942)

SCSL-03-01-T
(28592-28597)

28592

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

Registrar: Ms. Binta Mansaray

Date filed: 16 April 2010

THE PROSECUTOR **Against** **Charles Ghankay Taylor**

Case No. SCSL-03-01-T

PUBLIC
PROSECUTION REPLY TO DEFENCE RESPONSE TO PROSECUTION MOTION FOR JUDICIAL NOTICE OF ADJUDICATED FACTS FROM THE RUF JUDGEMENT

Office of the Prosecutor:
Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Ms. Kathryn Howarth

Counsel for the Accused:
Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood

I. INTRODUCTION

1. The Prosecution files this Reply to the "Defence Response to Prosecution Motion for Judicial Notice of Adjudicated Facts from the RUF Judgment" ("**Response**").[1]

II. ARGUMENT

2. The Prosecution takes exception to the allegations made by the Defence at paragraph 13 of the Response. The Defence allegation that the Prosecution Motion, by virtue of including a conditional or alternative argument is "cheap tit for tat…which should not have any place in legal proceedings" is unfounded, unprofessional and has no place in pleadings before the Court. The Prosecution's argument regarding the facts set out in Appendix B is clear – it is the Prosecution's position that such facts are not appropriate for judicial notice as they go to a contested and core issue in the case. However, should the Trial Chamber conclude that this category of facts is suitable for judicial notice, the facts in Appendix B should be admitted to ensure the Trial Chamber has before it comprehensive and complete facts found by that Trial Chamber relevant to AFRC/RUF relations in the lead up to and during the Freetown invasion.

3. In relation to the applicable legal principles, the Defence suggests that the proposed facts ought not to be judicially noticed where they relate to people or conduct that is proximate to the accused.[2] This submission finds no support in the jurisprudence. Also different considerations apply in relation to Rule 92*bis* and judicially noted facts. However, should the Trial Chamber determine the Defence suggestion to be apposite, then it should apply equally to those facts proposed for judicial notice by the Defence as to those proposed for judicial notice by the Prosecution. In other words neither those facts proposed by the Prosecution or the Defence which relate to people or conduct that is proximate to the accused should be subject to judicial notice.

---

[1] *Prosecutor v. Taylor*, SCSL-03-01-T-941, "Defence Response to Prosecution Motion for Judicial Notice of Adjudicated Facts from the RUF Judgment," 12 April 2010 ("**Response**").
[2] See Response paras. 8 – 11.

4. As regards the timing of the application, the Defence draws attention to the fact that the Prosecution makes its application after its case has closed. [3] However, given that the RUF Appeal Judgment was rendered some five months after the Prosecution case was formally closed it was patently impossible for the Prosecution to make an application during the currency of its case.

5. At paragraph 18 of the Response, the Defence makes, what essentially amounts to a thinly veiled threat to the Trial Chamber, that should the proposed facts be judicially noticed then they may have to call additional witnesses or conduct further investigations which would require extra time and facilities and result in delay and expense. This threat should be given short shrift. As the Defence itself acknowledges, 38 of the proposed facts (in Appendix A to the Motion) relate largely to crime base evidence[4] – evidence which the Defence has repeatedly stated publicly that it is not disputing.[5] As regards the additional 12 proposed facts (in Appendix B to the Motion) although these relate to AFRC/RUF relations in the lead up to and during the Freetown invasion, the Defence has been on notice of this aspect of the case from the beginning,[6] such that in relation to this, as well as the crime base evidence, the Defence cannot make any genuine claim to have been taken by surprise such that additional witnesses, investigations, facilities and or time would be required. The Defence ignores that the facts set out in Appendix B are simply additional to those on the same issue and from the same source which the Defence has requested the Trial Chamber to judicially notice. The Defence threat also conveniently ignores the substantial amount of evidence it has already introduced on these matters in its cross examination of Prosecution witnesses and the evidence of its own witnesses, a matter it does however, ask the Trial Chamber to consider in evaluating the Prosecution

---

[3] Response, para. 17.
[4] Response, para. 2.
[5] *See, e.g., Prosecutor v. Taylor*, SCSL-2003-01-T, Trial Transcript, 14 February 2008, page 3857, lines 9-13 (Defense Counsel states, "[A]s far as crime base witnesses are concerned we didn't see the need to call any of them to give evidence. We indicated that because, as far as this degree of detail is concerned, it seems to us that we are not in a position to challenge any of it."); *See Prosecutor v. Taylor*, SCSL-2003-01-T, Trial Transcript, 13 July 2009, pages 24295-24296, lines 27-2 (Defense Counsel states, "We consequently do not and never have taken issue with the fact that terrible things, atrocities, were committed in Sierra Leone. We've never done that. We still cannot therefore understand why more than half of the witnesses called were so-called crime base witnesses to prove a fact not in dispute.").
[6] As much is acknowledged by the Defence at para. 22 of the Response.

request for judicial notice of these adjudicated facts.[7] Finally the threat also seems to be based on the premise that the Defence has the authority to unilaterally add new witnesses to its case or to delay proceedings.

6. Further, in as far as the Defence arguments[8] suggest that the rights of the Accused will somehow be compromised, it should be remembered that not only the Accused but also the Prosecution has the right to a fair trial.[9] Whereas the Defence is currently in the currency of its case and is therefore well placed to rebut any judicially noted fact/s should it deem it necessary to do so, the Prosecution has of course closed its case, and would only be in a position to rebut any judicially noticed facts should a rebuttal case be permitted.

7. At paragraph 20 of the Response, the Defence argues in the alternative that "the volume of Prosecution evidence already on record in relation to these facts is extensive". This assertion brings to fore the lack of substance and illogic inherent to the Defence Response. The Defence cannot both argue that the proposed facts are "new evidence"[10] that would require additional witnesses, investigations, expense and time, and at the same time that the "evidence already on record in relation to these facts is extensive".[11] Thus the arguments made in the Defence Response,[12] to suggest that the proposed facts "violate the accused's fair trial rights" and are "not in the interests of justice" are inherently contradictory and should be dismissed in their entirety.

8. Finally, the arguments made by the Defence to the effect that the proposed facts do not satisfy the criteria for Judicial Notice similarly lack merit.[13] As regards paragraph 25, the Prosecution is entitled to select those facts it wishes to request judicial notice of and is in no way obliged to include findings which run counter to the evidence that

---

[7] Response, para 20.
[8] See esp. para 18 and also 19 – 20.
[9] *Prosecutor v. Blaskic*, IT-95-14, "Decision on Defence Motion for Protective Measures for Witnesses D/H and D/I", 25 September 1998. This point is cited in Archbold International Courts Practice, Procudure and Evidence paragraph 8-48a and cited by this Trial Chamber in *Prosecutor v. Brima et al.*, SCSL-04-16-T-307, "Decision on Objection to Question Put by Defence in Cross-Examination of Witness TF1-227," 15 June 2005, para. 17.
[10] Response, para. 19.
[11] Response, para. 20.
[12] See paras. 16 – 23 of the Response under the sub-heading "*Admission of Facts Violates the Accused's Fair Trial Rights and is Not in the Interests of Justice*".
[13] Response, paras. 24 – 28.

it has presented in this case – indeed to do otherwise would be illogical. As regards paragraph 27 there is no bar on evidence which is outside the temporal or geographical scope of the Indictment. Such evidence is relevant and admissible for a variety of purposes including to show the existence of a common plan, design or purpose, concerted action, mens rea, and regarding other relevant matters.[14] Both Trial Chambers' of the Special Court have relied on such evidence during the trial and Trial Chamber I made a finding to this effect in the RUF Judgment.[15]

III. CONCLUSION

9. For the reasons given above the Defence arguments as set out in the Response should be rejected.

Filed in The Hague,

16 April 2010,

For the Prosecution,

Brenda J. Hollis
The Prosecutor

[14] *Prosecutor v. Sesay et al.*, SCSL-04-15-T, Judgement, 2 March 2009, para 482 ("**RUF Judgment**"). *See also, Prosecutor v. Nahimana*, ICTR-99-52-A, Appeal Judgement, 28 November 2007, para. 315 (such evidence is relevant and admissible to "clarify a given context," "establish by inference the elements of criminal conduct," or "demonstrate a deliberate pattern of conduct"), para. 320 (such evidence is relevant and admissible "to challenge the Accused's credibility"); *See also, Prosecutor v. Prlic*, IT-04-74-T, Decision on Slobodan Praljak's Motion for Clarification of the Time Frame of the Alleged Joint Criminal Enterprise, 15 January 2009, page 9.
[15] RUF Judgment at para. 482.

INDEX OF AUTHORITIES

SCSL

Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T-941, Defence Response to Prosecution Motion for Judicial Notice of Adjudicated Facts from the RUF Judgment, 12 April 2010

Prosecutor v. Taylor, Trial Transcript, 14 February 2008

Prosecutor v. Taylor, Trial Transcript, 13 July 2009

Prosecutor v. Sesay et al.

Prosecutor v. Sesay et al., SCSL-04-15-T, Judgement, 2 March 2009

Prosecutor v. Brima et al.

Prosecutor v. Brima et al., SCSL-04-16-T-307, Decision on Objection to Question Put by Defence in Cross-Examination of Witness TF1-227, 15 June 2005

ICTY

Prosecutor v. Blaskic, IT-95-14, Decision on Defence Motion for Protective Measures for Witnesses D/H and D/I, 25 September 1998
http://www.icty.org/x/cases/blaskic/tdec/en/80925PM15080.htm

Prosecutor v. Prlic, IT-04-74-T, Decision on Slobodan Praljak's Motion for Clarification of the Time Frame of the Alleged Joint Criminal Enterprise, 15 January 2009
http://www.icty.org/x/cases/prlic/tdec/en/090115a.pdf

ICTR

Prosecutor v. Nahimana, ICTR-99-52-A, Appeal Judgement, 28 November 2007
http://www.unhcr.org/refworld/docid/48b5271d2.html