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SCSL-03-01-T
(30707-30709)

30707



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

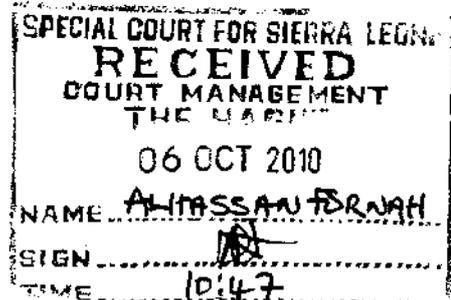
Case No.: SCSL03-1-T

Date: 6 October 2010

PROSECUTOR

v.

Charles Ghankay TAYLOR



DECISION ON DEFENCE MOTION TO EXCLUDE EVIDENCE FALLING OUTSIDE THE SCOPE OF
THE INDICTMENT AND/OR THE JURISDICTION OF THE SPECIAL COURT FOR SIERRA LEONE

Office of the Prosecutor:

Brenda J. Hollis
Leigh Lawrie
Kathryn Howarth

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 “Defence Motion to Exclude Evidence Falling Outside the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone”, filed on 24 September 2010 (“Motion”),¹ wherein the Defence submits that much of the ex-temporal and ex-territorial evidence adduced in the case is irrelevant to the Indictment or falls outside the jurisdiction of the Special Court and should be excluded from the Trial Chamber’s consideration of the evidence when it retires to consider judgement, and requests the Trial Chamber to:

- (i) exclude Prosecution evidence which falls outside the temporal scope of the Indictment and/or the jurisdiction of the Court, or impose limits on the scope to which such evidence may be taken into consideration;
- (ii) exclude Prosecution evidence of crimes committed in locations within Sierra Leone not pleaded in the Indictment, or impose limits on the scope to which such evidence may be taken into consideration;
- (iii) exclude Prosecution evidence of crimes committed outside of Sierra Leone and impermissibly admitted pursuant to Rule 93 or other Rules;²

NOTING the “Prosecution Response to Defence Motion to Exclude Evidence Falling Outside of the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone”, filed on 29 September 2010 (“Response”),³ wherein the Prosecution opposes the Motion and submits that it should be dismissed in its entirety on the basis that it is, at least in part, *res judicata*, and is otherwise untimely, insufficiently specific and contrary to the accepted international jurisprudence,⁴ and argues that evidence outside of the scope of the Court’s jurisdiction and/or the Indictment is admissible for a wide variety of purposes including to:

- (i) provide the context in which the offences are said to have been committed;
- (ii) prove the existence of a joint criminal enterprise, command and control, *de facto* authority over a subordinate, and the *mens rea* of the Accused;
- (iii) establish by inference the elements (in particular, criminal intent) of criminal conduct occurring during the Court’s jurisdiction;

¹ SCSL-03-01-T-1086.

² Motion, paras 1, 4, 28.

³ SCSL-03-01-T-1093.

⁴ Response, paras 1-9, 20.




- (iv) demonstrate a deliberate or consistent pattern of conduct, which can then be relied upon to establish specific offences, including a campaign of terror, and/or modes of liability charged in an indictment; and/or
- (v) prove the chapeau requirements of Articles 2, 3 and 4 of the Statute;⁵

NOTING ALSO the "Defence Reply to Prosecution Response to Defence Motion to Exclude Evidence Falling Outside of the Scope of the Indictment and/or the Jurisdiction of the Special Court for Sierra Leone", filed on 5 October 2010 ("Reply");⁶

COGNISANT of the provisions of Articles 1 and 17 of the Statute of the Special Court for Sierra Leone ("Statute") and Rules 89, 93, and 95 of the Rules of Procedure and Evidence ("Rules");

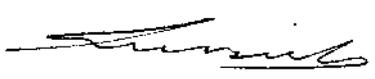
CONSIDERING that the issues raised by the Defence are matters for the Trial Chamber to determine at the end of the trial when it deliberates on the final judgement after having considered the totality of the evidence tendered into the record;

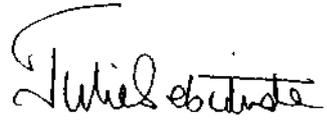
FINDING therefore that the Motion is premature at this stage of the trial and that the said issues are more appropriately addressed by the parties in the final trial Briefs and/or closing arguments;

PURSUANT to Rule 73(A) of the Rules;

HEREBY DISMISSES THE MOTION.

Done at The Hague, The Netherlands, this 6th day of October 2010.


Justice Richard Lussick


Justice Julia Sebutinde
Presiding Judge


Justice Teresa Doherty



⁵ Response, paras 10-18.
⁶ SCSL-03-01-T-1100.