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SCSL-03-01-T  
(30062-30066)

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## SPECIAL COURT FOR SIERRA LEONE

### TRIAL CHAMBER II

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

**Registrar:** Binta Mansaray

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

**Date:** 9 September 2010

SPECIAL COURT FOR SIERRA LEONE	
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PROSECUTOR

v.

Charles Ghankay TAYLOR

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DECISION ON PUBLIC WITH CONFIDENTIAL ANNEXES A, B, C, AND D DEFENCE MOTION  
FOR ADMISSION OF DOCUMENTS PURSUANT TO RULE 92BIS - AUTOPSY REPORT

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Office of the Prosecutor:

Brenda J. Hollis  
Leigh Lawrie

Counsel for the Accused:

Courtenay Griffiths, Q.C.  
Terry Munyard  
Morris Anyah  
Silas Chekera  
James Supuwood

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

SEISED of the “Public with Confidential Annexes A, B, C, and D Defence Motion for Admission of Documents Pursuant to Rule 92bis - Autopsy Report”, filed on 25 August 2010 (“Motion”),<sup>1</sup> wherein the Defence requests the Trial Chamber, pursuant to Rule 92bis of the Rules of Procedure and Evidence (“Rules”), to admit into evidence the following four documents (“Defence Documents”) relating to the issue of the death of the former Vice-President of Liberia Mr. Enoch Dogolea,<sup>2</sup> on the grounds that the material sought to be admitted into evidence satisfies the requirements of Rule 92bis<sup>3</sup> in that the evidence is relevant,<sup>4</sup> susceptible of confirmation,<sup>5</sup> and does not go to proof of the acts and conduct of the Accused:<sup>6</sup>

- (i) Document DCT-414 (in French), “*Rapport D'autopsie Medico-Legale Rapport Provisoire; Ref.: Autopsie de Monsieur DOGOLEA ENOCH réalisée le 27 Juin 2000 au Laboratoire d'Anatomie Pathologique et de Medicine Légale du C.H.U. de Treichville*”, done on 27 June 2000 by Docteur Hélène YAPO ETTÉ and provided by the Centre Hospitalier Universitaire (C.H.U.) of Treichville, Abidjan, Ivory Coast;<sup>7</sup>
- (ii) Document DCT-415, English translation of Document DCT-414, “Medico-Legal Autopsy Preliminary Report; Ref.: Autopsy of Mr. DOGOLEA ENOCH done on June 27, 2000 in the laboratory of the anatomic pathology and forensic department at the C.H.U. - Treichville”, translated by Dr. Clotilde E. Monguya;<sup>8</sup>
- (iii) Document DCT-416, “Conclusion of the Medical Report on the Late Enoch Dogolea at the Centre Medico-Chirurgical France-Ivoire 18 B.P. 2960 Abidjan 18”, dated 23 June 2000;<sup>9</sup> and
- (iv) Document DCT-418 (in French), “Letter dated 24 June 2000 *Objet: Autopsie Vice-Président Du Liberia to Maître TOURE MARAME Avocat près la Cour d'Appel D'ABIDJAN, from Le Professeur*

<sup>1</sup> SCSL-03-01-T-1061.

<sup>2</sup> Motion, para. 9.

<sup>3</sup> Motion, para. 11.

<sup>4</sup> Motion, paras. 12-16.

<sup>5</sup> Motion, para. 17.

<sup>6</sup> Motion, para. 18.

<sup>7</sup> Motion, para. 12; Confidential Annex A.

<sup>8</sup> Motion, para. 12; Confidential Annex B.

<sup>9</sup> Motion, para. 14; Confidential Annex C.

Peter S. Coleman, *Ministre de la Santé*, Ministry of Health and Social Welfare, P.O. BOX 10-9009, 1000 Monrovia, 10 Liberia” (with several attachments);<sup>10</sup>

**NOTING** the “Corrigendum to Defence Motion for Admission of Documents Pursuant to Rule 92bis – Autopsy Report”, filed on 27 August 2010 (“Corrigendum”),<sup>11</sup> wherein the Defence excludes Annex D from the Motion, requests the Trial Chamber not to consider the argument made in the substance of the Motion in relation to Annex D,<sup>12</sup> and seeks admission of only three of the annexes (Confidential Annexes A, B, and C) to the Motion;<sup>13</sup>

**NOTING** the “Public with Confidential Annex Prosecution Objections to Public with Confidential Annexes A, B, C, and D Defence Motion for Admission of Documents Pursuant to Rule 92bis – Autopsy Report”, filed on 30 August 2010 (“Objections”),<sup>14</sup> wherein the Prosecution opposes the admission of all three Defence Documents pursuant to Rule 92bis, on the grounds that:

- (i) the Defence Documents do not satisfy the requirements of Rule 92bis;<sup>15</sup>
- (ii) the two medical documents DCT 414 and DCT 416 (and document DCT 415 which is inextricably linked to them) contain medical opinion<sup>16</sup> and are properly characterised as expert statements for the purposes of Rule 94bis and so the Defence must comply with the requirements of Rule 94bis;<sup>17</sup> and in the alternative;
- (iii) should the Trial Chamber admit the Defence Documents pursuant to Rule 92bis, the Prosecution requires in light of Rule 94bis(C), that the authors of those documents be made available for cross-examination on the final versions of their reports;<sup>18</sup>

**NOTING ALSO** the “Defence Reply to Prosecution Objection to Defence Motion on Admission of Documents Pursuant to Rule 92bis – Autopsy Report”, filed on 3 September 2010 (“Reply”);<sup>19</sup>

**COGNISANT** of the provisions of Rule 92bis which states:

<sup>10</sup> Motion, para. 15; Confidential Annex D.

<sup>11</sup> SCSL-03-01-T-1063.

<sup>12</sup> Corrigendum, para. 3.

<sup>13</sup> Corrigendum, para. 4.

<sup>14</sup> SCSL-03-01-T-1066.

<sup>15</sup> Objections, paras. 2(i), 3-5.

<sup>16</sup> Objections, paras. 3, 6.

<sup>17</sup> Objections, para. 6.

<sup>18</sup> Objections, paras. 2(ii), 11-13.

<sup>19</sup> SCSL-03-01-T-1068. The Trial Chamber notes that Rule 92bis does not contain a provision permitting the party applying for admission of documents pursuant to Rule 92bis to file a reply to an objection filed by the other party. However, the Trial Chamber finds that, in the circumstances, it is in the interests of justice to consider the Reply.

**Rule 92bis: Alternative Proof of Facts**

- (A) In addition to the provisions of Rule 92ter, a Chamber may, in lieu of oral testimony, admit as evidence in whole or in part, information including written statements and transcripts, that do not go to proof of the acts and conduct of the accused.
- (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.

COGNISANT also of the provisions of Rule 94bis which provide that:

**Rule 94bis: Testimony of Expert Witnesses**

- (A) Notwithstanding the provisions of Rule 66(A), Rule 73bis(B)(iv)(b) and Rule 73ter(B)(iii)(b) of the present Rules, the full statement of any expert witness called by a party shall be disclosed to the opposing party as early as possible and shall be filed with the Trial Chamber not less than twenty-one days prior to the date on which the expert is expected to testify.
- (B) Within fourteen days of filing of the statement of the expert witness, the opposing party shall file a notice to the Trial Chamber indicating whether:
  - (i) It accepts the expert witness statement; or
  - (ii) It wishes to cross-examine the expert witness.
- (C) If the opposing party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

CONSIDERING that the “information” which the Trial Chamber is permitted to admit as evidence pursuant to Rule 92bis is confined to assertions of fact, not opinion;<sup>20</sup>

HOLDING that the medical opinions expressed in the Defence Documents are purportedly the opinions of experts qualified in that particular field;<sup>21</sup>

CONSIDERING that Rule 94bis provides a specific procedure regarding the admission of the statement of an expert witness whereby, if the opposing party does not accept the statement, then it can only be admitted into evidence after the expert has been called and has testified in person;<sup>22</sup>

<sup>20</sup>*Prosecutor v. Taylor*, SCSL-03-01-T, Decision on Prosecution Motion for Admission of Liberia Search Documents, 18 February 2009, para. 18; *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.

<sup>21</sup> *Prosecutor v. Milosević*, IT-98-29/1-T, Decision on Admission of Expert Report of Robert Donia, 15 February 2007, para. 7; *Prosecutor v. Galić*, IT-98-29-T, Decision Concerning the Expert Witness Ewa Tabeau and Richard Phillips, 3 July 2002, p. 2; *Prosecutor v. Bizimungu*, ICTR-99-50-T, Decision on Qualification of Prosecution Expert Sebahire Deo Mbonyekebe, 2 May 2005, p. 2; *Prosecutor v. Simba*, ICTR-2001-76-I, Decision on Defence Motion to Disqualify Expert Witness Alison des Forges, and to Exclude her Report, 14 July 2004, p. 3.

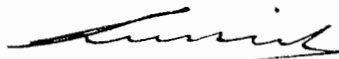
<sup>22</sup> *Prosecutor v. Blagojević*, IT-02-60-T, Decision on Prosecution’s Motion for Admission of Expert Statements, 7 November 2003, (“Blagojević Decision”), para. 26.

NOTING that the Prosecution does not accept the expert statements and requests that the authors of the two medical documents (DCT-414 and DCT-416) be made available for cross-examination on the final versions of their reports;<sup>23</sup>

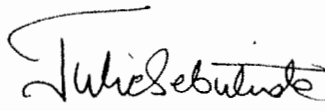
FINDING that the Defence has failed to make out a case for the admission of the Defence Documents pursuant to Rule 92bis and has not followed the procedure laid down in Rule 94bis for the admission into evidence of the statements of expert witnesses;

DISMISSES the Motion.

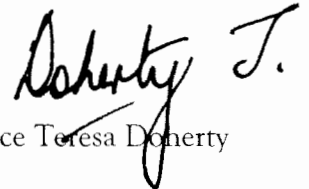
Done at The Hague, The Netherlands, this 9<sup>th</sup> day of September 2010.



Justice Richard Lussick



Justice Julia Sebutinde  
Presiding Judge



Justice Teresa Doherty

[Seal of the Special Court for Sierra Leone]



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<sup>23</sup> Objections, paras 11-14.