

(17026 - 17030)



## SPECIAL COURT FOR SIERRA LEONE

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## TRIAL CHAMBER I

**Before:** Hon. Justice Pierre Boutet, Presiding Judge  
 Hon. Justice Bankole Thompson  
 Hon. Justice Benjamin Mutanga Itoe

**Interim Registrar:** Mr. Lovemore Green Munlo

**Date:** 9<sup>th</sup> of November 2005

**PROSECUTOR**                      **Against**                      **ISSA HASSAN SESAY**  
**MORRIS KALLON**  
**AUGUSTINE GBAO**  
 (Case No. SCSL-04-15-T)

**DECISION ON THE PROSECUTION CONFIDENTIAL NOTICE UNDER 92bis  
 TO ADMIT THE TRANSCRIPTS OF TESTIMONY OF TF1-023, TF1-104 AND TF1-169**

Office of the Prosecutor:

Luc Côté  
 Peter Harrison

Defence Counsel for Issa Hassan Sesay:

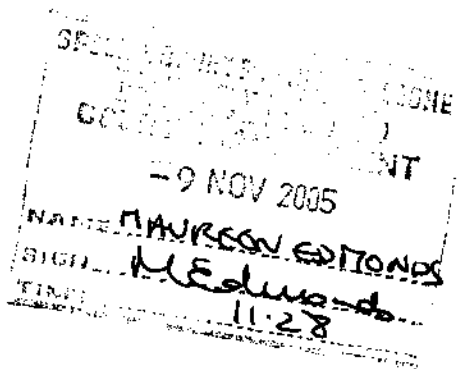
Wayne Jordash  
 Sareta Ashraph

Defence Counsel for Morris Kallon:

Shekou Touray  
 Melron Nicol-Wilson

Defence Counsel for Augustine Gbao

Andreas O'Shea  
 John Cammegh



TRIAL CHAMBER I ("Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Hon. Justice Pierre Boutet, Presiding Judge, Hon. Justice Bankole Thompson, and Hon. Justice Benjamin Mutanga Itoe;

SEIZED OF the "Confidential Prosecution Notice Under Rule 92bis to Admit the Transcripts of Testimony of TF1-023, TF1-104 and TF1-169" filed by the Office of the Prosecutor ("Prosecution") on the 25<sup>th</sup> of October 2005 ("Notice");<sup>1</sup>

CONSIDERING that the Prosecution is seeking to admit the transcripts of the testimony of these witnesses and the exhibits that were entered in the course of their testimony during the trial proceedings in *Prosecutor v. Brima, Kamara and Kanu* ("AFRC trial") in lieu of their examination-in-chief in the proceedings in *Prosecutor v. Sesay, Kallon and Gbao*;

NOTING the Chamber's "Order for Extension of Time to Respond to the Prosecution Confidential Notice Under Rule 92bis to Admit the Transcripts of Testimony of TF1-023, TF1-104 and TF1-169" which granted an extension of the 5-day period to submit an objection to Counsel for the Accused Issa Hassan Sesay;

NOTING the "Confidential Defence Response to Prosecution Notice Under Rule 92bis to Admit the Transcripts of Testimony of TF1-023, TF1-104 and TF1-169" filed on the 1<sup>st</sup> of November 2005 by Counsel for the Accused Issa Hassan Sesay which did not oppose the Prosecution Notice;

NOTING the "Kallon - Confidential Defence Response to Prosecution Notice Under Rule 92bis to Admit the Transcripts of Testimony of TF1-023, TF1-104 and TF1-169" that was filed out of time by Counsel for the Accused Morris Kallon on the 2<sup>nd</sup> of November 2005;

EXCEPTIONALLY GRANTING leave to Counsel for Kallon to file out of time and CONSIDERING that Counsel objected to the admission of the transcripts on the basis that the testimonies might be different if elicited during the RUF proceedings, that its prejudicial effect outweighs the probative value, that the evidence does not meet the requirements of Rule 89(C), and that the evidence does not incriminate Morris Kallon;

NOTING the "Gbao Response to Notice to Admit Transcripts in Lieu of Testimony" filed out of time by Counsel for the Accused Augustine Gbao on the 4<sup>th</sup> of November 2005;

<sup>1</sup> The Trial Chamber notes that while this Notice was filed confidentially, the Chamber is satisfied that it is in the interests of justice that this Decision be filed publicly.

**EXCEPTIONALLY GRANTING** leave to Counsel for Gbao to file out of time and **CONSIDERING** that Counsel, while expressing concerns regarding Rule 92bis, the requirement of having a fair trial and the potential prejudice which may result from the admission of transcripts into evidence, does not oppose the Prosecution Notice;

**MINDFUL** that Rule 92bis of the Rules of Procedure and Evidence ("Rules") provides that:

- (A) A Chamber may admit as evidence, in whole or in part, information in lieu of oral testimony.
- (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.

**MINDFUL** of this Chamber's "Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C)" in the case of *Prosecutor v. Norman, Fofana and Kondewa*, in which we held that at the stage of admission, the Chamber must determine whether documents admitted under Rule 92bis are relevant, whether they possess sufficient indicia of reliability and whether their admission would not prejudice unfairly the Defence, such as if documents pertaining to the acts and conduct of the Accused are admitted into evidence without giving the Defence the opportunity of cross-examination;<sup>2</sup>

**CONSIDERING** that the Prosecution has indicated that it has no objection to the cross-examination of Witnesses TF1-023, TF1-104 and TF1-169 by Defence Counsel for the three Accused and that it wishes to reserve its right to re-examine the witnesses if they are cross-examined;

**CONSIDERING** that it is in the interests of justice that the trial proceeds fairly and expeditiously;

**NOTING** that Counsel for the First and Third Accused have indicated that they do not object to the admission of this evidence pursuant to Rule 92bis;

**SATISFIED** upon careful examination of the evidence that the transcripts of the testimony of Witnesses TF1-023, TF1-104 and TF1-169 are relevant as background evidence of matters alleged in

<sup>2</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL04-14-T, "Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C)", 14 July 2005, p. 4.

the Amended Consolidated Indictment, possess sufficient indicia of reliability and are susceptible of confirmation and that their admission would not prejudice unfairly the Defence;

PURSUANT to Rule 92bis of the Rules;

HEREBY GRANT the Prosecution's Application to admit the transcripts and exhibits from the AFRC trial for the Prosecution Witnesses TF1-023, TF1-104 and TF1-169; and

ORDER that the Prosecution file in this trial the following transcripts and exhibits from the AFRC trial:

1) Witness TF1-023:

- Transcript of the 9<sup>th</sup> of March 2005, p. 26-62 (open session)
- Transcript of the 10<sup>th</sup> of March 2005, p. 1-43 (open and closed session)
- Transcript of the 7<sup>th</sup> of November 2005, p. 1-35 (open and closed session)
- Exhibits P1, P2 and P3 entered into evidence on the 9<sup>th</sup> of March 2005 (sealed)

2) Witness TF1-104:

- Transcript of the 30<sup>th</sup> of June 2005, p. 1-78 (closed session ordered by Trial Chamber I<sup>3</sup>)

3) Witness TF1-169:

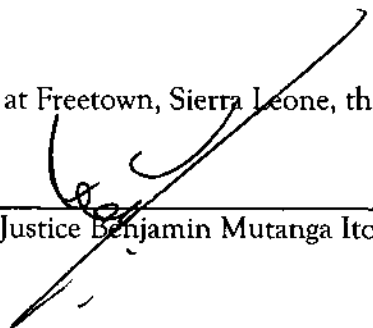
- Transcript of the 6<sup>th</sup> of July 2005, p. 1-100 (closed session)
- Transcript of the 7<sup>th</sup> of July 2005, p. 1-26 (closed session)
- Exhibits P28 and P29 entered into evidence on the 6<sup>th</sup> of July 2005 (not sealed)

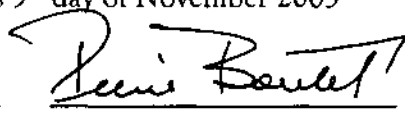
ORDER that those transcripts of closed sessions in the AFRC trial be sealed and that those exhibits that were sealed in the AFRC trial be sealed;

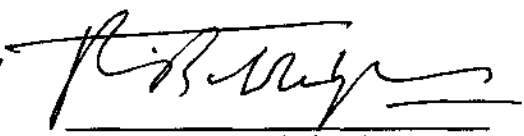
<sup>3</sup> *Prosecutor v. Brima, Kamara and Kanu*, SCSL04-16-T and *Prosecutor v. Sesay, Kallon and Gbao*, SCSL04-15T, "Decision on the Urgent and Confidential Prosecution Application to Vary Protective Measures Regarding Witnesses TF1-104 and TF1-081", 11 May 2005.

AND ORDER that the Defence Counsel may cross-examine all of the Witnesses and the Prosecution may re-examine the Witnesses relating to matters raised in any cross-examination by Defence Counsel.

Done at Freetown, Sierra Leone, this 9<sup>th</sup> day of November 2005

  
\_\_\_\_\_  
Hon. Justice Benjamin Mutanga Itoe

  
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Hon. Justice Pierre Boutet  
Presiding Judge  
Trial Chamber I

  
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Hon. Justice Bankole Thompson

[Seal of the Special Court for Sierra Leone]

