

369.)

SCSL-03-01-T
(12823-12827)



12823

SPECIAL COURT FOR SIERRA LEONE

TRIAL CHAMBER II

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

Registrar: Herman von Hebel

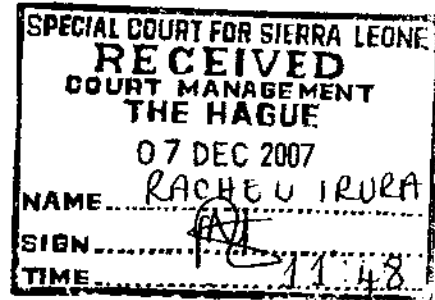
Case No.: SCSL-03-1-T

Date: 7 December 2007

PROSECUTOR

Against

CHARLES GHANKAY TAYLOR



**DECISION ON PROSECUTION'S MOTION FOR
ADMISSION OF MATERIAL PURSUANT TO RULES 89(C) AND 92BIS**

Office of the Prosecutor:

Brenda Hollis
Nick Koumjian

Defence Counsel for Charles G. Taylor:

Courtenay Griffiths, Q.C.
Terry Munyard
Andrew Cayley

12824

TRIAL CHAMBER II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court");

SEISED of the "Prosecution's Motion for Admission of Material Pursuant to Rules 89 (C) and 92bis", filed on 17 May 2007 ("Motion")¹, wherein the Prosecution requests that the Trial Chamber admit into evidence a sizeable number of documents and audio-visual material² in lieu of oral testimony,

NOTING the "Defence Response to 'Prosecution's Motion for Admission of Material Pursuant to Rules 89 (C) and 92bis,'" filed on 10 September 2007 ("Response")³, wherein the Defence submits that the Trial Chamber should reject all but nine of the proposed exhibits on the grounds that (i) generally the relevance of the documentary material submitted is unclear and, in particular, that the relevant sections of the material proposed for admission were not highlighted in accordance with the jurisprudence of the Trial Chamber, and (ii) the Prosecution failed to demonstrate the relevance of the audio-visual material and /or provide an English translation of the footage in Krio;⁴

NOTING the "Prosecution Reply to 'Defence Response to Prosecution's Motion for Admission of Material Pursuant to Rules 89 (C) and 92bis'", filed on 24 September 2007 ("Reply")⁵, wherein the Prosecution argues (i) with regard to documentary material, that it has sufficiently indicated the portions of material it seeks to have admitted⁶; and (ii) with regard to the audio-visual material, that where it does not specify part(s) of the material, it seeks admission of the material in its entirety and has in addition provided "an unofficial translation of Exhibit 1.132";⁷

CONSIDERING that the Prosecution has also requested that the Trial Chamber admit documents under Rules 89(C) and 92bis in the "Prosecution Motion for Judicial Notice" in the event that the Trial Chamber does not use those documents to take Judicial Notice of alleged facts;⁸

RECALLING the Trial Chamber's jurisprudence regarding the admission of documentary evidence pursuant to Rule 92bis, stating that

[...]We do not think that we are required by Rule 92bis to wade through this mountain of material trying to separate relevant facts from what are irrelevancies, opinions, and legal findings, in order to admit into evidence only the information that satisfies the Rule. Instead, the Prosecution should have clearly indicated on each document the passages that we are being asked to consider on the question of relevance.

¹ Document SCSL-03-1-T-241

² Annex A to the Motion includes 8 videos numbered: 1.132, 1.129, 1.130, 1.219, 1.224, 1.225, 1.330 and 1.128, and 2 audio tapes numbered 1.338, 1.339, respectively.

³ Document SCSL-03-01-T-337. The Defence was granted an extension of time to respond to the Motion at the Status Conference on 20 August 2007, see Transcript 20 August 2007, p. 31; for the initial delay see SCSL-03-01-PT-269, Decision on Defence Motion Pursuant to Rule 54 Requesting Order to Court Management to Accept Filings and Serve Hard Copies of All Filings on the Parties in The Hague Immediately, 31 May 2007.

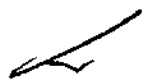
⁴ Defence Response paras 8-11.

⁵ Document SCSL-03-01-T-346; the Defence was granted an extension of time to reply to the Defence Response, see Document SCSL-03-01-T-341, Decision on Prosecution Motion for an Extension of Time to File a Reply to the 'Defence Response to 'Prosecution's Motion for Admission of Material Pursuant to Rules 89(C) and 92bis', 17 September 2007. Noting also the List of Authorities to the said Reply, Document SCSL-03-01-T- 347, filed by the Prosecution on 25 September 2007.

⁶ Reply, paras 9-20

⁷ Reply, paras 9 and 21

⁸ Document SCSL-03-01-PT 236, paras 13-14.



We agree with the comments of Robertson J. in *Fofana*⁹ [...] that: "This mass of undigested paperwork should not be imposed upon the Trial Chamber and the Defence in such an undisciplined fashion" and that "[i]t must not become a practice in this Court."¹⁰

RECALLING FURTHER the Separate Opinion of Justice Robertson in *Prosecutor v. Norman, Fofana and Kondewa* stating that

All relevant material is admissible, but that is not an invitation to the parties to deluge the court [...] The wider admissibility provisions in the SCSL carry a concomitant duty to the parties to narrow the documentary material they seek to introduce and to identify only those passages which are relevant to the case [...]¹¹

NOTING FURTHER that many of the documents in this Motion served on the Trial Chamber by Court Management Section are partly or entirely illegible;¹²

FINDING that in contravention of the jurisprudence of the Trial Chamber, the Prosecution has failed to adequately identify or highlight on each document those passages it claims are relevant to the case;

FINDING FURTHER that the Prosecution has failed to indicate the relevance to the case, of the audio-visual material tendered for admission;

FINDING ALSO that the chart provided by the Prosecution in Annex A to the Motion, and in particular the column titled "Relevance", is vague and ambiguous and does not assist the Trial Chamber in determining admissibility under Rule 92 bis;

PARTIALLY GRANTS THE MOTION and **ADMITS** into evidence Prosecution documents 1.278, 1.279, 1.280, 1.281, 1.283, 1.334, 1.336, 1.384 and 1.385 as indicated in the Annex to this Decision;

DISMISSES the Motion in all other respects, without prejudice to future filings on the same issue, and

DIRECTS the Registrar to ensure that in the future all documents served by the Court Management Section are either the originals or accurate reproductions thereof.

⁹ *Prosecutor v. Norman, Fofana and Kondewa*, "Fofana - Decision on Appeal against 'Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence'", ("Fofana") 16 May 2005, Separate Opinion of Justice Robertson, para. 30.

¹⁰ *Prosecutor v. Brima, Kamara, Kanu*, Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence, 25 October 2005, paras 71-72. [emphasis added].

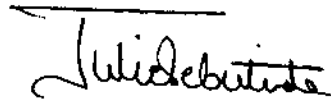
¹¹ *Prosecutor v. Norman, Fofana and Kondewa*, "Fofana - Decision on Appeal against 'Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence'", ("Fofana") 16 May 2005, Separate Opinion of Justice Robertson, para. 31.

¹² See for example, Prosecution documents: 1.134, 1.136, 1.142, 1.324, 1.390, 1.088, 1.089, 1.134, 1.244, 1.245, 1.249, 1.250, 1.251, 1.252, 1.253, 1.254, 1.255, 1.257 (list not exhaustive).

12826

Done at The Hague, The Netherlands, this 7th day of December 2007


Justice Richard Lussick


Justice Julia Sebutinde
Presiding Judge


Justice Teresa Doherty

[Seal of the Special Court for Sierra Leone]



12827

ANNEX

No. in Annex A to Doc. SCSL-03-01-241	Prosecution's Description of Document	Information Admitted in Evidence	Allocated Exhibit No.
1.278	Map of West Africa	Entire document	P-1
1.279	Map of Africa	Entire document	P-2
1.280	Map of Burkina Faso	Entire document	P-3
1.281	Map of Guinea	Entire document	P-4
1.283	Map of Sierra Leone	Entire document	P-5
1.334	Map of the Ivory Coast	Entire document	P-6
1.336	Map of Libya	Entire document	P-7
1.384	Shell Map of Sierra Leone	Entire document	P-8
1.385	Map of The Gambia	Entire document	P-9