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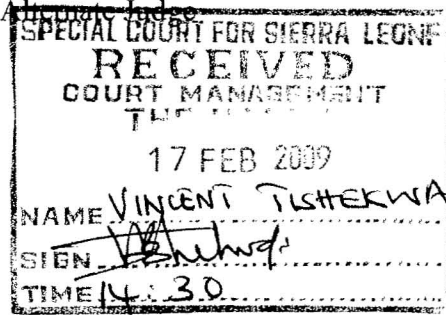
**SPECIAL COURT FOR SIERRA LEONE**  
OFFICE OF THE PROSECUTOR  
Freetown – Sierra Leone

**TRIAL CHAMBER II**

Before: Justice Richard Lussick, Presiding  
Justice Teresa Doherty  
Justice Julia Sebutinde  
Justice El Hadji Malick Sow, <sup>Acting Judge</sup>

Registrar: Mr. Herman von Hebel

Date filed: 17 February 2009



**THE PROSECUTOR**

**Against**

**Charles Ghankay Taylor**

Case No. SCSL-03-01-T

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**PUBLIC**

**PROSECUTION REPLY TO “PUBLIC DEFENCE RESPONSE TO PROSECUTION REQUEST FOR LEAVE TO FILE SUPPLEMENTAL ARGUMENT IN LIGHT OF THE APPEALS CHAMBER DECISION ON PROSECUTION NOTICE OF APPEAL AND SUBMISSIONS CONCERNING THE DECISION REGARDING THE TENDER OF DOCUMENTS”**

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Office of the Prosecutor:  
Ms. Brenda J. Hollis  
Mr. Nicholas Koumjian  
Ms. Ula Nathai-Lutchman

Counsel for the Accused:  
Mr. Courtenay Griffiths Q.C.  
Mr. Andrew Cayley  
Mr. Terry Munyard  
Mr. Morris Anyah

## I. INTRODUCTION

1. The Prosecution files this Reply to the “Defence Response to Prosecution Request for Leave to File Supplemental Argument in Light of the Appeals Chamber Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’”.<sup>1</sup>
2. In relation to the issues raised by the Defence in its Response, the Prosecution replies as set out below.

## II. REPLY

3. The Appeals Chamber decision reiterates that the only test for admissibility of a document at the Special Court is a demonstration of its relevance.<sup>2</sup> Issues concerning the authenticity of the document or the reliability of the contents go to weight and are decided at the end of the trial in order to reach a judgment in light of all the evidence.<sup>3</sup> The Appeals Chamber decision held that when documents are presented through a witness under Rule 89(C), the Trial Chamber retains the discretion to require the tendering party to lay a foundation demonstrating the competence of the witness to provide relevant testimony in relation to the document.<sup>4</sup>
4. Contrary to the Defence’s argument, the Appeals Chamber decision did not hold that a document can only be admitted pursuant to the testimony of a witness who prepared the document or has personal knowledge concerning the information

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<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-730, “Defence Response to Prosecution Request for Leave to File Supplemental Argument in Light of the Appeals Chamber Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’”, 13 February 2009 (“**Response**”).

<sup>2</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-726, “Prosecution Request for Leave to File Supplemental Argument in Light of the Appeals Chamber Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’”, 10 February 2009 (“**Request**”), para. 3 of Annex A citing *Prosecutor v. Taylor*, SCSL-03-01-AR-721, “Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’”, 6 February 2009 (“**Appeals Chamber Decision**”), para. 37.

<sup>3</sup> Appeals Chamber Decision, para. 37.

<sup>4</sup> *Ibid.*, para. 40.

contained within the document.<sup>5</sup> These arguments go to the reliability of the information, which the Appeals Chamber decision reiterated are considered at a later stage – when the evidence is being considered as to matters such as weight and probity of the relevant evidence and are not requirements for its admission.<sup>6</sup> Therefore, the Trial Chamber is not foreclosed from considering the contents of a document where the author of the document does not testify as a *viva voce* witness. In addition, it is a well established principle that the SCSL's Rules are broad and there is no exclusion of hearsay evidence. Hearsay is admissible before international tribunals and the weight to be given it, as with all evidence, will be decided by professional judges at the conclusion of the case.

5. The Defence acknowledged the relevance of Mr. Malik's testimony concerning the origins of the documents when they did not oppose adding him to the witness list.<sup>7</sup> Contrary to the Defence assertion,<sup>8</sup> a foundation showing the connection or link between Mr. Malik and the documents for which admission is sought was established during his testimony. Mr. Malik had personal knowledge of how each document came into the possession of the Prosecution. He was responsible for recording information about how the document was received and preserving the integrity of the document; thus, it was clearly shown that he indeed had a connection with the document. With such a foundation, the documents should be admitted through Rule 89(C) in conjunction with the testimony of Mr. Malik.
6. Jurisprudence from the ICTY supports the Prosecution position herein. Two Trial Chamber decisions in the "Tuta and Stella" case admitted documents pursuant to Rule 89(C) through witnesses who testified only to the provenance and archiving of the documents.<sup>9</sup> The Chamber considered that the document admission procedure is not contingent upon considerations of authenticity and origin and that the decision to authorize the tendering of one or several documents is without prejudice

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<sup>5</sup> Response, para. 11.

<sup>6</sup> Appeals Chamber Decision, para. 37.

<sup>7</sup> Response, para. 5.

<sup>8</sup> *Ibid.*, para. 5.

<sup>9</sup> *Prosecutor v. Mladen Naletilic aka "Tuta" and Vinko Martinovic aka "Stela"*, IT-98-34-T, "Decision on Admission of Seized Documents", 31 January 2002, page 2 and "Decision on Admission of E.C.M.M. Documents", 31 January 2002, page 2.

to the value or weight which will be accorded to the documents during the final stage of the trial.<sup>10</sup>

7. In paragraph 10 of the Response, the Defence argues that a foundation beyond provenance must form the basis for the witness's cross-examination on the contents of the document. The Defence has successfully objected to allowing a witness to be shown a document where the witness has knowledge of the contents of the document but not of the document itself. With that background, the Defence must be arguing that a witness must have knowledge of the document itself in order to be shown the document, and for the document to be tendered through the witness. The Defence argument does not withstand scrutiny. Taken to its logical conclusion, the Defence argument would require disparate rules for oral and documentary evidence, as hearsay is clearly permitted for the former and there are no limitations on hearsay evidence going to the acts and conduct of the accused. Under this argument, for example, a witness would be allowed to testify to what others told him they heard an accused order, but an order written and signed by the accused would be inadmissible unless the Prosecution could make available for cross-examination a witness who had involvement in its preparation.
8. Clearly, the matters to which Mr. Malik testified are relevant to the Trial Chamber's evaluation of the weight to be given to the documents in question, and form the required relation, or connection, between Mr. Malik and the documents. The location where a document was found or the source from whom it was received are relevant to the weight to be given to a document, and may shed light on other matters going to weight, for example, the date when a document was created, who created it and who had received it.
9. Mr. Malik provided evidence relevant to the origins of these documents. At no time was Mr. Malik asked to give any opinion evidence about the contents of the documents. The relevance of these documents to issues in this case is apparent from their contents and when considered in light of prior testimony. Moreover, for

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<sup>10</sup> *Prosecutor v. Mladen Naletilic aka "Tuta" and Vinko Martinovic aka "Stela"*, IT-98-34-T "Decision on Admission of Seized Documents", 31 January 2002, page 2.

each of these documents, the Prosecution has included an analysis of its relevance in annexes attached to prior pleadings under Rules 89(C) and 92bis.<sup>11</sup>

10. The Defence arguments fail to appreciate that the Appeals Chamber decision allows the Trial Chamber discretion to require a showing of the connection of the witness to the document offered under Rule 89(C).<sup>12</sup> Instead, the Defence seeks to impose a much greater restriction on the admission of documents through a witness under SCSL Rule 89(C) by misinterpreting the Appeals Chamber decision. The Defence arguments would restrict admission of relevant documents to only those where the party offering the document produces a witness with personal knowledge of the document itself.<sup>13</sup> Adopting such an interpretation would deprive the Trial Chamber of the ability to consider clearly relevant documents which include acts and conduct of the Accused unless the offering party could produce a witness who participated in the preparation of the document.<sup>14</sup> Such a technical limitation on the Trial Chamber's ability to consider relevant evidence would be contrary to the interests of justice and the search for the truth.
11. The Defence cites no jurisprudence and offers no arguments to support the claim that admitting documents which go to acts and conduct of the Accused would violate Rule 95 in that it would bring the administration of justice into serious disrepute.<sup>15</sup> On the contrary, to preclude the parties from offering relevant evidence about the acts and conduct of the accused, always a key issue in any criminal case, would be contrary to the interests of justice. A decision from the *Kordić and Čerkez* case emphasizes this point. In that instance, the Trial Chamber was faced

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<sup>11</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-659, "Prosecution Motion For Admission of Documents Seized From Foday Sankoh's House", 6 November 2008, para. 7; *Prosecutor v. Taylor*, SCSL-03-01-T-667, "Prosecution Motion For Admission of Documents Seized From RUF Office, Kono District", 13 November 2008, para. 8; *Prosecutor v. Taylor*, SCSL-03-01-T-681, "Prosecution Motion For Admission of Liberia Search Documents", 1 December 2008, para. 8 and *Prosecutor v. Taylor*, SCSL-03-01-T-678, "Prosecution Motion For Admission of Newspaper Articles Obtained from the Catholic Justice and Peace Commission Archive in Monrovia, Liberia", 28 November 2008, para. 8.

<sup>12</sup> Appeals Chamber Decision, para. 39.

<sup>13</sup> Response, para. 5.

<sup>14</sup> While documentary evidence offered by both parties would be affected by this limitation, one obvious effect would be to preclude the Prosecution from offering into evidence a document authored by the Accused unless he waived his right against self-incrimination and testified about matters about which the contents of the document are relevant.

<sup>15</sup> Response, para. 13.

with a Prosecution request for admission of a Book of Observations of the Officer on Duty in the Central Bosnia Operative Zone, generally referred to as the “War Diary”, said to reflect events in the immediate region from January to May 1993, including orders given by one of the accused, Dario Kordić.<sup>16</sup> Even though the document arguably went to acts and conduct of one of the accused, the Trial Chamber admitted the War Diary. In determining to admit the document, the Chamber found that it was “under a duty to try to ascertain the truth and to deprive itself of this document would put that duty at risk.”<sup>17</sup>

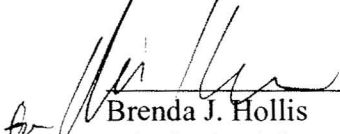
### III. CONCLUSION

12. For the reasons set out in its Request and above, the Response should be dismissed. The Prosecution requests the Trial Chamber to grant the request for leave to file the supplemental argument contained in Annex A and the four categories of documents should be admitted under Rule 89(C) in conjunction with the testimony of Mr. Malik.

Filed in The Hague,

17 February 2009,

For the Prosecution,

  
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Brenda J. Hollis  
Principal Trial Attorney

<sup>16</sup> For a narration of the facts against which the decision was made, see paras. 1 – 11 of *Prosecutor v. Kordić and Čerkez*, IT-95-14/2, “Decision on Prosecutor’s Submissions concerning ‘Zagreb Exhibits’ and Presidential Transcripts”, 1 December 2000, para. 26 (“**Kordić and Čerkez Decision**”).

<sup>17</sup> *Kordić and Čerkez Decision*, para. 44.

## LIST OF AUTHORITIES

### SCSL Cases

#### *Prosecutor v. Taylor* – Case No. SCSL-03-01

1. *Prosecutor v. Taylor, SCSL-03-01-T-659*, “Prosecution Motion For Admission of Documents Seized From Foday Sankoh’s House”, 6 November 2008.
2. *Prosecutor v. Taylor, SCSL-03-01-T-667*, “Prosecution Motion For Admission of Documents Seized From RUF Office, Kono District”, 13 November 2008.
3. *Prosecutor v. Taylor, SCSL-03-01-T-678*, “Prosecution Motion For Admission of Newspaper Articles Obtained from the Catholic Justice and Peace Commission Archive in Monrovia, Liberia”, 28 November 2008.
4. *Prosecutor v. Taylor, SCSL-03-01-T-681*, “Prosecution Motion For Admission of Liberia Search Documents”, 1 December 2008.
5. *Prosecutor v. Taylor, SCSL-03-01-AR73-721*, “Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’”, 6 February 2009.
6. *Prosecutor v. Taylor, SCSL-03-01-T-726*, “Prosecution Request for Leave to File Supplemental Argument in Light of the Appeals Chamber Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’”, 10 February 2009.
7. *Prosecutor v. Taylor, SCSL-03-01-T-730*, “Defence Response to Prosecution Request for Leave to File Supplemental Argument in Light of the Appeals Chamber Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’”, 13 February 2009.

### ICTY Cases

1. *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.icty.org/x/cases/kordic\\_cerkez/tdec/en/01201AE514292.htm](http://www.icty.org/x/cases/kordic_cerkez/tdec/en/01201AE514292.htm)
2. *Prosecutor v. Mladen Naletilic aka "Tuta" and Vinko Martinovic aka "Stela"*, IT-98-34-T, “Decision on Admission of E.C.M.M. Documents”, 31 January 2002.  
  
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3. *Prosecutor v. Mladen Naletilic aka "Tuta" and Vinko Martinovic aka "Stela"*, IT-98-34-T, "Decision on Admission of Seized Documents", 31 January 2002.

[http://www.icty.org/x/cases/naletilic\\_martinovic/tdec/en/20131AE16993.htm](http://www.icty.org/x/cases/naletilic_martinovic/tdec/en/20131AE16993.htm)