

Justice Shireen Avis Fisher, Pre-Hearing Judge of the Appeals Chamber of the Special Court for Sierra Leone (“Special Court”), acting in accordance with the President’s “Order Designating a Pre-Hearing Judge Pursuant to Rule 109 of the Rules of Procedure and Evidence”,¹ dated 21 June 2012;

BEING SEIZED of the “Prosecution Motion Seeking Clarification of the Practice Direction on the Structure of Grounds of Appeal before the Special Court”, filed before the Pre-Hearing Judge on 3 October 2012, seeking clarification as to whether paragraph 16 of the Practice Direction on the Structure of Grounds of Appeal before the Special Court supersedes Article 7 of the Practice Direction on Dealing with Documents in The Hague Sub-Office, or *vice versa*;²

NOTING the Defence Response to the Motion, filed on 8 October 2012 (“Response”);³

CONSIDERING that pursuant to Rule 109(B)(i), the Pre-Hearing Judge shall take any measures related to procedural matters, including the issuing of decisions, orders and directions with a view to preparing the case for a fair and expeditious hearing;

RECALLING that during the Status Conference of 18 June 2012, the parties were reminded that “the Appeals Chamber feels very strongly that this direction [Practice Direction on the Structure of Grounds of Appeal before the Special Court] needs to be complied with...”;⁴

CONSIDERING that pursuant to paragraph 29 of the Practice Direction on the Structure of Grounds of Appeal before the Special Court (“2011 Practice Direction”), it is for the Pre-Hearing Judge or the Appeals Chamber to decide whether a party has complied with the requirements laid down in this Practice Direction;

CONSIDERING FURTHER that Article 16 of the 2011 Practice Direction explicitly provides that the Book of Authorities shall include “a legible *copy of the pages of or excerpts* from every referenced material *including* case law, statutory and regulatory provisions *from the Special*

¹ *Prosecutor v. Taylor*, SCSL-03-01-A-1297, Order Designating a Pre-Hearing Judge Pursuant to Rule 109 of the Rules of Procedure and Evidence, 21 June 2012.

² *Prosecutor v. Taylor*, SCSL-03-01-A-1327, Prosecution Motion Seeking Clarification of the Practice Direction on the Structure of Grounds of Appeal Before the Special Court, 3 October 2012.

³ *Prosecutor v. Taylor*, SCSL-03-01-A-1332, Public with Confidential Annex A and Public Annex B Defence Response to Prosecution Motion Seeking Clarification of the Practice Direction on the Structure of Grounds of Appeal before the Special Court, 8 October 2012.

⁴ *Prosecutor v. Taylor*, SCSL-03-01-A, Status Conference, Transcript of 18 June 2012, p. 49768.

Court, international tribunals and national sources to which the parties actually refer in the parties' submissions or intends to refer in the parties' oral arguments",⁵

RECALLING that the 2011 Practice Direction was adopted on 1 July 2011 and amended on 23 May 2012 and is, thus, later in law (*lex posteriori*) in relation to the Practice Direction on Dealing with Documents in The Hague Sub-Office, which was adopted on 16 January 2008 and amended on 25 April 2008 ("2008 Practice Direction");

RECALLING further that the aim of adopting the 2011 Practice Direction was "to establish a procedure for the structuring of grounds of appeal and written submissions in appellate proceedings before the Special Court",⁶

CONSIDERING that, in accordance with the principle of effectiveness in interpreting legislation, whereby a piece of legislation as a whole and each of its provisions are to be given effect and are designed to achieve an end, interpretation which favours Article 7 of the 2008 Practice Direction would render paragraph 16 of the 2011 Practice Direction a mere surplusage.

CONSIDERING FURTHER, however, that the Defence could have been reasonably misled by the reference, in paragraph 20 of the 2011 Practice Direction, to Article 7 of the 2008 Practice Direction;

HEREBY ORDERS:

1. That the Motion for Clarification filed by the Prosecution be considered a Motion for Compliance, filed pursuant to paragraph 29 of the 2011 Practice Direction;
2. That the Defence comply with paragraph 16 of the 2011 Practice Direction and file the amended Book of Authorities no later than 31 October 2012.

Done in The Hague, The Netherlands, this 16th day of October 2012.

⁵ Emphasis added.

⁶ Preamble of the Practice Direction on the Structure of Grounds of Appeal of 1 July 2011, amended 23 May 2012.

Hon. Justice Shireen Avis Fisher
Pre-Hearing Judge

Shireen Avis Fisher

