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SCSL-03-01-T
(29694-29711)

29694



THE SPECIAL COURT FOR SIERRA LEONE

Trial Chamber II

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

Registrar: Ms. Binta Mansaray

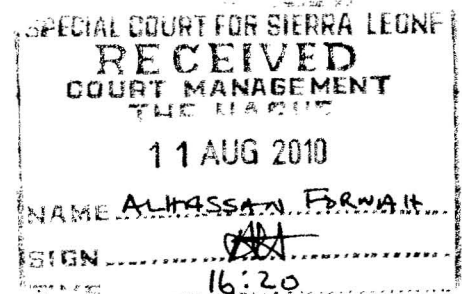
Date: 11 August 2010

Case No.: SCSL-03-01-T

THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR



PUBLIC WITH ANNEXES A AND B

DEFENCE MOTION FOR ADMISSION OF DOCUMENTS PURSUANT TO RULE 92bis

Office of the Prosecutor:

Ms. Brenda J. Hollis

Counsel for the Accused:

Mr. Courtenay Griffiths, Q.C.

Mr. Terry Munyard

Mr. Morris Anyah

Mr. Silas Chekera

Mr. James Supuwood

I. INTRODUCTION

1. This is the Defence motion to admit into evidence the annexed documents, pursuant to Rules 92*bis* of the Rules of Procedure and Evidence of the Special Court for Sierra Leone ("Rules").
2. The material, which is the subject of this filing, is relevant to the crimes charged ~~in the Second Amended Indictment,¹ being Code Cables sent to or sent by Felix Downes-Thomas, the Special Representative of the Secretary-General of the United Nations, in 1999.~~
3. The two (2) Code Cables, Defence Exhibit DCT-296 and DCT-328, annexed to this motion were initially included in the list of anticipated exhibits to use during the examination-in-chief of Mr. Taylor² and were disclosed to the Prosecution on 12 August 2009.

II. APPLICABLE LAW

4. Rule 92*bis* states:
 - (A) In addition to the provision 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 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 as evidence shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.
5. Trial Chamber II has further ruled that the purpose 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

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-263, "Public Prosecution's Second Amended Indictment", 29 May 2007.

² *Prosecutor v. Taylor*, SCSL-03-01-T-828, "Public with Annexes A and B Defence Witness Order and List of Exhibits for the Week 24 August 2009-28 August 2008", 10 August 2009. See also: *Prosecutor v. Taylor*, SCSL-03-01-T-827, "Public with Annex A and Confidential Annex B Defence Rule 73*ter* Filing of Exhibit List (Version VI)", 10 August 2009.

“susceptible to confirmation.”³ However, the reliability of a document is not a bar to admission; information may still be admitted where it is capable of corroboration in due course.⁴

6. The Appeals Chamber of the Special Court for Sierra Leone has ruled that any information not going to proof of the acts and conduct of the accused which is *not tendered through a witness* [emphasis added] should be submitted under Rule 92bis.⁵ Furthermore, the Appeals Chamber has found that by its express terms Rule 92bis applies to information tendered “*in lieu of oral testimony*” and the information to be admitted is *not restricted to written statements or transcripts* [emphasis added].⁶

III. SUBMISSIONS AND ADMISSIBILITY OF EVIDENCE

7. Based on the applicable law and legal principles elaborated above, the Defence submits this application to admit these Code Cables pursuant to Rule 92bis. The Defence seeks to admit these two Code Cables in relation to the Accused’s testimony regarding the destruction of weapons collected after the disarmament in

³ *Prosecutor v. Taylor*, SCSL-03-01-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, page 4.

⁴ *Prosecutor v. Norman et al.*, 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. In the AFRC trial, the Trial Chamber has stated that “evidence may be excluded because it is unreliable, but it is not necessary to demonstrate the reliability of the evidence before it is admitted.” See *Prosecutor v. Brima et al.*, SCSL-04-16-T, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92bis”, 18 November 2005, page 2, citing *Prosecutor v. Brima et al.*, SCSL-04-16-T, “Decision on Joint Defence Application for Leave to Appeal from Decision n Defence Motion to Exclude All Evidence from Witness TF1-277”, 2 August 2005, para. 6. In the same AFRC trial, the Trial Chamber considered the reliability of the evidence to be considered at the end of the trial and be evaluated and weighed as a whole, taking into account the context and nature of the evidence as well as the credibility and reliability of the evidence See: *Prosecutor v. Brima et al.*, SCSL-04-16-T, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92bis”, 18 November 2005, page 2. See also: *Prosecutor v. Norman et al.*, SCSL-04-14-T-447, “Decision on Prosecution’s Request to Admit into Evidence Certain Documents Pursuant to Rule 92bis and 89(C)”, 14 July 2005, page 3.

⁵ *Prosecutor v. Taylor*, SCSL-03-01-721 “Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’”, 6 February 2009, para. 34.

⁶ *Prosecutor v. Taylor*, SCSL-03-01-721, para 30-31. Subsequent to the Appeals Chamber Decision, Trial Chamber II found that : “The effect of Rule 92bis 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.”

Liberia, and to contradict evidence brought by the Prosecution through its witnesses in relation to the alleged RUF supply route in Liberia.

8. Furthermore, the Defence submits that all the criteria for submission of documents under Rule 92bis have been met as elaborated below:

The Evidence is Relevant

9. ~~The Code Cables annexed to this motion, defence exhibit numbers DCT-296 and DCT-328, are relevant to the current proceedings as they cover issues that occurred within the indictment period, specifically in 1999.~~
10. The first document, Defence Exhibit DCT-296, is a two-page outgoing Code Cable from Felix Downes-Thomas, dated 14 April 1999.⁷ It is a daily situation report ("SITREP") covering the period from 13 April 1999 to 14 April 1999, and includes a report on an announcement made by the Defence Minister of Liberia, Daniel Chea, concerning the deployment of more troops on the Liberian border with Sierra Leone in response to a threat by the ECOMOG Force Commander to "attack RUF rebel's supply routes in Liberia".
11. The issue of the alleged RUF's supply route in Liberia is central to the Prosecution's allegations of "Joint Criminal Enterprise" and "Aiding and Abetting" charged within the Second Amended Indictment;⁸ and, indeed, the topic has arisen on multiple occasions before the court.⁹
12. The second document, Defence Exhibit DCT-328 is an outgoing Code Cable addressed to Felix Downes-Thomas, dated 28 July 1999.¹⁰ Attached to the Code Cable is the Secretary-General's briefing to the Security Council entitled *The Secretary-General's of the United Nations Talking Points for Press Encounter after Briefing the Security Council on Africa*. Two of the issues that are mentioned are: (1) the peace agreement in Sierra Leone; and, (2) "the biggest ever organized destruction of conventional weapons" in Liberia. Both are *prima facie* relevant to

⁷ Annex A, DCT-296 is a "Situation report from Felix Downes-Thomas, which mentions Liberia deploying more troops on its border with Sierra Leone to counter allegations of RUF receiving supplies from Liberia, dated 14 April 1999." See CMS 827 Supra note.2

⁸ *Prosecutor v. Taylor*, SCSL-03-01-T-263, "Public Prosecution's Second Amended Indictment", 29 May 2007

⁹ For instance, see: *Prosecutor v. Taylor*, Trial Transcripts, 6 February 2008, p.3272; 7 February 2008, p.3341; 11 June 2008, p.11541; 21 August 2008, p.14235 line:2-9; Trial Transcript, 5 August 2009, 26084, 6 August 2009, p.26196; 10 September 2009, p.28634; p.28635 line:13-19, p.28637-28638 line: 15 September 2009; 28958; 16 September 2009, p.29051.

¹⁰ Annex B, DCT-328 is a "Code Cable dated 28 July 1999 attaching a copy of the UN Secretary General's briefing to the Security Council following his trip to Africa" See CMS 827 Supra note.2

the proceedings, given the centrality of the Lomé Peace Agreement and the disarmament and destruction of arms in Liberia to the case.¹¹

13. It is, therefore, self-evident that the information contained in document DCT-296 and DCT-328 is highly relevant to the proceedings, and satisfies the requirement of relevance set out in Rule 92*bis* of the Rules.

The Evidence is Susceptible of Confirmation

14. Rule 92*bis* also requires the material(s) referred to in this notice to be susceptible of confirmation. The Defence, at this point in time, is only required to show that the reliability of the evidence is susceptible to confirmation and does not have to prove the evidence is actually reliable.¹² The Appeals Chamber in *Norman et al* has further interpreted that “susceptible of confirmation” does not require proof of reliability before admission, but does require that the information is capable of corroboration in due course.¹³ This Trial Chamber has noted that reliability is to be assessed at the end of the trial, in light of the totality of the evidence presented at trial, and what weight, if any, should be attached to it.¹⁴ The Defence submits that the Code Cables annexed to this motion are “susceptible to confirmation” as the authenticity of the Code Cables is capable of being verified against the United Nations archive. The issues set out in the two Code Cables are not novel to the Prosecution, or the Court, and indeed, such evidence has been corroborated by other witnesses before this court.¹⁵

The Evidence Does Not Go to Proof of the Acts and Conduct of the Accused

15. The Defence acknowledges that Rule 92*bis* explicitly excludes written statements or transcripts which go to proof of the acts and conduct of the Accused.¹⁶ The

¹¹ For instance, see : *Prosecutor v. Taylor*, Trial Transcripts 12 August 2009, p. 26552-26553, p. 26639, p. 26640, p. 26648-26649, p. 26652, p. 26655, p. 26658, p. 26660; 17 August 2009, p. 26897; 20 August 2009, p. 27360, p. 27397; 26 August 2009, p. 27810.

¹² *Prosecutor v. Norman et al.*, 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. 27.

¹³ *Prosecutor v. Norman et al.*, 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.

¹⁴ *Prosecutor v. Taylor*, SCSL-03-01-750, “Decision on Prosecution Motion for Admission of Newspaper Articles Obtained from the Catholic Justice and Peace Commission Archive in Monrovia, Liberia” 27 February 2009, paragraph 27 quoting so and so.

¹⁵ See footnotes 8 and 9

¹⁶ There is a distinction 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

Defence submits that the material offered here self-evidently does not go to proof of the acts and conduct of the Accused, and thus satisfies the requirements of admission through Rule 92*bis*.

IV. CONCLUSION

16. For the reasons stated above, the Defence respectfully requests the Trial Chamber, in exercising its discretion, to admit into evidence, pursuant to Rule 92*bis*, the materials annexed to this motion.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
 Dated this 11th Day of August 2010
 The Hague, The Netherlands

others;" and that only written statements which go to proof of the latter are excluded by Rule 92*bis*. See: *Prosecutor v. Galic*, IT-98-29-AR73.2, "Decision on Interlocutory Appeal Concerning Rule 92*bis*(C)", 8 June 2002, para. 9. See also *Prosecutor v. Sesay et al.*, SCSL-04-15-1049, "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, p.2-3., See also *Prosecutor v. Galic*, IT-98-29-AR73.2, "Decision on Interlocutory Appeal Concerning Rule 92*bis*(C)", 8 June 2002, para. 9.

TABLE OF AUTHORITIES

Prosecutor v Taylor

Prosecutor v. Taylor, SCSL-03-01-T-263, “Public Prosecution’s Second Amended Indictment”, 29 May 2007.

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

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

Prosecutor v. Taylor, SCSL-03-01-750, “Decision on Prosecution Motion for Admission of Newspaper Articles Obtained from the Catholic Justice and Peace Commission Archive in Monrovia, Liberia”, 27 February 2009.

Prosecutor v. Taylor, SCSL-03-01-T-827, “Public with Annex A and Confidential Annex B Defence Rule 73ter Filing of Exhibit List (Version VI)”, 10 August 2009.

Prosecutor v. Taylor, SCSL-03-01-T-828, “Public with Annexes A and B Defence Witness Order and List of Exhibits for the Week 24 August 2009-28 August 2008”, 10 August 2009.

Prosecutor v. Taylor, Trial Transcripts, 6 February 2008.

Prosecutor v. Taylor, Trial Transcripts, 7 February 2008.

Prosecutor v. Taylor, Trial Transcripts, 11 June 2008.

Prosecutor v. Taylor, Trial Transcripts, 21 August 2008.

Prosecutor v. Taylor, Trial Transcripts, 5 August 2009.

Prosecutor v. Taylor, Trial Transcripts, 6 August 2009.

Prosecutor v. Taylor, Trial Transcripts, 12 August 2009.

Prosecutor v. Taylor, Trial Transcripts, 17 August 2009.

Prosecutor v. Taylor, Trial Transcripts, 20 August 2009.

Prosecutor v. Taylor, Trial Transcripts, 26 August 2009.

Prosecutor v. Taylor, Trial Transcripts, 10 September 2009.

Prosecutor v. Taylor, Trial Transcripts, 15 September 2009.

Prosecutor v. Taylor, Trial Transcripts, 16 September 2009.

CDF

Prosecutor v. Norman et al., SCSL-2004-14-AR73, “Fofana – Decision on Appeal against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, 16 May 2005.

Prosecutor v. Norman et al., SCSL-04-14-T-447, “Decision on Prosecution’s Request to Admit into Evidence Certain Documents Pursuant to Rule 92*bis* and 89(C)”, 14 July 2005.

AFRC

Prosecutor v. Brima et al., SCSL-04-16-T, “Decision on Joint Defence Application for Leave to Appeal from Decision n Defence Motion to Exclude All Evidence from Witness TF1-277”, 2 August 2005.

Prosecutor v. Brima et al., SCSL-04-16-T, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92*bis*”, 18 November 2005.

RUF

Prosecutor v. Sesay et al., SCSL-04-15-1049, “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

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

[http://sim.law.uu.nl/sim/caselaw/tribunalen.nsf/eea9364f4188dcc0c12571b500379d39/a2755cfb491f7363c12571fe004be529/\\$FILE/Galic%20ACD%207-06-2002.pdf](http://sim.law.uu.nl/sim/caselaw/tribunalen.nsf/eea9364f4188dcc0c12571b500379d39/a2755cfb491f7363c12571fe004be529/$FILE/Galic%20ACD%207-06-2002.pdf)

ANNEX A

RSG/MVA/CLN-127

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OPKO REGISTRY 3-3725

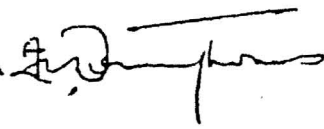
Page 1 of 2

1999 APR 14 P 4:06

OUTGOING CODE CABLE

TO: PRENDERGAST, UNITED NATIONS, NEW YORK

INFO: MIYET/VIEIRA DE MELLO, UNITED NATIONS, NEW YORK
ROBINSON, GENEVA (Pls. Relay)

FROM: DOWNES-THOMAS, RSG, UNOL, MONROVIA 

DATE: 14 APRIL 1999

DAILY SITREP

Covering Period from 1401H 13 April 1999 to 1400H 14 April 1999

HIGHLIGHTS

- * Liberia Announces Deployment of More Troops on its Border with Sierra Leone
- * Liberia Loses Votes at OAU and UN For Nonpayment of Dues
- * Ex-combatants Refuse to Vacate Catholic Premises

POLITICAL

1. Defence Minister Daniel Chea has announced the deployment of additional troops on Liberia's border with Sierra Leone in response to a recent threat by ECOMOG's new Force Commander, Maj.Gen. Felix Mujakpero, to attack RUF rebels' supply routes in Liberia. Minister Chea also urged the UN to deploy military observers on the Liberia-Sierra Leone border so that they could assist in verifying allegations that Liberia was supplying arms and ammunition to RUF rebels in Sierra Leone. The minister also called on ECOWAS to take disciplinary action against the ECOMOG commander by having him apologize for his threats against Liberia.
2. Foreign Affairs Minister Monie Captan told journalists on 12 April that Liberia will no longer be able to play any meaningful role nor take an active part in future meetings of the OAU and the UN owing to the non-payment of membership dues. The minister said since 1990, Liberia had not been able to settle its financial obligations to the UN, the OAU and the ECOWAS. As a result, the UN and the OAU have resolved to temporarily relegate Liberia's participation to an observer status until it settles its obligations. Minister Captan, who did not disclose how much Liberia owed to these institutions, lamented the fact that "Liberia will be voiceless in future OAU and UN meetings".
3. More than 200 ex-combatants have refused to vacate the Gbarnga Theological Seminary in Bong County they have been occupying since 1994 until the Catholic authorities pay them

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US\$25,000 to enable them to "resettle and engage in meaningful projects". The ex-fighters, most of them handicapped and former members of the now defunct National Patriotic Front of Liberia, have organized themselves into the Veteran Assistance Programme. The Archdiocese of Gbarnga has requested the ex-combatants to vacate the premises to allow the seminary to reopen. The former fighters' only current source of livelihood comes from periodic ration of rice provided by the ruling National Patriotic Party. If given the money, they plan to engage in agricultural and other development projects. Among the ex-combatants are some trained nurses, mechanics, carpenters, metal and construction workers.

SECURITY

4. NSTR

HUMAN RIGHTS

5. NSTR

Best regards.

ANNEX B

29706

RECEIVED
DPKO REGISTRY. S-3725
1999 JUL 29 A 7:05

OUTGOING CODE CABLE

CNL-152/CXG-007

P 1/20

IMMEDIATE

TO: DOWNES-THOMAS, UNOL, MONROVIA

NANA-SINKAM, UNOGBIS, BISSAU

FROM: PRENDERGAST, UNATIONS, NEW YORK

DATE: 28 JULY 1999

NUMBER: 1775

SUBJECT: Recent SG briefing to the Council

1999 JUL 28 P 7:53
RECEIVED
DPKO REGISTRY

Please find attached, for your information, a copy of the Secretary-General's briefing to the Council on his recent visit to West Africa.

SG's briefing redacted according to clause c)
confidential, internal information.

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TT
AV

EM 26vii99

02

SIR/
Please come
to SG on

THE SECRETARY-GENERALM
87
26/**TALKING POINTS**SG (Pres)
R 26/**FOR PRESS ENCOUNTER AFTER BRIEFING
THE SECURITY COUNCIL ON AFRICA****New York, 27 July 1999****Good Morning.**

- I have just briefed the Council on my trip to Africa earlier this month, during which I visited five West African countries and then attended the OAU summit in Algiers.

03

- I felt I should do this because there is a

danger - with such dramatic things

happening in the Balkans, Iraq and

elsewhere - that very important

developments in Africa might be

overlooked.

- In parts of the continent - Angola, especially - the situation remains deeply troubling. But elsewhere, many of the latest events are quite positive. There is a peace agreement in Sierra Leone, a cease-fire agreement in the Democratic Republic of Congo, and it seems that Eritrea and

Ethiopia have now agreed on how the

OAU plan for ending their conflict should be implemented.

- Yesterday, Liberia carried out the biggest ever organized destruction of conventional weapons. Nigeria has returned to democracy after nearly twenty years of military rule. There are signs of reconciliation in Algeria. And at the OAU summit African leaders expressed their determination not to accept regimes installed by coup d'état, much more strongly than in previous years.

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- These are encouraging developments but they are very fragile. It is vital that the Security Council and the whole international community give them strong support.
- Africans, more than ever before, are facing up to their own problems and working hard to resolve them. They need help, and they deserve it. That is the message I brought to the Council, and which I should like to bring to the world.

- If you have any questions, I will do my best to answer them.
-

Thank you very much.