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SCSL-03-01-T
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SPECIAL COURT FOR SIERRA LEONE

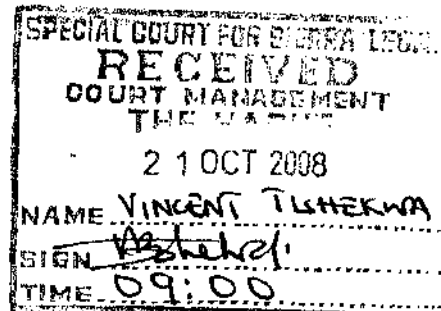
TRIAL CHAMBER II

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: 20 October 2008



PROSECUTOR

v.

Charles Ghankay TAYLOR

**DECISION ON PUBLIC WITH CONFIDENTIAL ANNEXES B TO G
PROSECUTION NOTICE UNDER RULE 92BIS FOR THE ADMISSION OF EVIDENCE
RELATED TO *INTER ALIA* FREETOWN & WESTERN AREA - TF1-024, TF1-081 AND TF1-084**

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 20 October 2008 ("Rule 16 Order");¹

SEISED of the "Public with Confidential Annexes B to G Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *inter alia* Freetown & Western Area - TF1-024, TF1-081 & TF1-084", filed on 30 September 2008 ("Notice"),² wherein the Prosecution gives notice under Rule 92bis of its intention to seek for admission into evidence of:

- (1) parts of the prior trial transcripts and related exhibits of the testimony of Witnesses TF1-024,³ TF1-081⁴ and TF1-084,⁵ excluding those sections which concern: (i) legal arguments; (ii) trial administrative matters; and (iii) evidence of the acts and conduct of the Accused;⁶ and
- (2) supplemental statements of Witness TF1-084 in other proceedings before the Special Court;⁷

NOTING the "Public with Confidential Annex A Defence Objection to 'Prosecution Notice Under Rule 92bis for the Admission of Evidence related to *inter alia* Freetown and Western Area - TF1-024, TF1-081, and TF1-084'" filed on 6 October 2008 ("Objection"),⁸ wherein the Defence objects to the admission of such evidence on the grounds that: (i) the prior trial transcripts, related exhibits of the witnesses, and particularly the supplemental statement of Witness TF1-084, should be admitted under 92ter; (ii) some of the evidence reflects the witnesses own respective opinions or conclusions; (iii) some of the information is "linkage" in nature and goes to proof of acts and conduct of the Accused and cannot therefore be admitted under Rule 92bis without the opportunity for cross-examination;⁹ and the Defence requests the Trial Chamber to: (1) dismiss the Notice entirely; or (2) admit into evidence only those portions of the Witnesses' prior testimony and related exhibits that are not objected to in Annex A; (3) in the event that the Trial Chamber admits the objectionable portions of the Witnesses' testimony and related exhibits the Defence further requests the Trial Chamber to make each witness available for cross-examination;¹⁰

NOTING the "Public Prosecution Reply to 'Public with Confidential Annex A Defence Objection to Prosecution Notice under Rule 92bis for the Admission of Evidence Related to *inter alia* Freetown and Western Area -TF1-024, TF1-081, and TF1-084'", filed on 10 October 2008 (" Reply");¹¹

NOTING FURTHER that on 17 October 2008, the Defence orally withdrew its objection to the admission of the evidence of Witness TF1-081 under Rule 92bis, stating that whilst "there are some

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-639, Order Under Rule 16 to Continue Trial in the Absence of a Judge, 20 October 2008.

² SCSL-03-01-T-611.

³ Witness TF1-024 testified in *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T ("AFRC trial") on 7 and 8 March 2005.

⁴ Witness TF1-081 testified in the AFRC trial on 4 July 2005 and in *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-05-15-T ("RUF trial") on 6 April 2006.

⁵ Witness TF1-084 testified in the AFRC trial on 6 April 2005.

⁶ Notice, paras 2, 8, 30-33.

⁷ Notice, para. 32, Annex G.

⁸ SCSL-03-01-T-619.

⁹ Objection, para. 5.

¹⁰ Objection, paras 6, 21.

¹¹ SCSL-03-01-T-627.

small elements of hearsay in his evidence that we don't accept", this could adequately be dealt with in legal submissions;¹²

NOTING the "Public with Confidential Annex Corrigendum to Three Prosecution Notices Submitted Under Rule 92bis (SCSL-03-01-T-585, SCSL-03-01-T-611 & SCSL-03-01-T-614), filed on 20 October 2008;¹³

MINDFUL of the Provisions of Rules 92bis and 92ter of the Rules of Procedure and Evidence, ("Rules");

RECALLING the Trial Chamber's previous decision establishing the applicable law in relation to such Rule 92bis motions;¹⁴

HAVING conducted a careful examination of the transcripts of the testimony of Witnesses TF1-024, TF1-081 and TF1-084, the supplemental statements of Witness TF1-084 and the related exhibits admitted during their testimony in the trials of *Prosecutor v. Brima, Kamara, Kanu* ("AFRC trial")¹⁵ and/or *Prosecutor v. Sesay, Kallon, Gbao* ("RUF trial")¹⁶ respectively;

SATISFIED that the information provided in the material that the Prosecution is seeking to tender in lieu of the oral testimony of Witnesses TF1-024, TF1-081 and TF1-084 does not directly go to proof of acts and conduct of the Accused, is relevant to the purpose for which it is submitted and that its reliability is susceptible to 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;

FOR THE ABOVE REASONS

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

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

ORDERS that

- (1) The prior transcript of the closed-session testimony of Witness TF1-081 from the AFRC trial on 4 July 2005, as contained in Annex C to the Notice, is entered into evidence as Exhibit P-204(A), and marked as confidential;
- (2) The related exhibit (P-25 in the AFRC trial), as contained in Annex D to the Notice, is admitted into evidence as Exhibit P-204(B), and marked as confidential;

¹² Transcript, 17 October 2008, p.18660.

¹³ SCSL-03-01-T-640.

¹⁴ *Prosecutor v Charles Ghankay 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 the Prosecution Notice Under Rule 92bis for the Admission of the Prior Testimony of TF1-036 into Evidence, dated 15 July 2008.

¹⁵ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T.

¹⁶ *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-05-15-T.

- (3) The prior transcript of the closed-session cross-examination of Witness TF1-081 from the RUF trial on 6 April 2006, as contained in Annex C to the Notice, is admitted into evidence as Exhibit P-204(C), and marked as confidential;
- (4) The Trial Chamber shall admit into evidence:
- (a) the prior transcripts of the testimony of Witness TF1-024 from the AFRC trial on 7 and 8 March 2005, as contained in Annexes A and B to the Notice;
 - (b) the prior transcripts of the testimony of Witness TF1-084 from the AFRC trial on 6 April 2005 and related exhibit (D3 in the AFRC trial) as contained in Annexes E and F to the Notice;
 - (c) the supplemental statements of Witness TF1-084 as contained in Annex G to the Notice;

provided that the Prosecution shall make Witnesses TF1-024 and TF1-084 available for cross-examination by the Defence.

Done at The Hague, The Netherlands, this 20th day of October 2008.


Justice Richard Lussick


Justice Teresa Doherty
Presiding Judge

