

SEIZED OF the *Prosecution Notice Under Rule 92bis to Admit the Transcripts of Testimony of TF1-156 and TF1-179* filed by the Office of the Prosecutor (“Prosecution”) on the 23rd of April 2006 (“Notice”);

CONSIDERING that the Prosecution is seeking to admit the transcripts of the testimony of Prosecution Witnesses TF1-156 and TF1-179 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 *Sesay Defence Reply to Prosecution Notice Under Rule 92bis to Admit the Transcripts of Testimony of TF1-156 and TF1-179* filed by Counsel for the Accused Issa Hassan Sesay on the 28th of March 2006 in which Counsel states that they do not oppose the admission of the relevant transcripts in this specific instance;

NOTING the *Gbao Response to the Prosecution Notice Under Rule 92bis to Admit the Transcripts of Testimony of TF1-156 and TF1-179* filed by Counsel for the Accused Augustine Gbao on the 28th of March 2006 in which Counsel also do not oppose the admission of the transcripts;

NOTING that Counsel for the Second Accused Morris Kallon have not objected to the admission of this evidence pursuant to Rule 92bis;

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.

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;[\[1\]](#)

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;[\[2\]](#)

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*[\[3\]](#) and the *Decision on the Prosecution Confidential Notice Under 92bis to Admit the Transcripts of Testimony of TF1-081*[\[4\]](#);

CONSIDERING that the Prosecution has indicated that it has no objection to the cross-examination of Witnesses TF1-156 and TF1-179 by Defence Counsel for the three Accused and that it wishes to reserve its right to re-examine the witness if they are cross-examined;

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

FINDING that the evidence that the Prosecution is seeking to tender in lieu of the oral testimony of TF1-156 and TF1-179 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;

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;

SATISFIED upon careful examination of the evidence the Prosecution is seeking to admit, namely, the transcripts of the testimony of Prosecution Witnesses TF1-156 and TF1-179, 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 transcripts from the AFRC trial for Prosecution Witnesses TF1-156 and TF1-179; and

ORDERS that the Prosecution file in this trial:

1. For Witness TF1-156, the transcript of the 26th of September 2005, pages 33-50 (open session), 51-53 (closed session) and 54-67 (open session), all inclusive; and
2. For Witness TF1-179, the transcript of the 27th of July 2005, pages 31-73 (open session), inclusive.

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

AND FURTHER ORDERS that the Defence Counsel may cross-examine Witnesses TF1-156 and TF1-179 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 3rd day of April 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]

[1] *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.

[2] *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution’s Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C), 15 July 2005, p. 4.

[3] *Prosecutor v. Sesay, Kallon and Gbao*, 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, 11 November 2005.

[4] *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Prosecution Confidential Notice Under 92bis to Admit the Transcripts of Testimony of TF1-081, 21 February 2006.
