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SCSL-03-01-T
(30182-30185)

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SPECIAL COURT FOR SIERRA LEONE

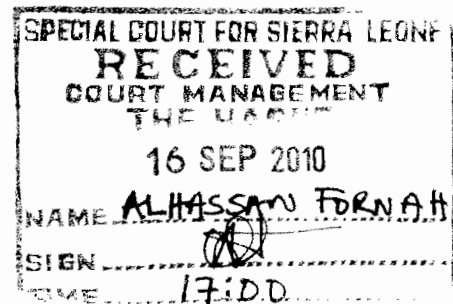
TRIAL CHAMBER II

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

Registrar: Binta Mansaray

Case No.: SCSL-03-1-T

Date: 16 September 2010



PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON PUBLIC WITH ANNEX A DEFENCE MOTION FOR ADMISSION
OF DOCUMENT PURSUANT TO RULE 92BIS - ICTJ REPORT ON
LIBERIAN TRUTH AND RECONCILIATION COMMISSION

Office of the Prosecutor:

Brenda J. Hollis
Leigh Lawrie
Nathan Quick

Counsel for the Accused:

Courtenay Griffiths, Q.C.
Terry Munyard
Morris Anyah
Silas Chekera
James Supuwood

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

SEISED of the “Public with Annex A Defence Motion for Admission of Document Pursuant to Rule 92bis - ICTJ Report on Liberian Truth and Reconciliation Commission”, filed on 25 August 2010 (“Motion”),¹ wherein the Defence requests the Trial Chamber to admit into evidence pursuant to Rule 92bis of the Rules of Procedure and Evidence (“Rules”) specific pages of a report written by the International Center for Transitional Justice (“ICTJ”), titled “Beyond the Truth and Reconciliation Commission: Transitional Justice Options in Liberia” (“Defence Document”), submitting that the material is relevant to the probative value of Prosecution evidence and exhibits stemming from the Liberian Truth and Reconciliation Commission (“TRC”) findings² and satisfies the requirements of Rule 92bis;³

NOTING the “Prosecution Objections to Public with Annex A Defence Motion for Admission of Document Pursuant to Rule 92bis - ICTJ Report on Liberian Truth and Reconciliation Commission”, filed on 30 August 2010 (“Objections”),⁴ wherein the Prosecution opposes the admission of the Defence Document on the grounds that the material sought to be admitted into evidence does not satisfy the requirements of Rule 92bis⁵ in that (i) the proposed evidence is irrelevant⁶ and (ii) the majority of the Defence Document is clearly opinion evidence;⁷

NOTING FURTHER that the Prosecution requests in the alternative, that if the Defence Document is admitted, then (i) the entire ICTJ Report and (ii) the entire Liberian TRC Report, should be admitted as the portions contained in the Defence Document cannot be properly read, understood and assessed without reference to both these documents in their entirety;⁸

NOTING ALSO the “Defence Reply to Prosecution Objection to Public with Annex A Defence Motion for Admission of Documents Pursuant to Rule 92bis - ICTJ Report on Liberian Truth and

¹ SCSL-03-01-T-1060.

² Motion, para. 2.

³ Motion, paras 10-17.

⁴ SCSL-03-01-T-1067.

⁵ Objections, paras. 2-9.

⁶ Objections, paras 3-8, 12.

⁷ Objections, paras 9, 12.

⁸ Objections, paras 10-11, 13.





Reconciliation Commission,” filed on 3 September 2010 (“Reply”),⁹ wherein the Defence submits that: (i) while the report does contain opinion evidence, the opinions do not comment on the charges in the Indictment or on the guilt or innocence of the Accused, and therefore is not the type of opinion evidence that Rule 92bis seeks to exclude;¹⁰ (ii) to the extent that the Trial Chamber agrees with the Prosecution characterization of the Defence Document as opinion evidence, the Defence would then seek admission through Rule 92bis only of certain sections of the report, which are essentially factual in nature;¹¹ (iii) there is no legal basis for the proposition put forward by the Prosecution that “the Trial Chamber should admit the entire ICTJ Report and Liberian TRC Report to be able to analyze the extracts of the ICTJ Report that the Defence has selected”;¹² (iv) in any event, the entire Liberian TRC Report is inadmissible under Rule 92bis as it is largely irrelevant and contains many instances of the acts and conduct of the Accused.¹³

COGNISANT of the provisions of Rule 92bis which provides that:

Rule 92bis: Alternative Proof of Facts

- (A) In addition to the provisions of Rule 92ter, 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.

CONSIDERING that, in accordance with the Appeals Chamber’s decision on the effect of Rule 92bis, the “information” which the Trial Chamber is permitted to admit as evidence pursuant to Rule 92bis is confined to assertions of fact, not opinion. The Appeals Chamber held: “SCSL Rule 92bis is different to the equivalent Rule in the ICTY and ICTR and deliberately so. The judges of this Court, at one of their first plenary meetings, recognised a need to amend ICTR Rule 92bis in order to simplify this provision for a court operating in what was hoped would be a short time-span in the country where the crimes had been committed and where a Truth and Reconciliation Commission and other authoritative bodies were generating testimony and other information about the recently

⁹ SCSL03-01-T-1069. The Trial Chamber notes that Rule 92bis does not contain a provision permitting the party applying for admission of documents pursuant to Rule 92bis to file a reply to an objection filed by the other party. However, the Trial Chamber finds that, in the circumstances, it is in the interests of justice to consider the Reply.

¹⁰ Reply, para. 7.

¹¹ Reply, para. 8. The Defence then seeks only the admission of the introductory pages, Executive Summary and paragraphs 1, 7, 8, 9, 13, 23 and 27 of Section 2 “The Final Report: Merits and Limitations”.

¹² Reply, para. 9.

¹³ Reply, para. 11.

concluded hostilities.¹⁴ The effect of the SCSL Rule is to permit the reception of “information” - assertions of fact (but not opinion) made in documents or electronic communications - if such facts are relevant and their reliability is “susceptible of confirmation”. This phraseology was chosen to make clear that 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.”¹⁵


FINDING that the Defence Document, being a review and critique in which the authors offer their views and opinions on the effectiveness of TRC process and on the merits and limitations of the final report of the TRC, is essentially opinion evidence which is not admissible under Rule 92bis;¹⁶

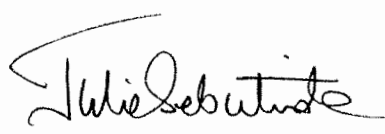
FINDING ALSO that since the whole of the Defence Document is influenced by the authors’ views and opinions, it is not practicable to consider the admissibility of any particular portion in isolation as suggested by the Defence;¹⁷

FINDING, therefore, that the alternative request by the Prosecution to admit the entire ICTJ Report and Liberian TRC Report is redundant;¹⁸

DISMISSES the Motion.

Done at The Hague, The Netherlands, this 16th day of September 2010.


Justice Richard Lussick


Justice Julia Sebutinde
Presiding Judge


Justice Teresa Doherty

[Seal of the Special Court for Sierra Leone]

¹⁴ The amendment was adopted on 7 March 2003.

¹⁵ *Prosecutor v. Norman, Fofana and Kondewa*, SCSL 2004-14-AR-73, *Fofana* - Decision on Appeal Against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”, 16 May 2005, para. 26; see also *Prosecutor v. Taylor*, SCSL-03-01-T, Decision on Prosecution Motion for Admission of Liberia Search Documents, 18 February 2009, para. 18.

¹⁶ See Objections, para. 9; see also Motion, Annex A, “Executive Summary”.

¹⁷ See Reply, para. 8.

¹⁸ See Objections, para. 10,11.