

SCSL-04-15-T
(18086 - 18090).



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 G. Munlo SC

Date: 21st of February 2006

PROSECUTOR **Against** **ISSA HASSAN SESAY**
MORRIS KALLON
AUGUSTINE GBAO
(Case No. SCSL04-15-T)

Public Document

**DECISION ON THE PROSECUTION CONFIDENTIAL NOTICE UNDER 92 bis
TO ADMIT THE TRANSCRIPT OF TESTIMONY OF TF1-081**

Office of the Prosecutor:

James C. Johnson
Peter Harrison

Defence Counsel for Issa Hassan Sesay:

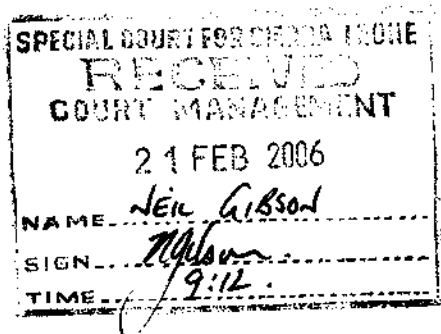
Wayne Jordash
Sareta Ashraph

Defence Counsel for Morris Kallon:

Shekou Touray
Charles Taku
Melron Nicol-Wilson

Defence Counsel for Augustine Gbao

Andreas O'Shea
John Cammegh



TRIAL CHAMBER 1 (“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 Transcript of Testimony of TF1-081” filed by the Office of the Prosecutor (“Prosecution”) on the 15th of December 2005 (“Notice”);¹

CONSIDERING that the Prosecution is seeking to admit the transcript of the testimony of Prosecution Witness TF1-081 and the exhibit that was entered in the course of his testimony during the trial proceedings in *Prosecutor v. Brima, Kamara and Kanu* (“AFRC trial”) in lieu of his examination-in-chief in the proceedings in *Prosecutor v. Sesay, Kallon and Gbao*;

NOTING the “Confidential – Kallon: Defence Response to Confidential “Prosecution Notice Under Rule 92bis to Admit the Transcript of Testimony of TF1-081” filed out of time by Counsel for the Accused Morris Kallon on the 9th of January 2006;

CONSIDERING that Counsel for Kallon objected to the admission of the evidence on the basis that the evidence goes far beyond the ambit of background evidence and is proffered to link the Accused to specific counts in the Indictment, that the exhibit goes beyond the crime base areas indicated in the Prosecution Chart to include Makeni, Kono and Bo (this last one also not being included in the Indictment), and that judicial economy ought not be achieved at the expense of judicial fairness;

CONSIDERING ALSO Counsel’s indication that the Defence is prepared to accept the admission of the portion of the evidence of TF1-081 excluding those portions referring to Makeni, Kono and Bo Districts;

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.

¹ The Trial Chamber notes that while this Notice was filed confidentially due to the fact that TF1-081 testified in closed session and that the exhibit was sealed, the Chamber is satisfied that it is in the interests of justice that this Decision be filed publicly.

- (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 the Appeals Chamber has emphasised that this Rule is deliberately different from the corresponding Rule in the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda;²

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;³

MINDFUL of this Chamber's "Decision on the Prosecution Confidential Notice Under 92bis to Admit the Transcripts of Testimony of TF1-023, TF1-104 and TF1-169" in this case filed on the 9th of November 2005;

CONSIDERING that the Prosecution has indicated that it has no objection to the cross-examination of Witness TF1-081 by Defence Counsel for the three Accused and that it wishes to reserve its right to re-examine the witness if he is 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 not objected to the admission of this evidence pursuant to Rule 92bis;

FINDING that the evidence that the Prosecution is seeking to tender in lieu of the oral testimony of TF1-081 is relevant as background evidence of matters alleged in the Amended Consolidated Indictment in that, while revealing that crimes were committed generally, the evidence does not directly prove the acts and conduct of any of the Accused;

² *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-2004-14-AR73, "Fofana - Decision on Appeal Against 'Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence'", 16 May 2005, para. 26.

³ *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)", 15 July 2005, p. 4.

NOTING also the broad nature of Rule 92bis which places no limitation on the type of evidence admissible under this Rule to only background evidence;

FURTHER FINDING that while it is clear that the focus of the evidence of TF1-081 was Freetown and the Western Area, the Defence had notice that there was to be peripheral mention of a few abductions from Makeni and Kono and of the military training of these abductees when they received disclosure of TF1-081's evidence (including the medical report that was entered as an exhibit) in 2003 and in 2004;⁴

NOTING ALSO that the summary of the witness' evidence provided by the Prosecution to the Defence clearly states that most of the victims were from Freetown;⁵

NOTING that during the testimony of TF1-081 in the AFRC trial, he stated that one victim of a gang rape was "coming from Bo", an area not covered by the Amended Consolidated Indictment under Counts 6-9 concerning sexual violence or under Count 13 concerning abductions and forced labour;

SATISFIED upon careful examination of the evidence the Prosecution is seeking to admit, namely, the transcript of the testimony and exhibit of Witness TF1-081, is relevant to the purpose for which it is sought to be admitted and that its reliability is susceptible of confirmation;

PURSUANT to Rule 92bis of the Rules;

HEREBY GRANTS the Prosecution's Application to admit the transcript and exhibit from the AFRC trial for Prosecution Witness TF1-081; and

ORDERS that the Prosecution file in this trial, the transcript of the 4th of July 2005 from pages 1 to 30, inclusive and exhibit P-25 from the AFRC trial and be sealed;

ORDERS that the portion of the evidence relating to the gang rape of a woman "coming from Bo" shall not be included as part of the trial record;

⁴ *Prosecutor v. Sesay, Kallon and Gbao*, SCSL04-15-T, "Materials Filed Pursuant to Consequential Order to the Decision on Further Renewed Witness List Dated 13 April 2005", 5 May 2005, Annex B - Updated Disclosure Chart - May 2005, p. 14.

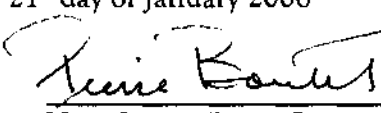
⁵ *Ibid*, Annex A - RUF Updated "Back-up" Witness Chart - May 2005, p. 128-129.

AND FURTHER ORDERS that the Defence Counsel may cross-examine Witness TF1-081 and that the Prosecution may re-examine the Witness relating to matters raised in any cross-examination by Defence Counsel.

Done at Freetown, Sierra Leone, this 21st day of January 2006



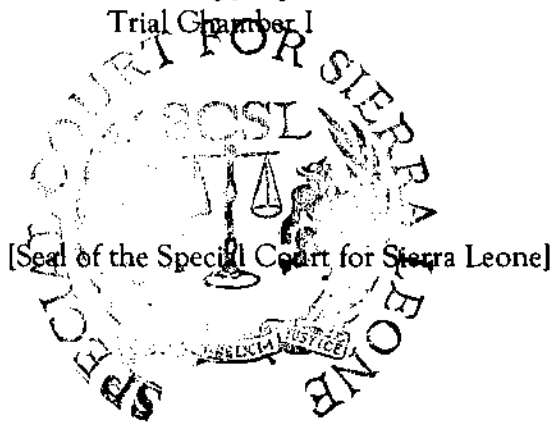
Hon. Justice Benjamin Mutanga Itoe



Hon. Justice Pierre Boutet
Presiding Judge
Trial Chamber I



Hon. Justice Bankole Thompson



[Seal of the Special Court for Sierra Leone]