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## SPECIAL COURT FOR SIERRA LEONE

### TRIAL CHAMBER II

**Before:** Justice Teresa Doherty, Presiding Judge  
Justice Richard Lussick  
Justice Julia Sebutinde  
Justice El Hadji Malick Sow, Alternate Judge

**Registrar:** Herman von Hebel

**Case No.:** SCSL-03-1-T

**Date:** 14 October 2008

### PROSECUTOR

v.

Charles Ghankay TAYLOR

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### DECISION ON PROSECUTION NOTICE UNDER RULE 92BIS FOR THE ADMISSION OF EVIDENCE RELATED TO *INTER ALIA* KONO DISTRICT – TFI-218 & TFI-304

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**Office of the Prosecutor:**

Brenda J. Hollis  
Leigh Lawrie

**Defence Counsel for Charles G. Taylor:**

Courtenay Griffiths, Q.C.  
Terry Munyard  
Andrew Cayley  
Morris Anyah

**TRIAL CHAMBER II** (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);

**RECALLING** the Trial Chamber’s “Order Under Rule 16 to Continue Trial in the Absence of a Judge”, dated 13 October 2008 (“Rule 16 Order”);<sup>1</sup>

**SEISED** of the “Public with Confidential Annexes A & B Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *inter alia* Kono District - TF1-218 & TF1-304”, filed on 3 September 2008 (“Notice”),<sup>2</sup> wherein the Prosecution gives notice under Rule 92bis of its intention to seek admission into evidence of parts of the prior trial transcripts and related exhibits of the testimony of Witnesses TF1-218 and TF1-304 in other proceedings before the Special Court,<sup>3</sup> excluding those sections which concern: (i) legal argument; (ii) trial administrative matters; and (iii) evidence of the acts and conduct of the Accused;<sup>4</sup>

**NOTING** the “Public with Confidential Annex A Defence Objection to Prosecution Notice under Rule 92bis for the Admission of Evidence Related to *inter alia* Kono District - TF1-218 & TF1-304”, filed on 9 September 2008 (“Objection”),<sup>5</sup> wherein the Defence objects to the admission of such evidence on the grounds that: (i) some of the information is not relevant as it falls outside the Indictment period; (ii) some of the evidence reflects the Witnesses’ own respective opinions or conclusions; (iii) some of the information is “linkage” in nature and/or goes to proof of the acts and conduct of the Accused and can not be admitted under Rule 92bis without the opportunity for cross-examination;<sup>6</sup> and (iv) that alternatively, if the Trial Chamber does not deny the admission of evidence completely, then (a) only those portions of the evidence not objected to in Annex A of the Objection should be admitted; and (b) the Trial Chamber should exercise its discretion to order the witnesses concerned to appear for cross-examination.<sup>7</sup>

**NOTING** the “Public Prosecution Reply to ‘Defence Objection to Prosecution Notice under Rule 92bis for the Admission of Evidence Related to *inter alia* Kono District – TF1-218 & TF1-304”, filed 12 September 2008 (“Reply”);<sup>8</sup>

**MINDFUL** of the provisions of Rule 92bis of the Rules of Procedure and Evidence (“Rules”);

**RECALLING** the Trial Chamber’s previous decisions establishing the applicable law in relation to such Rule 92bis motions;<sup>9</sup>

**HAVING** conducted a careful examination of the transcripts of the testimony of Witnesses TF1-218 and TF1-304 and the exhibit<sup>10</sup> admitted during the testimony of witness TF1-304 in the RUF trial;

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<sup>1</sup> Prosecutor v. Taylor, SCSL-03-01-T-629, Order Under Rule 16 to Continue Trial in the Absence of a Judge, 13 October 2008 (“Rule 16 Order”).

<sup>2</sup> SCSL-03-01-T- 574.

<sup>3</sup> TF1-218 and TF1-304 testified in *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T (“RUF Trial”).

<sup>4</sup> Notice, para. 26.

<sup>5</sup> SCSL-03-01-T-579.

<sup>6</sup> Objection, para 4.

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

<sup>8</sup> SCSL-03-01-T-588.

<sup>9</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-623, Decision on Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Kono District, 8 October 2008; *Prosecutor v. Taylor*, SCSL-03-01-T-556, Decision on Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Kenema District and on Prosecution Notice Under Rule 92bis for the Admission of the Prior Testimony of TF1-036 into Evidence, 15 July 2008.

**SATISFIED** that the information the Prosecution is seeking to tender in lieu of the oral testimony of Witnesses TF1-218 and TF1-304 does not directly go to proof of the acts and conduct of the Accused, is relevant to the purpose for which it is submitted and that its reliability is susceptible of confirmation;

**SATISFIED FURTHER** that the nature of the information contained in the transcripts sought to be tendered in evidence by the Prosecution is sufficiently proximate to the Accused that its admission in the absence of an opportunity to cross-examine the makers of the statements would unfairly prejudice the Accused and that it is therefore in the interests of justice to afford the Accused such an opportunity;

**RECALLING** that the Trial Chamber delivered an oral decision in court on 14 October 2008 and advised that a written decision would follow;<sup>11</sup>

**FOR THE ABOVE REASONS**

**PURSUANT TO** Rules 26*bis*, 54, 89(C), and 92*bis* of the Rules of Procedure and Evidence;

**GRANTS** the Prosecution application **IN PART**; and,

**ORDERS** that

the prior trial transcripts and related exhibit relating to the testimony of Witnesses TF1-218 and TF1-304 shall be admitted into evidence pursuant to Rule 92*bis* provided that the Prosecution shall make the said Witnesses available for cross-examination by the Defence;

Done at The Hague, The Netherlands, this 14<sup>th</sup> day of October 2008.

Justice Richard Lussick  
Presiding Judge<sup>12</sup>

Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]

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<sup>10</sup> Set out in Public Annex C of the Notice.

<sup>11</sup> Transcript 14 October 2008, p. 18337.

<sup>12</sup> In accordance with the Rule 16 Order.