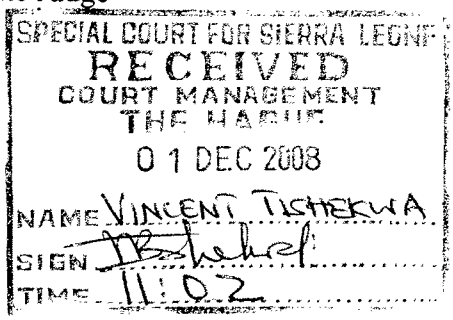
(680) SCSL-03-01-T (22537 - 22547) 22537

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

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

Registrar: Mr. Herman von Hebel

Date filed: 1 December 2008



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

Case No. SCSL-03-01-T

PUBLIC
PROSECUTION REPLY TO DEFENCE RESPONSE TO PROSECUTION MOTION FOR ADMISSION OF DOCUMENTS SEIZED FROM RUF OFFICE, KONO DISTRICT

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I. INTRODUCTION

1. The Prosecution files this Reply to the "Public Defence Response to Prosecution Motion for Admission of Documents Seized from RUF Office, Kono District."[1]

II. REPLY

Applicable Legal Principles

2. In the Response, the Defence incorporate by reference arguments contained in a separate filing regarding the legal principles to be applied to the admission of documents.[2] The Prosecution has filed a reply to that separate filing addressing those arguments.[3] Accordingly, the Prosecution relies on and incorporates by reference its submissions made therein at paragraphs 2 to 11 in reply to those submissions incorporated by reference in the Response.

3. The Prosecution underlines, though, that the matter at issue is the ability of the Parties to bring relevant evidence before this Chamber. The Defence arguments contained in the Response are fundamentally flawed as they ignore the fact that two rules are used at the ICTY and ICTR for the introduction of evidence other than through live testimony – Rules 89 and 92*bis*.[4] These rules are used in tandem. Nonetheless, the Defence seek to impose on the SCSL the interpretation and use made by the ICTY and ICTR of Rule 92*bis* without also extending to the SCSL these tribunals' interpretation and use of Rule 89(C).

General matters relevant to admission under Rule 89(c) alone or Rule 89(C) & Rule 92bis

Legibility of Documents

4. The Defence complaint regarding legibility[5] in effect concerns only one document: that provided at Tab 17 of Annex B of the Motion.[6] As noted in the Motion, the Prosecutor's

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[1] *Prosecutor v. Taylor*, SCSL-03-01-T-677, "Public Defence Response to Prosecution Motion for Admission of Documents Seized from RUF Office, Kono District," 24 November 2008 ("**Response**").
[2] Response, para. 3.
[3] *Prosecutor v. Taylor*, SCSL-03-01-T-670, "Public Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies," 17 November 2008 ("**UN Documents Reply**").
[4] In the context of the current issue, Rules 92*ter* and 92*quater* are not relevant and so are not discussed.
[5] Response, para. 16.
[6] *Prosecutor v. Taylor*, SCSL-03-01-T-667, "Public Prosecution Motion for Admission of Documents Seized from RUF Office, Kono District," 13 November 2008 (**"Motion"**).

copy of this document is a photocopy.[7] While the Prosecution disputes that the scanned version served on the Defence is "unintelligible",[8] the Prosecution noted in the Annex to the Motion that the Prosecution's copy is available for inspection by the Defence.[9] Yet, the Defence has failed to inspect the document.

Documents may be tendered absent a witness

5. The Defence argument that a witness is required to speak to the contents and relevance of the RUF Documents[10] is without merit. First, the Defence reliance on the *Milutinović* Decision[11] is misplaced as the court in that case was bound by ICTY Rule 89(C) to also find reliability, "a necessary prerequisite for probative value," before admission.[12] Ruling that particularized relevance goes to reliability[13] the court excluded documents that were otherwise "generally relevant."[14] Under SCSL Rule 89(C), however, those documents found "generally relevant" would have been admissible without any further showing of reliability or context, both issues that are considered at the SCSL when apportioning weight to *admitted* evidence. Indeed, in *Milutinović* the court admitted those documents which it deemed facially relevant without requiring context or tender through any witness.[15] Further, the *Milutinović* court acknowledged that even those documents it was not willing to deem facially relevant were generally relevant.[16] Finally, the Defence arguments regarding context fail to consider the fact that the Prosecution does not seek admission of the RUF Documents into a vacuum. It seeks to admit these relevant documents into a court record which will provide the context the Defence seek at the end of the trial.

6. Therefore, as issues of reliability and probative value are not conditions of admission under either Rules 89(C) or 92*bis* at the SCSL, the Defence objections to certain of the

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[7] See Motion, Annex A, Document 17, column headed "Original Available for Inspection."
[8] Response, para. 16.
[9] Motion, Annex A, Document 17, column headed "Original Available for Inspection."
[10] Response, paras. 9-11.
[11] *Prosecutor v. Milutinovic et al.*, No. IT-05-87-T, Decision on Prosecution Motion to Admit Documentary Evidence, 10 October 2006 (**"*Milutinović* Decision"**).
[12] *Milutinović* Decision, para.10.
[13] *Milutinović* Decision, para. 27.
[14] *Milutinović* Decision, para. 25, 27.
[15] *Milutinović* Decision, paras. 28, 34, 39, 47.
[16] *Milutinović* Decision, paras. 27.

RUF Documents on this ground are unfounded. The documents found at Tabs 14[17] and 17 are generally relevant as stated in Annex A of the Motion as a Notebook detailing "various RUF activities during December 2000-January 2001" and a "Black Guard Admin Book" showing "organization of the radio communication network in the RUF." Further, the Defence objection to the RUF Document at Tab 4 of Annex A of the Motion[18] based on its alleged irrelevance is without merit. Despite the Defence's refusal to accept the document's relevance, the relevance of the document titled "Materials Issued to the 2nd Brigade Commander on the 13th December, 1998" is obvious on the document's face: the report is signed by several RUF/AFRC commanders and lists the supplies used at the end of 1998. Supplies are necessary to any military operation and as such are relevant to the military operations occurring when these supplies were recorded.

7. Additionally, the Defence request that the signatures on the RUF documents be attested[19] is without merit. First, unlike the position at the *ad hoc* tribunals, issues of authenticity are not a condition of admission.[20] Rather, this is a matter which goes to the weight to be given the documents in the context of all the evidence in the case. As regards the impact of such a consideration on the weight to be given the documents, there is no requirement that an expert be called to resolve such an issue. The Defence argument ignores the reality that the Prosecution has adduced evidence regarding signatures from persons who have already testified, and may adduce additional evidence in this regard before the close of this case. Finally, authenticity may be determined by many factors other than signatures, such as the content of the document, the similarity of format to other documents, other, corroborative evidence adduced during the trial.

8. Finally, the Defence argument in paragraph 11 of the Response as to the timing of the Motion is without foundation and ignores the practice in other proceedings. The Prosecution has addressed this point in other similar submissions and, therefore, in order

[17] In the Response, the Defence actually object to "the Notebook at Tab 15". However, the document at Tab 15 of the Motion's Annex A is actually a "Clearance and Official Traveling Pass". Thus, the Prosecution assumes the Defence objection is actually to the Notebook at Tab 14.
[18] Response, para. 20.
[19] Response, para. 10.
[20] See, for example, Rule 89(E) of the ICTY Rule of Procedure and Evidence: "A Chamber may request verification of the authenticity of evidence obtained out of court." The equivalent provision at ICTR is Rule 89(D).

to avoid repetition respectfully refers the Chamber to those submissions.[21]

Chain of custody

9. The RUF documents are relevant on their face and, thus, are admissible on their face. None of the Defence's arguments concerning chain of custody justify exclusion of the evidence.[22] Rather, they are also issues that relate, ultimately, to the weight to be given to this evidence. The SCSL jurisprudence is clear: "[r]elevant evidence is not 'clearly inadmissible' [but] [b]y virtue of Rule 89(C), it is clearly admissible."[23] Unlike at the ICTY and ICTR, issues of authenticity and probative value are not conditions of admission. Therefore, the Defence's reliance on the ICTR cases cited in the Response is misplaced as the dicta cited focuses on these additional conditions which are not part of the SCSL Rules.[24] Finally, contrary to the Defence's assertion otherwise,[25] this may be done at any time prior to the conclusion of the trial.

Probative value of the documents is not substantially outweighed by their prejudicial effect

10. The bases for exclusion identified by the Defence in paragraph 17 of the Response are those identified and considered in paragraphs 3 to 9 above. As previously stated, these arguments are without merit. In relation to the Defence's second ground, it is to be noted that evidence can be challenged by comparison with other evidence adduced during the trial, including during the Defence phase. Further, to take the Defence argument to its logical conclusion would be to invalidate the provisions of Rules 89(C) and 92*bis*, in that there would be no evidence that could be admitted without cross-examination. Such an interpretation is not consistent with the language or intent of those Rules. The Rules and the jurisprudence of the SCSL favour admission rather than exclusion, as the threshold for exclusion is set high.[26]

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[21] See *Prosecutor v. Taylor*, SCSL-03-01-T-669, "Prosecution Reply to Defence Response to Prosecution Motion for Admission of Extracts of the Report of the Truth and Reconciliation Commission of Sierra Leone," 17 November 2008, para. 20.
[22] Response, paras. 12-15.
[23] *Prosecutor v. Norman et al.*, SCSL 04-14-T, "Fofana – Appeal against Decision Refusing Bail", 11 March 2005 (**"*Fofana* Bail Appeals Decision"**), para. 27.
[24] Response, paras. 13 and 14.
[25] Response, paras. 13-15.
[26] *Prosecutor v. Brima et al.*, SCSL-04-16-T-280, "Decision on Joint Defence Motion to exclude all Evidence from Witness TF1-227 Pursuant to Rule 89(C) and/or Rule 95", 24 May 2005, para. 24.

Admission under Rule 89(C)

11. As noted in previous submissions, the exclusionary conditions set out in the *Kordić* and *Čerkez* case are legally and factually irrelevant to the matter at issue and should not be applied to the admission of the RUF Documents.[27] In relation to the application of this ICTY case to the current proceedings, the Prosecution refers the Chamber to its previous submissions subject to the amendment that the RUF Documents are not publicly available, but have been disclosed to the Defence for at least well over a year.[28]

12. Further, the Defence again refers the Trial Chamber to the *Milutinović* Decision, this time to justify application of the fourth *Kordić* and *Čerkez* condition.[29] The Defence points out that the *Milutinović* court refused to admit several maps because of their cumulative nature.[30] These maps, however, were nearly identical to, and in some cases less detailed than, previously admitted maps thus the maps were excluded as a matter of efficiency and economy.[31] Annex A to the Response painstakingly identifies previous witnesses and exhibits mentioning facts similar to those contained in the RUF Documents listed in paragraph 25 of the Response. Yet, the exclusion of documents that repeat evidence already adduced at trial, as the Defence suggests, is unimaginable. The fact that one of the RUF Documents, not identical to previous evidence, mentions similar operations, diamond mining and command structure details[32] cannot be the ground for exclusion otherwise corroboration, confirmation and in turn, reliability findings at the end of the trial would prove nearly impossible.

13. In addition to the above objections to the application of the *Kordić and Čerkez* Decision,[33] the Prosecution observes that the Defence interpretation of, and reliance on, this decision is further flawed for the reasons identified and set out in a previous filing. The Prosecution respectfully refers the Trial Chamber to this previous filing's arguments concerning the Defence's misinterpretation and misapplication of the *Kordić and Čerkez*

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[27] Response, paras. 21-27 and Annex A.
[28] See UN Documents Reply, para. 7.
[29] Response, paras 22-23.
[30] Response, para. 22.
[31] Milutinovic Decision, paras. 23-24.
[32] Response, Annex A.
[33] *Prosecutor v. Kordić and Čerkez*, IT-95-14/2, "Decision on Prosecutor's Submissions concerning 'Zagreb Exhibits' and Presidential Transcripts", 1 December 2000 ("***Kordić and Čerkez* Decision**")

Decision.[34]

Admission under Rules 89(C) & 92bis

Acts and conduct of the Accused

14. The Defence argument at paragraph 4 of the Response is flawed for two reasons. First, as noted in paragraph 3 above, the Defence advocate a selective application of the *ad hoc* tribunals' jurisprudence to the SCSL Rules which will result in admissibility standards more confined and constricted than at either the ICTY or ICTR.[35] Second, and specific to the RUF Documents at issue, none of the Documents include evidence going to proof of the acts and conduct of the Accused (as such phrase is defined and limited by the jurisprudence). The first reference to "President Charles Taylor" highlighted by the Defence[36] mentions an investigation by certain journalists concerning a link between the diamond business and Charles Taylor.[37] There is no allegation as to how Charles Taylor is involved in the diamond business. Rather, the Document passively mentions his name as the subject of an investigation conducted by third party journalists. The second reference to "Dr. Charles G. Taylor" mentioned by the Defence[38] concerns the appointment of a delegation to Monrovia.[39] Again, these are not the acts of Charles Taylor that are being described, rather it is the act of signatory, Issa H. Sesay, changing members of the "external delegation."[40] Once again, Charles Taylor is mentioned in a passive sense and his acts and/or conduct are in no way referred to, mentioned or implicated. Therefore, there is no evidence going to proof of the acts and conduct of the Accused in the RUF Documents.

15. Additionally, the Defence attempt to make the location of evidence seizure affect the evidence seized by bringing it within the Rule 92*bis* exclusion[41] is without merit and unsupported by any jurisprudence or practice.

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[34] *Prosecutor v. Taylor*, SCSL-03-01-T, "Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents Seized from Foday Sankoh's House," 24 November 2008, paras. 13-17.
[35] The approach would result in the SCSL being denied access to items of evidence such as the War Diary (see the *Kordić and Čerkez* Decision) and the evidence available to the ICTR noted at footnote 35 of the UN Documents Reply.
[36] Response, para. 4.
[37] Motion, Annex B, Tab 16, page 22317.
[38] Response, para. 4.
[39] Motion, Annex B, Tab 13, page 22287.
[40] *Ibid.*
[41] Response, para. 4.

Evidence going to a critical element of the Prosecution case

16. Finally, the Defence arguments at paragraphs 5 through 7 of the Response should be dismissed as being overly broad. In this regard, the ICTR Appeals Chamber's dicta in *Karemera* regarding the type of facts which might properly be the subject of judicial notice is helpful in considering this type of objection and which facts properly fall within its scope:

> "The Appeals Chamber ... has never gone so far as to suggest that judicial notice under Rule 94(B) cannot extend to facts that "go directly or indirectly" to the criminal responsibility of the accused (or that "bear" or "touch" thereupon). With due respect to the Trial Chambers that have so concluded, the Appeals Chamber cannot agree with this proposition, as its logic, if consistently applied, would render Rule 94(B) a dead letter. The purpose of a criminal trial is to adjudicate the criminal responsibility of the accused. Facts that are not related, directly or indirectly, to that criminal responsibility are not relevant to the question to be adjudicated at trial, and, as noted above, thus may neither be established by evidence nor through judicial notice. So judicial notice under Rule 94(B) is in fact available *only* for adjudicated facts that bear, at least in some respect, on the criminal responsibility of the accused."[42]

17. On this basis, it is clear that the Documents are not central themselves to determining the liability of the Accused for the crimes set out in the Second Amended Indictment.

18. The Prosecution also notes that, in paragraph 6 of the Response, the Defence relies on dicta from the Kenema Decision which is itself based on jurisprudence from the ICTY.[43] As noted above, however, evidence which might be considered pivotal or proximate to the Accused and which is not contained in a witness statement or transcript is admitted at the ICTY under a different rule.

19. Should, *arguendo*, the Chamber decide that: (i) the RUF Documents do contain evidence which goes to proof of the acts and conduct of the accused (as defined and limited by the jurisprudence) or evidence which goes to a critical element of the Prosecution case and is therefore proximate to the Accused; and (ii) such evidence may not be admitted, then such information may be redacted from the documents.[44]

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[42] *Prosecutor v. Karemera*, ICTR-98-44-AR73(C), "Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice", App. Ch., 16 June 2006, para. 50.

[43] This decision cites to *Prosecutor v. Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C), 7 June 2002.

[44] This procedure conforms to the procedure adopted at the ICTR. At the ICTR statements tendered pursuant to Rule 92*bis* are reviewed. Where a statement is tendered that includes information that falls within Rule 92*bis* and information that falls outside the Rule, the statement is admitted but the paragraphs or information that fall outside

III. CONCLUSION

20. For the reasons set out in the Motion and above, the Prosecution requests that the Trial Chamber admit into evidence the RUF Documents identified in Annex A and provided in Annex B of the Motion pursuant to: (i) Rule 89(C); or in the alternative, (ii) Rules 89(C) and 92*bis* (Rule 92*bis* being interpreted as set out in paragraphs 15-16 of the UN Documents Motion[45]).

21. The Prosecution further requests that the arguments contained in the Response be dismissed.

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For the Prosecution,

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the Rule are simply not admitted into evidence. See for example *Prosecutor v. Bagosora et al,* ICTR-98-41-T, "Decision on Prosecutor's Motion for the Admission of Written Witness Statements Under Rule 92bis," 9 March 2004. This procedure has now been adopted at the SCSL – see *Prosecutor v. Sesay et al.,* SCSL-04-15-T-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.

[45] *Prosecutor v. Taylor,* SCSL-03-01-T-650, "Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies," 29 October 2008 ("**UN Documents Motion**").

LIST OF AUTHORITIES

Prosecutor v. Taylor, SCSL-03-01-T-650, "Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies," 29 October 2008

Prosecutor v. Taylor, SCSL-03-01-T-667, "Public Prosecution Motion for Admission of Documents Seized from RUF Office, Kono District," 13 November 2008

Prosecutor v. Taylor, SCSL-03-01-T-669, "Prosecution Reply to Defence Response to Prosecution Motion for Admission of Extracts of the Report of the Truth and Reconciliation Commission of Sierra Leone," 17 November 2008

Prosecutor v. Taylor, SCSL-03-01-T-670, "Public Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies," 17 November 2008

Prosecutor v. Taylor, SCSL-03-01-T-677, "Public Defence Response to Prosecution Motion for Admission of Documents Seized from RUF Office, Kono District," 24 November 2008

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Prosecutor v. Kordić and Čerkez, IT-95-14/2, "Decision on Prosecutor's Submissions concerning "Zagreb Exhibits" and Presidential Transcripts", 1 December 2000 http://www.un.org/icty/kordic/trialc/decision-e/01211AE514285.htm

Prosecutor v. Milutinović et al., No. IT-05-87-T, "Decision on Prosecution Motion to Admit Documentary Evidence", 10 October 2006 http://www.un.org/icty/milutino87/trialc/decision-e/061010.pdf

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Prosecutor v. Karemera, Case No. ICTR-98-44-AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, App. Ch., 16 June 2006 http://69.94.11.53/ENGLISH/cases/Karemera/decisions/160606.htm

Prosecutor v. Bagosora et al, ICTR-98-41-T, "Decision on Prosecutor's Motion for the Admission of Written Witness Statements Under Rule 92bis," 9 March 2004 http://69.94.11.53/ENGLISH/cases/Bagosora/decisions/040309.htm