sup>3</sup>

**CONSIDERING** that the Prlić Defence did not file a response to the Motion,

**NOTING** the "Decision on the Interlocutory Appeal Against the Trial Chamber's Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses", rendered publicly by the Appeals Chamber on 26 February 2009, in which the Appeals Chamber upheld the Decision of 27 November 2008,<sup>4</sup>

**CONSIDERING** as a preliminary matter that the Chamber notes that the Joint Defence filed its Joint Response on 8 December 2009, which is one day after the

---

<sup>1</sup> Motion, paras 1, 5, 10 and 22 and footnote 3.

<sup>2</sup> Since the Stojić, Praljak, Petković, Ćorić and Pušić Defence teams filed a Joint Response to the Prosecution Motion, the Chamber will refer to the "Joint Defence" as an entity for this Decision.

<sup>3</sup> Response, paras 5 and 6.

<sup>4</sup> *The Prosecutor v. Prlić et al.* Case No. IT-04-74-AR73.14, "Decision on the Interlocutory Appeal Against the Trial Chamber's Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses", public, 26 February 2009 ("Appeals Chamber Decision of 26 February 2009"), paras 23 to 31.

deadline set by the Chamber;<sup>5</sup> that it decides, however, as an exception and in keeping with the subject of the Motion, that it is in the interest of justice to admit the Joint Response; that the Chamber nevertheless orders the Parties, in the future, to adhere strictly to set deadlines,

**CONSIDERING** that the Chamber notes that in its Motion, the Prosecution argues that when it wishes to use “new documents” during the cross-examination of a Defence witness, it is not required in advance to state its intention, or to give an explanation or seek permission of the Trial Chamber before using it;<sup>6</sup> that if it later wishes to tender these “new documents” for admission, it will have to adhere to the Chamber's admissibility criteria defined in the Decision of 27 November 2008;<sup>7</sup> that, furthermore, the defence teams were unable to prove that the Prosecution use of the “new documents” in court caused any specific prejudice and that like the approach adopted by the Chamber for the cross-examination of Prosecution witnesses by Defence teams, there can be no limitation on the presentation of “new documents” by the Prosecution;<sup>8</sup>

**CONSIDERING** that in the Joint Response, the Joint Defence argues firstly that the Prosecution is using the Motion to dispute the Decision of 27 November 2008 under the pretext of seeking clarification;<sup>9</sup> that secondly, a clarification of the Decision of 27 November 2008 is unnecessary since the said Decision clearly stipulates that the Prosecution may present “new documents” during the cross-examination for the purpose of testing a Defence witness's credibility or refreshing his memory but that the Prosecution presentation of “new documents” must be justified by exceptional reasons and requires the prior permission of the Chamber,<sup>10</sup>

**CONSIDERING** that like the argument put forth by the Prosecution, the Chamber recognises that the use of “new documents” during the cross-examination of a Defence witness and a request by the Prosecution to tender the “new documents” into evidence constitute two separate stages regulated by different procedures,

---

<sup>5</sup> Chamber's email addressed to the Parties setting a deadline for filing the Prosecution Motion and responses from the parties, 23 November 2009.

<sup>6</sup> Motion, paras 5, 11-15 and 22.

<sup>7</sup> Motion, paras 5, 19 and 22.

<sup>8</sup> Motion, paras 7 and 8.

<sup>9</sup> Joint Response, para. 5 (i).

<sup>10</sup> Joint Response, paras 5 (ii) to (iv).

**CONSIDERING** that the Chamber further notes that this distinction between the procedure for using and the procedure for tendering "new documents" also applies to the Defence Teams whose cases have ended,

**CONSIDERING** that the Chamber recalls that while using "new documents" during the cross-examination of a Defence witness, whether the "new document" is used for the purpose of testing the credibility of that witness, refreshing his memory or establishing the guilt of one or more accused, the Prosecution and the Defence teams who have concluded their cases are not obliged to disclose their strategy; that consequently, they do not have to specify at that stage whether or not they wish subsequently to tender these "new documents"; that while using these "new documents" during the cross-examination of a Defence witness, the Prosecution and the Defence teams who have concluded their cases are not required to provide justifications regarding the use of the said documents,

**CONSIDERING** that the Chamber recalls that the Prosecution and the Defence teams who have concluded their cases and wish subsequently to tender "new documents" are required, when filing their respective IC lists, to specify their purpose for tendering these "new documents"; that when a party that has concluded its case requests the admission of "new documents" for the establishing the guilt of one or more Accused, it must at that moment specify the exceptional circumstances justifying the admission of these "new documents", namely the date of the documents and their source, the date when they were disclosed to the Defence teams and the reasons why these documents are being presented after the close of their respective cases;<sup>11</sup> that, in the spirit of clarification, the Chamber recalls that the an *inter partes* hearing will take place at this stage, namely during the motion for admission and that the objections related notably to the nature of the documents presented and formulated in court are therefore premature,

---

<sup>11</sup> "Decision of 27 November 2008," paras 20, 21, 23 and 24; "Appeals Chamber Decision of 26 February 2009," paras 24 and 30.

**FOR THE FOREGOING REASONS,**

**PURSUANT TO** Articles 20 and 21 of the Statute of the Tribunal and Rules 54 and 85 (A), 89 (B) and 90 (H) of the Rules of Procedure and Evidence,

**RECALLS** that the parties who have concluded the presentation of their case do not have to justify the use of “new documents” in court when they are cross-examining a Defence witness, **AND**

**INVITES** the parties not to raise objections in court on the nature of the “new documents” and to reserve such objections for when these “new documents” are the subject of a request for admission,

Done in English and in French, the French version being authoritative.

*/signed/*

---

Judge Jean-Claude Antonetti

Presiding Judge

Done this 12 January 2010

At The Hague

The Netherlands

**[Seal of the Tribunal]**