

370)

SC9L-03-01-1
(12828-12838)

12828



SPECIAL COURT FOR SIERRA LEONE

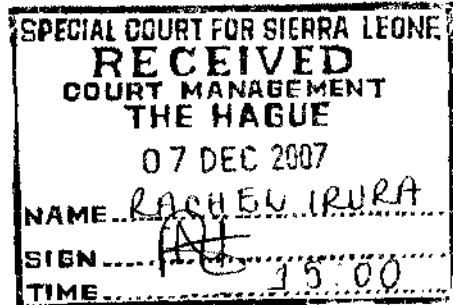
TRIAL CHAMBER II

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 THE PROSECUTION MOTION FOR JUDICIAL NOTICE

Office of the Prosecutor:
Brenda Hollis
Ann Sutherland

Defence Counsel for Charles G. Taylor:
Courtenay Griffiths, Q.C.
Terry Munyard
Andrew Cayley

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

SEISED of the “Prosecution’s Motion for Judicial Notice”, filed on 14 May 2007 (“Motion”)¹;

NOTING the “Defence Response to Prosecution’s Motion for Judicial Notice”, filed on 10 September 2007 (“Response”)²;

NOTING the “Prosecution Reply to Defence Response to Prosecution’s Motion for Judicial Notice”, filed on 17 September 2007 (“Reply”)³;

COGNISANT OF Rules 89, 92bis and 94 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“Rules”);

HEREBY DECIDES AS FOLLOWS, based solely on the written submissions of the parties, pursuant to Rule 73 of the Rules.

I. SUBMISSIONS

Motion

1. The Prosecution requests the Trial Chamber to take judicial notice of the facts set out in Annex A to the Motion pursuant to Rules 89 and 94(A), which facts the Prosecution submits, are of “common knowledge”.

2. The Prosecution submits that facts of common knowledge under Rule 94(A) of the Rules have been considered to encompass common or universally known facts, such as general facts of history, generally known geographical facts and the laws of nature, as well as those facts that are generally known within a Court’s territorial jurisdiction and facts that are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be called into question.⁴ In addition the Prosecution sets out four criteria approved by the Appeals Chamber.⁵

3. The Prosecution submits that judicial notice of facts of common knowledge is mandatory once a Trial Chamber has determined that a fact is of common knowledge.⁶ It argues that there is no exception to this even where a fact proposed for judicial notice amounts to a “legal qualification” or constitutes an element of an offence⁷ and that once judicially noticed, such facts cannot be challenged at trial.⁸

4. In the alternative, the Prosecution requests that the Trial Chamber admit into evidence pursuant to Rules 89(C) and 92bis the corresponding documentary extracts set out in Annex B of the Motion.⁹

¹ Document SCSL-03-01-PT 236.

² Document SCSL-03-01-T 338.

³ Document SCSL-03-01-T 342.

⁴ Motion, para. 3.

⁵ Motion, para. 4, see criteria set out in para. 13 *infra*.

⁶ Motion, para. 6.

⁷ Motion, para. 6.

⁸ Motion, para. 8.

⁹ Motion, paras 13-14.

Response

5. The Defence in its Response to the Motion “generally” accepts the statement of law by the Prosecution but argues that it would be improper for the Trial Chamber to take judicial notice of facts that are subject to reasonable dispute such as purported alliances between groups which allegedly include the Accused or any specific position held by the Accused where this could attest to the criminal responsibility of the Accused.¹⁰ The Defence also argues that facts such as the launching of military operations or the specific nature of atrocities committed against civilians are disputable and that the Trial Chamber should not take judicial notice of them.¹¹

6. The Defence accepts that judicial notice should be taken of (a) twelve of the proposed facts¹²; (b) parts of six of the proposed facts¹³; (c) 18 of the proposed facts subject to proposed amendments¹⁴ and requests the Trial Chamber to deny the motion with regard to the remaining facts as they do not satisfy the criteria for “facts of common knowledge” and/or “attest to the criminal responsibility of the Accused”.¹⁵

7. The Defence submits that the Trial Chamber should reject the Prosecution’s alternative request to admit into evidence the corresponding documentary extracts pursuant to Rules 89(C) and 92bis, arguing that the Prosecution failed to follow the established practice of indicating the relevant passages or parts of each document which it seeks to tender into evidence.¹⁶ Furthermore, the Defence requests that the Trial Chamber rely on Rule 92bis as amended on 14 May 2007 when considering the Prosecution Motion, submitting that the rule imposes a limitation on documents which relate to the acts and conduct of the Accused.¹⁷

Reply

8. The Prosecution submits that all facts in a criminal trial must be relevant to the issue of an Accused’s criminal responsibility in order to be admissible and that therefore the phrase “attests to the criminal responsibility of the Accused” should be given a narrow interpretation. The Prosecution refers to the *Karemera Appeals Decision* stating that a fact which is “sufficient of itself” or “central” to establishing the criminal responsibility of the Accused should not be judicially noticed.¹⁸

9. Regarding the admission of documents pursuant to Rules 89(C) and 92bis the Prosecution submits that a textual interpretation of the amended Rule 92bis clearly suggest that the limitation on proof of acts and conduct of the Accused applies only to statements and transcripts and not to the other forms of admissible information.¹⁹

¹⁰ Response, paras 6 and 14.

¹¹ Response, para. 15.

¹² Response, para. 17 and Annex A - Facts 1-3, 8, 19, 25, 27, 29, 30, 33, 101, 102.

¹³ Response, para. 17 and Annex A - Facts 93(d), 94(c), 98(a), 99(a), 100(a), 107(d) and 107(f).

¹⁴ Response, para. 17 and Annex A - Facts 4, 5, 13, 14, 15, 16, 17, 18, 22, 23, 24, 26, 31, 35, 36, 38, 39, and 49.

¹⁵ Response, para. 17 and Annex A - Facts 6, 7, 9-12, 20, 21, 28, 32, 34, 37, 40-48, 50-100, 103-107.

¹⁶ Response, paras 9-10, 18 (b).

¹⁷ Response, para. 8.

¹⁸ Reply, para. 7 citing *Prosecution v. Karemera et al.*, ICTR-98-44 AR73(C), Appeals Chamber, Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006 [“*Karemera Appeal Decision*”].

¹⁹ Reply, para. 11.

II. DELIBERATIONS

(a) *Rule 94(A)*

10. In evaluating the facts presented by the Prosecution for judicial notice, the Chamber is guided generally by Rule 89 and specifically by Rule 94(A) which directs the Chamber in regard to judicial notice of facts of common knowledge.

11. Rule 94(A) states:

A Chamber shall not require proof of facts of common knowledge but shall take judicial notice thereof.

12. The Trial Chamber adopts the definition of "facts of common knowledge" set out in *Prosecutor v. Semanza*, namely, "those facts which are not subject to reasonable dispute including common or universally known facts, such as general facts of history, generally known geographical facts and the law of nature" and "those facts that are generally known within a tribunal's territorial jurisdiction".²⁰ This definition was endorsed by the Appeals Chamber in *Prosecutor v. Norman et al.*²¹ The Trial Chamber therefore accepts that "[u]nder the rubric of matters of common knowledge, a court may generally take judicial notice of matters so notorious, or clearly established or susceptible to determination by reference to readily obtainable and authoritative sources that evidence of their existence is unnecessary".²²

13. The criteria for facts of common knowledge, also endorsed by the Appeals Chamber in *Prosecutor v. Norman et al.*, are as follows:

- a) the facts are relevant to the case of the Accused person;
- b) the facts are not subject to reasonable dispute;
- c) the facts do not include legal findings;
- d) the facts do not attest to the criminal responsibility of the Accused.²³

14. Facts of common knowledge under Rule 94(A) cannot be challenged during trial and legal conclusions as well as facts which constitute legal findings cannot be judicially noticed.²⁴

²⁰ *Prosecutor v. Semanza*, Case No. ICTR-97-20-T, Decision on the Prosecutor's Motion for Judicial Notice and Presumption of Facts Pursuant to Rules 94 and 54, 3 November 2000 at para. 23 ["Semanza Decision on Judicial Notice"].

²¹ *Prosecutor v. Norman et al.*, SCSL-2004-14-AR73-398, "Fofana - Decision on Appeal against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence", 16 May 2005, at para 21 ["Fofana Appeals Decision on Judicial Notice"]; The Trial Chamber also accepted this definition in *Prosecutor v. Brima et al.*, Case No. SCSL-04-10-T, "Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence", 25 October 2005 at para. 18 ["AFRC Judicial Notice Decision"].

²² *Semanza Decision on Judicial Notice* *ibid* at para. 25; *Fofana Appeals Decision on Judicial Notice* *ibid*; *AFRC Judicial Notice Decision* *ibid*.

²³ *Fofana Appeals Decision on Judicial Notice* *supra* at para. 28; *AFRC Judicial Notice Decision* *supra* at para. 19.

²⁴ *Fofana Appeals Decision on Judicial Notice*, paras 30-32; *AFRC Judicial Notice Decision*, para. 20.

(b) Rule 92bis

15. The Appeals Chamber has held that “[a] party which fails in an application to have a fact judicially noticed under Rule 94(A) may nonetheless be able to introduce into evidence the sources upon which it has relied under 92bis and at the end of the trial the court may well conclude that the fact has been proved beyond reasonable doubt.”²⁵

16. The Trial Chamber notes the various submission made by the parties relating to the admission of materials pursuant to Rule 92bis.²⁶ The Trial Chamber addresses these submissions in a separate Decision.²⁷

*(c) Judicial Notice of Proposed Facts**(i) Facts agreed between the parties*

17. The Trial Chamber concurs with the parties that Facts 1-3, 8, 19, 25, 27, 29, 30, 33, 101 and 102 are uncontroversial geographical or historical facts of which it is appropriate to take judicial notice.

18. The Defence proposed, and the Prosecution accepted, amendments to eighteen facts. The Trial Chamber concurs with the parties that Facts 4-5, 13-18, 22-24, 26, 31, 35-36, 38-39 and 49 in their amended form are facts of common knowledge not open to reasonable dispute. Accordingly, judicial notice is taken of them.

19. The Defence does not object to judicial notice being taken of parts of eight proposed facts: Facts 93(d), 94(c), 98(a), 99(a), 99(c), 100(a), 107(d) and 107(f). These facts consist of observations or conclusions contained in reports by various reputable non-governmental organisations and the Trial Chamber considers it also appropriate to take judicial notice of them.

(i) Facts objected to by the Defence

20. The Trial Chamber does not take judicial notice of Facts 6, 7, 9-12, 28, 32, 34, 37, 42, 43, 47, 50-100, 103, 104 and 107, with the exception of those parts accepted by the Defence, discussed above, because they are open to reasonable dispute and therefore are not appropriate for judicial notice.

21. The Defence objects that Facts 20, 21, 40, 41, 44-46, 48, 105 and 106 indirectly attest to the criminal responsibility of the Accused. The Trial Chamber upholds this objection and holds that these are not appropriate for judicial notice.

²⁵ *Fofana Appeals Decision on Judicial Notice* supra at para. 28; *AFRC Judicial Notice Decision* supra at para. 27.

²⁶ See *Prosecution's Motion for Judicial Notice; Defence Response to Prosecution's Motion for Judicial Notice; Prosecution Reply; "Prosecution Motion for Admission of Material Pursuant to Rules 89(C) and 92bis"* filed 17 May 2007, Document No. SCSL0301-PT 241; *"Defence Response to Prosecution's Motion for Admission of Material Pursuant to Rules 89(C) and 92bis"* filed 10 September 2007, Document No. SCSL-03-01-T 337; *"Prosecution Reply to Defence Response to Prosecution's Motion for Admission of Material Pursuant to Rules 89(C) and 92bis"* filed 24 September 2007, Document No. SCSL-03-01-T 346.

²⁷ See *Prosecutor v. Charles Ghankay Taylor, SCSL-03-01-T, Decision on Prosecution Motion for Admission of Materials Pursuant to Rules 89(C) and 92bis*, 7 December 2007

III. DISPOSITION

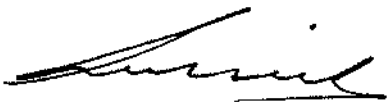
FOR THE FOREGOING REASONS THE TRIAL CHAMBER

PARTIALLY GRANTS the Motion; and

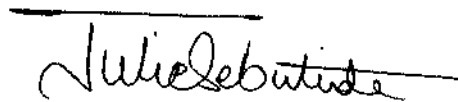
ORDERS that judicial notice is taken of the Facts set out in Annex A to this Decision;

DISMISSES the motion with regard to the remainder of the proposed facts.

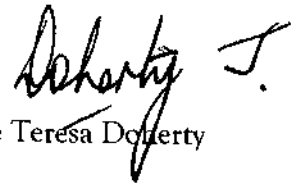
Done at The Hague, The Netherlands this 7th day of December 2007.



Justice Richard Lussick



Justice Julia Sebutinde
Presiding Judge



Justice Teresa Doherty



ANNEX A

This Annex sets out in full the facts of which judicial notice is taken, listed in sequential order for the purposes of future reference during the proceedings.

JUDICIALLY NOTICED FACTS

- Fact A:** The city of Freetown, the Western area and the following districts are located in the country of Sierra Leone: Port Loko, Bombali, Koinadugu, Kono, Kailahun, Kenema and Bo.
(Proposed Fact 1)
- Fact B:** Sierra Leone declared itself to be a party to the Geneva Conventions with effect from 27 April 1961 and acceded to the Additional Protocol II to the Geneva Conventions on 21 October 1986.
(Proposed Fact 2)
- Fact C:** There was an armed conflict in Sierra Leone from about March 1991 until about 18 January 2002.
(Proposed Fact 3)
- Fact D:** The AFRC was founded by members of the Armed Forces of Sierra Leone. Soldiers of the Sierra Leone Army (SLA) comprised the majority of the AFRC membership.
(Proposed Fact 8)
- Fact E:** President Kabbah's government returned to power in Sierra Leone in March 1998.
(Proposed Fact 19)
- Fact F:** The *Lomé Peace Agreement* committed the parties to promoting full respect for human rights and humanitarian law.
(Proposed Fact 25)
- Fact G:** Part Five of the *Lomé Peace Agreement* recognized the importance of upholding, promoting and protecting the human rights of every Sierra Leonean, as well as the enforcement of humanitarian law.
(Proposed Fact 27)
- Fact H:** On 10 November 2000, the Government of Sierra Leone and the RUF signed a Ceasefire Agreement in Abuja, Nigeria, to declare and observe a ceasefire and halt hostilities, effective from 10 November 2000.
(Proposed Fact 29)
- Fact I:** In 1975, 15 West African States signed the treaty creating an Economic Community of West Africa (ECOWAS).

(Proposed Fact 30)

Fact J: On 10 December 1999, ECOWAS member states signed a protocol that subsumed the Protocol Relating to Mutual Assistance on Defence (PMAD) and established the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security.

(Proposed Fact 33)

Fact K: The following counties are in the Republic of Liberia: Bomi, Bong, Gbarpolu, Grand Bassa, Grand Cape Mount, Grand Gedeh, Grand Kru, Lofa, Margibi, Maryland, Montserrado, Nimba, Rivercess, River Gee and Sinoe.

(Proposed Fact 101)

Fact L: There was an armed conflict in Liberia from about 24 December 1989 until about 17 August 1996.

(Proposed Fact 102)

Fact M: Armed groups who participated in the armed conflict in Sierra Leone included:

- a) The Revolutionary United Front (RUF);
- b) The Armed Forces Revolutionary Council (AFRC); and
- c) The Civil Defence Forces (CDF).

(Proposed Fact 4, amended)

Fact N: The Revolutionary United Front (RUF) began armed operations in Sierra Leone in March 1991.

(Proposed Fact 5, amended)

Fact O: On 30 November 1996, Foday Saybana Sankoh and Ahmed Tejan Kabbah, President of the Republic of Sierra Leone, signed a Peace Agreement in Abidjan, Ivory Coast.

(Proposed Fact 13, amended)

Fact P: The 30 November 1996 Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL) required that the "two foes" ensure [that] a total cessation of hostilities is observed forthwith.

(Proposed Fact 14, amended)

Fact Q: The 20 November 1996 Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL) stated that The Executive Outcomes shall be withdrawn five weeks after the deployment of the Neutral Monitoring Group (NMG).

(Proposed Fact 15, amended)

Fact R: The 30 November 1996 Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL) stated that:

“The parties agree that the basic civil and political liberties which are recognised by the Sierra Leone legal system and are contained in Declarations and Principles on Human Rights adopted by the UN and the OAU, especially the Universal Declaration of Human Rights and the African Charter on Human and People’s Rights, shall be fully guaranteed and promoted within Sierra Leone society.

These include the right to life and liberty, freedom from torture; the right to a fair trial, freedom of conscience [...].”

(Proposed Fact 16, amended)

Fact S: The 30 November 1996 Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL) stated that:

“The parties undertake to respect the principles and rules of international humanitarian law.”

(Proposed Fact 17, amended)

Fact T: Active hostilities recommenced in Sierra Leone following a temporary lull in fighting after the signing of the 30 November 1996 Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL).

(Proposed Fact 18, amended)

Fact U: In July 1998, Foday Sankoh was transferred from the custody of the Nigerian Government to the custody of the Sierra Leonean Government.

(Proposed Fact 22, amended)

Fact V: In October 1998, Foday Sankoh was found guilty of treason and sentenced to death in the High Court of Sierra Leone.

(Proposed Fact 23, amended)

Fact W: On 7 July 1999, the Government of Sierra Leone signed a peace agreement with the RUF in Lomé, Togo (“Lomé Peace Agreement”).

(Proposed Fact 24, amended)

Fact X: The parties to the Lomé Peace Agreement recognised the imperative that the children of Sierra Leone were entitled to special care and protection of their inherent right to life, survival and development, in accordance with the provisions of the International Convention on the Rights of the Child.”

(Proposed Fact 26, amended)

Fact Y: In 1981, ECOWAS member states signed a Protocol Relating to Mutual Assistance on Defence (PMAD).

(Proposed Fact 31, amended)

Fact Z: On 29 August 1997, ECOWAS extended the mandate of ECOMOG troops in Liberia to include Sierra Leone.

(Proposed Fact 35, amended)

Fact AA: The ECOWAS Cease-fire Monitoring Group is also known as ECOMOG.

(Proposed Fact 36, amended)

Fact AB: ECOWAS issued a Final Communiqué at the conclusion of its 28-29 August 1997 summit in Abuja, Nigeria.

(Proposed Fact 38, amended)

Fact AC: ECOWAS issued a Final Communiqué at the conclusion of its 28-29 August 1997 summit in which it mandated ECOMOG to specifically monitor the ceasefire, enforce sanctions and embargo and secure the peace in Sierra Leone.

(Proposed Fact 39, amended)

Fact AD: ECOMOG ousted the AFRC/RUF junta from power on or about 14 February 1998.

(Proposed Fact 49, amended)

Fact AE: In the press release, *Sierra Leone Rebels Forcefully Recruit Child Soldiers*, dated 31 May 2000, Human Rights Watch stated or noted:

the executive director of the Africa Division of Human Rights Watch called on all parties to the conflict in Sierra Leone to immediately stop the use of child soldiers and to release all abducted children and people under the age of eighteen.

(Proposed Fact 93(d))

Fact AF: In its press release, *New Testimony of Rape Committed by Sierra Leone Rebels – RUF fighters rape women and children in Makeni and other towns*, dated 5 June 2000, Human Rights Watch:

called upon the members of the U.N. Security Council to provide UNAMSIL with the mandate and the means to protect civilians in Sierra Leone from atrocities.

(Proposed Fact 94(c))

Fact AG: In *Taylor-made: The Pivotal Role of Liberia's Forests and Flag of Convenience in Regional Conflict*, dated September 2001, Global Witness stated or noted that:

The UN Security Council should immediately impose a total embargo on the exportation and transportation of Liberian timber, and its importation into other countries. Such an embargo should remain in place until it can be demonstrated that the trade does not contribute to the RUF in Sierra Leone and armed militias in Liberia, and that it is carried out in a transparent manner.

(Proposed Fact 98(a))

Fact AH: In its press release *IMC Plastic Surgeons Remove the Scars of War in Sierra Leone*, dated 4 September 2001, the International Medical Corps stated or noted:

For hundreds of children and child soldiers in Sierra Leone, the 10-year civil war left scars that could only be healed with the help of IMC's plastic surgery program.

Without plastic surgery, the child victims might never be able to return to their communities and reintegrate into society. The torment of the scars was so great that some children tried to burn them off with caustic soda, which only made them worse.

(Proposed Fact 99(a) and (c))

Fact AI: Sierra Leone's decade-long conflict was marked by an extraordinary level of brutal human rights abuses, including abductions, beatings, killings, sexual assault of women and men, being "captured" for less than 24 hours, torture, forced labour, serious injuries and amputations.

(Proposed Fact 100(a))

Fact AJ: Amnesty International Report 2001, which covered the period January to December 2000, set out that:

A UN panel of experts, established in August [2000] to investigate the link between the diamond trade and the conflict in Sierra Leone, published its report in December.

The panel made recommendations, including for an embargo on diamonds from Liberia and a travel ban on Liberian officials by UN members states.

(Proposed Fact 107(d) and (f))