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SCSL-03-01-T
(20665 - 21036)

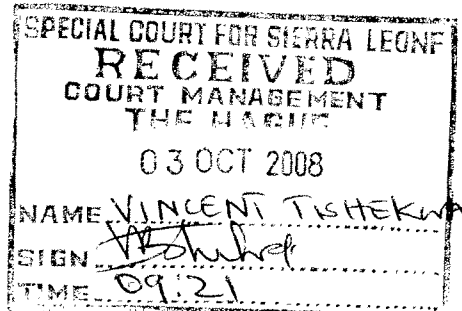
20665

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

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

Registrar: Mr. Herman von Hebel

Date filed: 3 October 2008



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC WITH CONFIDENTIAL ANNEXES A TO D & F TO G

PROSECUTION NOTICE UNDER RULE 92bis FOR THE ADMISSION OF EVIDENCE RELATED TO *INTER ALIA* FREETOWN & WESTERN AREA – TF1-098, TF1-104 & TF1-227

Office of the Prosecutor:

Ms. Brenda J. Hollis
Ms. Leigh Lawrie

Counsel for the Accused:

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

I. INTRODUCTION

1. The Prosecution submits this filing under Rules 73, 89(C) and 92bis of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (“**Rules**”).
2. The Prosecution gives notice under Rule 92bis of its intention to seek admission of the prior trial transcripts and statements relating to the witnesses TF1-098, TF1-104 and TF1-227 in other proceedings before the Special Court for Sierra Leone (“**SCSL**”)¹.
3. The material which is the subject of this filing is relevant to the crimes charged in the Second Amended Indictment² and committed predominantly in Freetown and the Western Area of Sierra Leone.

II. APPLICABLE LAW

4. Rule 89 sets out the basic principles to be applied by the Court in relation to the admission of evidence. Rule 89(B) provides that the Chamber: “... shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law”. Further, Rule 89(C) provides the Chamber with the discretion to admit relevant evidence.
5. Rule 92bis of the Rules provides that:
 - (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.
6. Rule 89 constitutes the basic rule regulating the admission of evidence which

¹ TF1-098 testified in *Prosecutor v. Brima et al* (SCSL-04-16-T) (“**AFRC trial**”) on 5 April 2005; TF1-104 testified in the **AFRC trial** on 30 June 2005 and appeared for cross-examination in *Prosecutor v. Sesay et al* (SCSL-04-15-T) (“**RUF trial**”) on 28 November 2005; and TF1-227 testified in the AFRC trial on 8, 11 and 12 April 2005. The Prosecution has identified the portions of the prior testimonies which it seeks to admit via this notice and these portions are provided in the **Annexes** hereto.

² *Prosecutor v. Taylor*, SCSL-03-01-T-263, “Prosecution’s Second Amended Indictment”, 29 May 2007 (“**Indictment**”).

applies in addition to the more specific provisions contained in Rule 92bis.³ Rule 89(C) only requires that evidence be *relevant* to be admissible. There is no requirement that the evidence be both relevant and probative.⁴

7. The procedural requirements of Rule 92bis must be met by the party seeking admission of a transcript or statement *in lieu of oral testimony*, in addition to the requirements of Rule 89. Accordingly, for witness specific material to be admitted pursuant to Rules 89(C) and 92bis, the evidence must not go to proof of the acts and conduct of the accused, must be relevant and its reliability susceptible of confirmation. Rule 92bis does not otherwise limit the evidence which might be admitted under it.
8. The Prosecution, therefore, notifies the Court of its intention to seek the admission of the prior trial transcripts and statements provided in the **Annexes** hereto relating to TF1-098, TF1-104 and TF1-227 under Rules 89(C) and 92bis.

III. BACKGROUND

9. On 4 April 2007, the Prosecution filed its Rule 73bis Pre-Trial Conference Materials.⁵ As part of these materials, the Prosecution filed a witness list (“**Witness List**”) and, in the introductory pages to the Witness List, advised the Court that it might seek to present the evidence of some witnesses through the admission of prior testimony under Rule 92bis. TF1-098, TF1-104 and TF1-227 were included on the Witness List and identified as being such witnesses.
10. All three witnesses are protected.⁶ The protective measures ordered in the other proceedings before this Court continue to have effect *mutatis mutandis* in these

³ *Prosecutor v. Slobodan Milošević*, Case No. IT-02-54-AR73.4, “Decision on Interlocutory Appeal on the Admissibility of Evidence-In-Chief in the Form of Written Statements”, 30 September 2003, paras 9-10.

⁴ *Prosecutor v. Brima et al.*, SCSL-04-16-T-280, “Decision on Joint Defence Motion to Exclude all Evidence from Witness TF1-277 Pursuant to Rule 89(C) and/or Rule 95”, 24 May 2005, para. 13.

⁵ *Prosecutor v. Taylor*, SCSL-03-01-PT-218, “Public Rule 73bis Pre-Trial Conference Materials”, 4 April 2007 (“**Pre-Trial Conference Materials**”).

⁶ The protective measures decision given in the RUF trial is applicable to all three witnesses (see *Prosecutor v. Sesay et al.*, SCSL-05-15-T-180, “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses”, 5 July 2004, which Decision is the subject of differing interpretations in this trial and is the subject of an appeal and a motion for leave to appeal.) Pursuant to this decision, both TF1-098 and TF1-227 testified as Category 1 witnesses (using pseudonym and screen) in the AFRC trial. In respect to TF1-104, closed session was ordered by *Prosecutor v. Brima et al. and Sesay et al.*, SCSL-04-16-T-259, “Decision on the Urgent and Confidential Prosecution Application to vary Protective Measures regarding Witnesses TF1-104 and TF1-081”, 11 May 2005. TF1-104 also testified in closed session in the RUF trial (see order at RUF trial Transcript, 28 November 2005, p. 67, lines 7 - 13).

- proceedings pursuant to Rule 75(F)(i).
11. TF1-098 testified in the AFRC trial on 5 April 2005. The witness' testimony consisted of approximately half an hour of examination-in-chief. The witness was not cross-examined. The prior testimony of TF1-098 is provided in confidential **Annex A**.⁷ Subsequent to his testimony, TF1-098 gave a supplemental statement. This supplemental statement dated 11 May 2007 and signed by the witness concerns the impact the crimes have had on his life. This statement is provided in confidential **Annex B**.⁸ The prior testimony of this witness was disclosed in redacted format on 17 May 2006. All unredacted material for this witness was disclosed on 7 August 2008.
 12. TF1-104 testified in the AFRC trial on 30 June 2005 entirely in closed session.⁹ The witness' testimony, direct and cross-examination lasted for about three and a half hours. This closed session prior testimony is provided in confidential **Annex C**. Pursuant to Trial Chamber I's decision,¹⁰ TF1-104's transcript from the AFRC trial was admitted in the RUF trial under Rule 92*bis* as confidential exhibit P60.¹¹ In the RUF trial, TF1-104 appeared for cross-examination by RUF Defence Counsel on 28 November 2005. The prior transcript relating to TF1-104's cross-examination in the RUF trial is provided in confidential **Annex C**.¹² Subsequent to his testimony, TF1-104 gave a supplemental statement. This supplemental statement dated 25 May 2007 and signed by the witness provides further information concerning the witness' evidence on hearing Liberian accents during the Freetown invasion. This statement is provided in confidential **Annex D**.¹³ The prior trial transcripts of TF1-104 were disclosed in redacted format to the

⁷ It is to be noted that pursuant to the witness' protected status, the public version of the 5 April 2005 transcript published on the Special Court's website contains redactions made by WVS. The copy of the transcript provided in **Annex A** does not contain these redactions and so is filed confidentially.

⁸ The statement is filed confidentially as it refers to the witness' name. The handwritten and typed versions of the statement are provided.

⁹ See reference to decision ordering closed session in footnote 6 above.

¹⁰ *Prosecutor v. Sesay et al.*, SCSL-04-15-T-448, "Decision on the Prosecution Confidential Notice under 92*bis* to Admit the Transcripts of Testimony of TF1-023, TF1-104 and TF1-169", 9 November 2005.

¹¹ See RUF trial Transcript, 28 November 2005, p. 65, lines 5 – 9. Exhibit 60 is not provided as it duplicates the material provided in **Annex C**.

¹² TF1-104 was cross-examined entirely in closed session (see ruling given at RUF trial Transcript, 28 November 2006, p. 66, line 2 to p. 67, line 13).

¹³ The statement is filed confidentially as it refers to the witness' name.

Defence on 17 May 2006 and the redacted version of the statement was disclosed on 27 August 2007. All unredacted material for this witness was disclosed on 7 August 2008.

13. TF1-227 testified in the AFRC trial on 8, 11 and 12 April 2005. The witness' testimony, direct and cross-examination, lasted just under seven hours and is provided in **Annexes E** and **F**¹⁴. The Prosecution notes that a decision of this Chamber in the AFRC trial upheld the Prosecution's request that certain questions asked during cross-examination regarding pre-testimony meetings be found inadmissible.¹⁵ However, as the Chamber has not followed this ruling in the current proceedings, the Prosecution has not redacted this evidence from the witness' prior transcripts. Subsequent to his testimony, TF1-227 provided a statement concerning information on the events dealt with in his testimony. This statement dated 20 June 2007 was adopted by the witness on 1 November 2007 and is provided in confidential **Annex G**.¹⁶ The prior testimony of this witness was disclosed in redacted format on 17 May 2006. All unredacted material for this witness was disclosed on 7 August 2008.

IV. SUBMISSIONS

14. The jurisprudence of the SCSL clearly establishes that the Rules "favour a flexible approach to the issue of admissibility of evidence."¹⁷ The jurisprudence of the SCSL also supports the view that expedient and fair trials are promoted where sworn testimony before the Court is admitted in a subsequent trial.¹⁸ This jurisprudence applies the principles enshrined in Article 17 of the SCSL's Statute

¹⁴ It is to be noted that pursuant to the witness' protected status, the public version of the 11 and 12 April 2005 transcripts published on the Special Court's website contains redactions made by WVS. The copy of the transcript provided in confidential **Annex G** does not contain such redactions.

¹⁵ *Prosecutor v. Brima et al.*, SCSL-04-16-T-307, "Decision on Objection to Question Put by Defence in Cross Examination of Witness TF1-227", 15 June 2005.

¹⁶ The statement is filed confidentially as it refers to the witness' name.

¹⁷ *Prosecutor v. Sesay et al.*, SCSL-04-15-T-618, "Decision on Prosecution Notice Pursuant to Rule 92bis to Admit Information into Evidence", 2 August 2006, p. 3, quoting with approval *Prosecutor v. Sesay et al.*, SCSL-04-15-T-391, "Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker", 23 May 2005, para. 4.

¹⁸ See: *Prosecutor v. Sesay et al.*, SCSL-04-15-T-448, "Decision on the Prosecution Confidential Notice under Rule 92bis to Admit the Transcripts of Testimony of TF1-023, TF1-104 and TF1-169", 9 November 2005; *Prosecutor v. Sesay et al.*, SCSL-04-15-T-557, "Decision on the Prosecution Notice under Rule 92bis to Admit the Transcripts of Testimony of TF1-256", 23 May 2006; and *Prosecutor v. Sesay et al.*, SCSL-04-15-T-559, "Decision on the Prosecution Notice under Rule 92bis to Admit the Transcripts of Testimony of TF1-334", 23 May 2006.

regarding the Accused's right to a fair and expeditious trial, and the principles underlining Rule 26bis which require that trial proceedings be conducted in a fair and expeditious manner.

The evidence is relevant

15. As required under both Rules 89(C) and 92bis, the evidence of TF1-098, TF1-104 and TF1-227 is relevant to the current proceedings as it concerns *inter alia* crimes committed in Freetown and the Western Area during the Indictment period.¹⁹
16. Witness TF1-098 gives evidence of burning, unlawful killings and physical violence in Freetown in the Western Area by the AFRC/RUF, all during the Indictment period. Witness TF1-104 gives evidence of burning, unlawful killings, rape, physical violence and looting by the AFRC/RUF occurring predominantly in Freetown in the Kissy area, all during the Indictment period. Witness TF1-227 gives evidence of burning, unlawful killings, sexual violence, looting, the abduction and forced labour of civilians and the use of child soldiers by the AFRC/RUF occurring predominantly in Freetown and the Western area, all during the Indictment period.
17. In addition to specific crime base evidence, the witnesses also provide evidence relevant to the chapeau requirements of the crimes charged in the Indictment such as the widespread or systematic nature of the attack, the nexus between the violation or crime and the armed conflict and the civilian status of the victims.

Susceptible of Confirmation

18. As also required under Rule 92bis, the material referred to in this notice is susceptible of confirmation. At this stage the Prosecution is not required to prove that the evidence is in fact reliable, only that the reliability of the evidence is susceptible of confirmation.²⁰ The phrase "susceptible of confirmation" contained in Rule 92bis (B) has been interpreted by the Appeals Chamber in the CDF trial to mean that the "proof of reliability is not a condition of admission: all that is required is that the information should be capable of corroboration in due

¹⁹ See also the summaries of the witnesses' evidence provided as part of the Pre-Trial Conference Materials.

²⁰ *Prosecutor v. Norman et al*, SCSL-04-14AR73, "Fofana – Decision on Appeal Against 'Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence'", 16 May 2005, para. 27.

course.”²¹ This approach was noted with approval by Trial Chamber I in relation to the reception of witness statements into evidence in the RUF trial.²²

19. This Trial Chamber in the AFRC trial reiterated that “evidence may be excluded because it is unreliable, but it is not necessary to demonstrate the reliability of the evidence before it is admitted.”²³ The Trial Chamber further considered that “reliability of the evidence is something to be considered by the Trial Chamber at the end of the trial when weighing and evaluating the evidence as a whole, in light of the context and nature of the evidence itself, including the credibility and reliability of the relevant evidence.”²⁴

Proof of the acts and conduct of the accused

20. The evidence which the witnesses provide on the RUF command structure, the AFRC/RUF command structure and the relationship between the RUF and the AFRC during the Indictment period is all relevant to the chapeau elements of the crimes such as the systematic nature of the attack, as noted in paragraph 17 above and to several forms of liability alleged by the Prosecution in this case, including the Accused’s participation in a common plan, design or purpose, and his liability based on superior authority for the crimes committed by the AFRC and RUF alliance. In relation to this evidence, it is acknowledged that Rule 92bis specifically excludes witness statements or transcripts which go to proof of the acts and conduct of the accused.
21. However, as noted by this Trial Chamber in its recent decision on Rule 92bis, “there must be a distinction made between ‘the acts and conduct of those others who

²¹ *Ibid*, para. 26, which dicta was recently referred to by this Chamber in *Prosecutor v. Taylor*, SCSL-01-03-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 (“**Taylor Rule 92bis Decision**”), p. 4.

²² *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1125, “Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements under Rule 92bis”, 15 May 2009, paras. 29-31.

²³ *Prosecutor v. Brima et al.*, SCSL-04-16-T, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92bis”, 18 November 2005, page 2 (last para), citing *Prosecutor v. Brima et al.*, SCSL-04-16-T, “Decision on Joint Defence Application for Leave to Appeal from Decision on Defence Motion to Exclude All Evidence from Witness TF1-277”, 2 August 2005, para. 6.

²⁴ *Prosecutor v. Brima et al.*, SCSL-04-16-T, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92bis”, 18 November 2005, page. 3 (second full paragraph). See also *Prosecutor v. Norman et al.*, SCSL-04-14-T-447, “Decision on Prosecution’s Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C)”, 14 July 2005, page 3.

commit the crimes for which the Indictment alleges that the accused is individually responsible' and 'the acts and conduct of the accused as charged in the Indictment which establish his responsibility for the acts and conduct of others;' and that only written statements which go to proof of the latter are excluded by Rule 92bis."²⁵

22. The prior trial transcripts and statements of the three witnesses which the Prosecution seeks to admit under Rule 92bis do not go to proof of the acts and conduct of the Accused as that term is defined and limited by the jurisprudence.

Cross-examination

23. In the recent *Taylor* Rule 92bis Decision, this Chamber noted that it is within its inherent power to order cross-examination where the evidence to be admitted under Rule 92bis: (i) is so "pivotal to the Prosecution's case and ... the person whose acts and conduct [the evidence] describes is so proximate to the accused"; or (ii) goes to a critical element of the Prosecution's case.²⁶
24. The Prosecution considers that the following factors support the conclusion that a further cross-examination of TF1-098, TF1-104 and TF1-227 is not required.
25. First, the evidence provided by both TF1-098 and TF1-104 is crime base evidence, evidence which the Defence has indicated on previous occasions it will not seek to challenge.²⁷ As regards the evidence of TF1-227, while this witness' evidence is predominantly crime base evidence, the Prosecution appreciates that this witness' testimony refers to "Brigadier Five-Five" and his position as the senior commander and, therefore, that such evidence might be considered to be sufficiently proximate to the Prosecution's case. However, as noted below, this evidence has been tested in other proceedings.
26. Save in respect of TF1-098, the evidence of TF1-104 and TF1-227 has already been tested by cross-examination by defence counsel in other proceedings. In

²⁵ *Taylor* Rule 92bis Decision, p. 4, citing *Prosecutor v. Galić*, IT-98-29-AR73.2, "Decision on Interlocutory Appeal Concerning Rule 92bis (C)", 7 June 2002, para. 9 and referring to *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1049, "Decision on Defence Application for the Admission of the Witness Statement of DIS-192 Under Rule 92bis, or in the alternative, Under Rule 92ter", 12 March 2008, p. 2-3.

²⁶ *Taylor* Rule 92bis Decision, p. 4.

²⁷ See footnote 29 of *Prosecutor v. Taylor*, SCSL-01-03-T-586, "Public, With Confidential Annex A to G Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to Inter Alia Kono District – TF1-195, TF1-197, TF1-198 & TF1-206", 11 September 2008 regarding Defence Counsel's previous statements regarding crime base evidence.

relation to prior cross-examination, it is to be noted that TF1-104's prior testimony has now been tested in two separate proceedings and by five defence counsel and, should cross-examination be ordered in these proceedings, would be tested for a third time. As regards TF1-227, while his testimony refers to "Brigadier Five-Five", this evidence was cross-examined by all three defence counsel in the AFRC trial, including defence counsel acting for Santigie Borbor Kanu aka "Five-Five". In relation to prior cross-examination, Trial Chamber I has considered this testing of evidence to be a relevant factor to be considered when determining whether to order further cross-examination.²⁸ Indeed, Trial Chamber I went so far as to find that if evidence *similar* to that being sought to be admitted under Rule 92bis had been given by other witnesses in the proceedings and this *similar* evidence had been subject to cross-examination, then a cross-examination of the *actual* Rule 92bis evidence might *not* be necessary.

27. In respect of TF1-098's evidence and the statements of TF1-104 and TF1-227, the Prosecution acknowledges that this evidence has not been tested in prior proceedings. However, the evidence at issue is crime base evidence and does not implicate the Accused in the perpetration of a crime or those who might be considered so proximate to him. Therefore, its admission without cross-examination would not prejudice the Accused.
28. Notwithstanding the foregoing, the Prosecution advises that, should the Chamber order cross-examination of any of the witnesses in question, then the Prosecution will not seek to conduct a *viva voce* examination-in-chief of these witnesses. The Prosecution has made this determination despite any disadvantage that may occur where it does not elicit during *viva voce* examination-in-chief the mental and physical effect of the crimes on the witnesses and other relevant evidence previously not elicited. In this regard, should further cross examination be allowed, then, in respect of TF1-104 and TF1-227, limiting it to matters not previously covered would be efficient and would not impact the fair trial rights of the Accused.

²⁸ *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1125, "Decision on Sesay Defence Motion and Three Defence Applications to Admit 23 Witness Statements under Rule 92bis", 15 May 2008, para. 40.

V. NOTICE

29. The Prosecution gives notice of its intention to submit for admission into evidence the parts of the prior trial transcripts relating to TF1-098, TF1-104 and TF1-227 provided in **Annexes A, C, E and F**. As permitted under Rule 92*bis*, the Prosecution seeks to admit *parts* only of the prior testimony into evidence and wishes to exclude those sections which concern: (i) legal argument which had no impact on the evidence of the witness; (ii) trial administrative matters; and (iii) evidence of the acts and conduct of the Accused. Accordingly, portions of the transcripts set out in the **Annexes** have been redacted on this basis.²⁹
30. The Prosecution gives notice of its intention to submit for admission into evidence the statements of TF1-098, TF1-104 and TF1-227 provided in **Annexes B, D, and G**.

VI. CONCLUSION

31. The Prosecution hereby gives notice under Rule 92*bis* of its intention to seek admission into evidence the material identified in paragraphs 29 and 30.

Filed in The Hague,

3 October 2008

For the Prosecution,



Brenda J. Hollis
Principal Trial Attorney

²⁹ This procedure also conforms to the procedure adopted at the ICTR. At the ICTR statements tendered pursuant to Rule 92*bis* are reviewed. Where a statement is tendered that includes information that falls within Rule 92*bis* and information that falls outside the Rule, the statement is admitted but the paragraphs or information that fall outside the Rule are simply not admitted into evidence. See for example *Prosecutor v. Bagosora et al*, ICTR-98-41-T, “Decision on Prosecutor’s Motion for the Admission of Written Witness Statements Under Rule 92*bis*,” 9 March 2004. This procedure has now been adopted at the SCSL – see *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1049, “Decision on Defence Application for the Admission of the Witness Statement of DIS-192 under Rule 92*bis* or, in the alternative, under Rule 92*ter*”, 12 March 2008.

LIST OF AUTHORITIES

SCSL**Prosecutor v. Taylor, SCSL-2003-01-T**

Prosecutor v. Taylor, SCSL-03-01-PT-218, “Public Rule 73bis Pre-Trial Conference Materials”, 4 April 2007

Prosecutor v. Taylor, SCSL-03-01-T-263, “Prosecution’s Second Amended Indictment”, 29 May 2007

Prosecutor v. Taylor, SCSL-01-03-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

Prosecutor v. Taylor, SCSL-01-03-T-586, “Public, With Confidential Annex A to G Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Kono District – TF1-195, TF1-197, TF1-198 & TF1-206”, 11 September 2008

Prosecutor v. Norman et al., SCSL-04-14-T

Prosecutor v. Norman et al., SCSL-2004-14AR73, “Fofana – Decision on Appeal Against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”, 16 May 2005

Prosecutor v. Norman et al., SCSL-04-14-T-447, “Decision on Prosecution’s Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C)”, 14 July 2005

Prosecutor v. Sesay, Kallon & Gbao, SCSL-2004-15-T

Prosecutor v. Sesay et al., SCSL-04-15-T-391, “Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker”, 23 May 2005

Prosecutor v. Sesay et al., SCSL-05-15-T-180, “Decision on Prosecution Motion for Modification of Protective Measures for Witnesses”, 5 July 2004

Prosecutor v. Sesay et al., SCSL-04-15-T-448, “Decision on the Prosecution Confidential Notice under Rule 92bis to Admit the Transcripts of Testimony of TF1-023, TF1-104 and TF1-169”, 9 November 2005

Prosecutor v. Sesay et al., SCSL-04-15-T-557, “Decision on the Prosecution Notice under Rule 92bis to Admit the Transcripts of Testimony of TF1-256”, 23 May 2006

Prosecutor v. Sesay et al., SCSL-04-15-T-559, “Decision on the Prosecution Notice under Rule 92bis to Admit the Transcripts of Testimony of TF1-334”, 23 May 2006

Prosecutor v. Sesay et al., SCSL-04-15-T-618, “Decision on Prosecution Notice Pursuant to Rule 92bis to Admit Information into Evidence”, 2 August 2006

Prosecutor v. Sesay et al., SCSL-04-15-T-1049, “Decision on Defence Application for the Admission of the Witness Statement of DIS-192 under Rule 92bis or, in the alternative, under Rule 92ter”, 12 March 2008

Prosecutor v. Sesay et al., SCSL-04-15-T-1125, “Decision on Sesay Defence Motion and Three Defence Applications to Admit 23 Witness Statements under Rule 92bis”, 15 May 2008

Prosecutor v. Brima et al., SCSL-04-16-T

Prosecutor v. Brima et al. and Sesay et al., SCSL-04-16-T-259, “Decision on the Urgent and Confidential Prosecution Application to vary Protective Measures regarding Witnesses TF1-104 and TF1-081”, 11 May 2005

Prosecutor v. Brima et al., SCSL-04-16-T-280, “Decision on Joint Defence Motion to Exclude all Evidence from Witness TF1-277 Pursuant to Rule 89(C) and/or Rule 95”, 24 May 2005

Prosecutor v. Brima et al., SCSL-04-16-T-307, “Decision on Objection to Question Put by Defence in Cross Examination of Witness TF1-227”, 15 June 2005.

Prosecutor v. Brima et al., SCSL-04-16-T, “Decision on Joint Defence Application for Leave to Appeal from Decision on Defence Motion to Exclude All Evidence from Witness TF1-277”, 2 August 2005

Prosecutor v. Brima et al., SCSL-04-16-T, “Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92bis”, 18 November 2005

ICTY Cases

Prosecutor v. Galić, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92 bis (C), 7 June 2002 (*Copy provided in previous filing – see SCSL-03-01-T-571*)

Prosecutor v. Slobodan Milošević, Case No. IT-02-54-AR73.4, “Decision on Interlocutory Appeal on the Admissibility of Evidence-In-Chief in the Form of Written Statements”, 30 September 2003

<http://www.un.org/icty/milosevic/appeal/decision-e/030930.htm>

ICTR Cases

Prosecutor v. Bagosora et al, ICTR-98-41-T, “Decision on Prosecutor’s Motion for the Admission of Written Witness Statements Under Rule 92bis,” 9 March 2004
<http://69.94.11.53/ENGLISH/cases/Bagosora/decisions/040309.htm>

20810

PUBLIC

ANNEX E

TRIAL TRANSCRIPTS FOR TF1-227

1. TF1-227, AFRC trial transcript, 8 April

20811

THE SPECIAL COURT FOR SIERRA LEONE

CASE NO. SCSL-2004-16-T
TRIAL CHAMBER I

THE PROSECUTOR
OF THE SPECIAL COURT
V.
ALEX TAMBA BRIMA
BRIMA KAMARA
SANTIGIE KANU

FRIDAY, 8 APRIL 2005
9.25 A.M.
TRIAL

Before the Judges:

Teresa Doherty, Presiding
Julia Sebutinde
Richard Lussick

For Chambers:

Mr Simon Meisenberg
Mr Matthias Reuss

For the Registry:

Mr Neil Gibson

For the Prosecution:

Ms Lesley Taylor
Ms Sharan Parmar
Mr Robert Braun
Ms Jennifer Beckley (intern)
Mr Mark wallbridge (Case Manager)

For the Principal Defender:

Ms Claire Carlton-Hanciles

For the accused Alex Tamba Brima:

Ms Glenna Thompson
Mr Osman K Kamara

For the accused Brima Kamara:

Mr Mohamed Pa-Momo Fofanah
Mr Abdul Rahman Mansaray

For the accused Santigie Kanu:

Mr Abibola Manley-Spaine
Ms Karlijn van der Voort

**Pages 2 to 91
omitted**

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

16:24:32

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 WITNESS TF1-227 [Sworn]
9 PRESIDING JUDGE: Please proceed.

16:30:47

10 EXAMINED BY MR BRAUN :

11 Q. Good afternoon, Mr witness.
12 A. Good afternoon.
13 Q. Mr witness, when were you born?
14 A. I was born on the 10th of February 1967.
15 Q. where were you born?
16 A. I was born in Freetown.
17 Q. Have you ever attended school?
18 A. Yes.
19 Q. So what is the highest grade you attained?
20 A. well, the highest grade is the TC certificate.
21 Q. Can you explain what kind of certificate this is?
22 A. It is a teacher's certificate in education.
23 Q. Thank you. what is your native language?
24 A. My native language is Limba.
25 Q. Do you speak any other languages than Limba?
26 A. Yes. I can speak Krio and English.
27 Q. what is your religion?
28 A. Christian, the Catholic Christian.
29 Q. would you describe yourself as a religious man?

16:31:11

16:31:26

16:31:57

20814

1 A. Yes, because I am a baptised and confirmed Christian.

2 Q. Were you ever a member of any armed group at any time?

3 A. No.

4 Q. Did you ever use a weapon during the conflict in Sierra Leone?

16:32:41 5 A. No.

6 Q. Mr witness, where were you on 19th January 1999?

7 A. I was at Calaba Town in 1999.

8 Q. Now, on 19th January 1999, where was your family?

9 A. well, my family was at Calaba Town and later they went up the hills.

16:33:33 10 We are proceeding towards Freetown.

11 Q. when you are speaking of your family, who are you referring to?

12 Please don't mention any names.

13 A. I am referring to my wife, my daughter and also my wife's brother and
14 my wife's nephew.

16:34:14 15 Q. why did your family leave Calaba Town?

16 A. well, when the atrocity was coming towards Calaba Town so I was
17 around the vicinity, then I told her to left immediately so that I can pack
18 certain documents for security reasons.

19 Q. when you say atrocities, what exactly do you mean by that?

16:34:50 20 A. well, I mean because we saw the firing, exchange of bullets and also
21 the burning of houses. we saw the smokes around. So we think that we
22 should flee for our lives.

23 Q. who was exchanging fire?

24 A. well, the ECOMOG and the rebels.

16:35:17 25 Q. when you say rebels, what do you mean by that?

26 A. I mean by the AFRC and the RUF.

27 Q. Now, when your family fled, did you stay in Calaba Town?

28 A. well, I also -- I stayed in Calaba Town for a few days and I proceed
29 to go to Allen Town.

20815

1 Q. Why did you want to go to Allen Town?

2 A. Because the tension was so immense, so I decided to go towards Jui to
3 face the ECOMOG for safety reasons.

4 Q. So, when you left Calaba Town, where did you go next?

16:36:31 5 A. When I left Calaba Town, I proceed to go to Allen Town by the main
6 road, towards going to Jui.

7 Q. Did you stop in Allen Town?

8 A. Yes, I stop at one Nyuma's house at the main road at Allen Town where
9 I saw a group of -- there were many people stayed there in an unfinished
16:37:04 10 house and so we stayed there for some time. Then because of the crowds at
11 that house, then I decided to pursue it again.

12 Q. Let me stop you here. When you say crowds, can you describe how many
13 people you saw?

14 A. Well, unfortunately we are about 70 people inside that house.

16:37:34 15 Q. And those people -- sorry, Mr Witness.

16 A. Well, those people were [inaudible] civilians.

17 Q. Was there a reason why you stayed in that house with those other
18 civilians?

19 A. Well, since we are all heading towards Jui, then I met them there so
16:38:00 20 I decided to stay with them, see. But because of the certain pressure, I
21 left immediately.

22 Q. What do you mean by pressure?

23 A. Well, the tension of the firing was going on and shedding of bombs.
24 So I decided to go.

16:38:26 25 Q. So where did you go next?

26 A. From there I continued in the main road going towards Allen Town
27 because my destination was going to Jui .

28 Q. And did you get to Jui?

29 A. No.

20816

1 Q. why didn't you get to Jui?

2 A. well, I stopped at certain junction because the ECOMOG were also
3 shedding bombs and civilians were also moving towards -- coming towards the
4 Calaba Town. So, they are not allowing any civilians to go towards their
16:39:21 5 own base. So, that was the reason I did not continue the journey to
6 [inaudible] to Jui.

7 Q. So where did you go then?

8 A. Then I return. See, I return later after I stay about two days
9 within that area. Then I return to pass through Thomas Place.

16:39:45 10 Q. when you came back to Thomas Place, did you notice anything?

11 A. Yes, I discover corpse, bodies, dead bodies.

12 Q. Do you know about how many dead bodies you saw?

13 A. well, estimately about 40 bodies I saw.

14 Q. Can you tell how those bodies were dressed like?

16:40:17 15 A. well, they dressed, they are all in plain clothes. They are in
16 civilian dress.

17 Q. Do you know what happened to them?

18 A. well, I cannot tell.

19 Q. So what did you do after that?

16:40:41 20 A. So after that I decided to go towards Kola Tree and stay at one
21 unfinished house.

22 Q. why did you stay in the unfinished house?

23 A. well, to secure myself.

24 Q. Secure from what, Mr Witness?

16:41:23 25 A. Secure myself because the firing was going on rampantly in that
26 particular area.

27 Q. How long did you stay in that unfinished house?

28 A. I stayed there for three days.

29 Q. Did anything happen during that three days, Mr Witness.

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- 1 A. Well, during my stay at that particular unfinished house for three
2 days, when I would just be praying, reciting certain prayers and my rosary
3 with me, they say on the third day three military soldiers came in, in the
4 house, and they entered and met me inside. They said I am a Kamajor. You
16:42:25 5 see, they all had guns, you see. So they asked me to stand. I stand up.
6 I pleaded to them that I am not a Kamajor, I am just a civilian. A
7 civilian. Then -- but the one who met me in said, "He is a pastor,"
8 because I was holding a prayer and hymn book.
- 9 Q. Can you describe those three soldiers that entered the house?
- 16:43:02 10 A. Well, one about the age of 28 to 29 years, is the tall gentleman by
11 the name, they said Corporal Bastard. Then you have two others, you see,
12 but they are about the age of 20 years above.
- 13 Q. Do you know what group Corporal Bastard belonged to?
- 14 A. Yes, he belonged to the AFRC group.
- 16:43:36 15 Q. So what happened after they said you are a pastor?
- 16 A. Yes, after that he asked -- he asked me to stand up. Then he started
17 shouting at me. He took my wedding ring. He took some monies that I have.
18 And I cannot state now the exact amount. And then he went inside the other
19 rooms in the building with the other two gentlemen -- soldiers. So they
16:44:08 20 started taking things and immediately they make a big bundle. They said I
21 should carry it and they will take me to their base. And later on they set
22 fire on the house.
- 23 Q. Was it your free will to go with those soldiers?
- 24 A. It was not my free will, I was forced.
- 16:44:37 25 Q. How were you forced?
- 26 A. You see because you under press because they have the guns, you need
27 to go with these looted things with them.
- 28 Q. So, you had to carry those looted things?
- 29 A. Yes.

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1 Q. So where did you go?

2 A. You see from there we went towards kola Tree end and after passing
3 through the Cemetery Road. So they started giving me some beating, so I
4 should not turn back. So not look at the back of them. They said I should
16:45:27 5 go front.

6 Q. How were they beating you?

7 A. well, the one beat me at my back. They said they wanted to starting
8 to kick me so I should walk quickly.

9 Q. Now, when you passed the cemetery, did you see anything unusual?

16:45:54 10 A. well, I saw a corpse or bodies anyway. I saw one fresh one who I
11 think he was newly killed. Other bodies was along the cemetery area.

12 Q. Do you recall how many dead bodies you saw?

13 A. It was about four bodies.

14 Q. How were they dressed like?

16:46:21 15 A. They were all in civilian clothes.

16 Q. where did you go from the cemetery?

17 A. From the cemetery we go to the extreme end of kola Tree where there
18 is -- you have mango tree, a big shade of trees full of mangoes.

19 Q. why did you go there?

16:46:49 20 A. well, they took me there because they are colleagues are there. when
21 I talk of their colleagues, they have leaders, their leaders are there.
22 They all have certain different groups. So their big authorities are also
23 there.

24 Q. Are you speaking of a base?

16:47:08 25 A. Yes.

26 Q. Now, when you came to that place, what did you see?

27 A. well, when I arrived at that place, I saw three of my students whom I
28 taut at about the age of 12 to 13 years of age. One the court cannot allow
29 me to mention the name. But one I remember as Justina. So I saw her. She

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1 also look at me, but at that moment we did not exchange any communication.
2 Then Corporal Bastard said should go to the Provost Marshall.

3 Q. Who was the Provost Marshall?

4 A. Well, the Provost Marshall his name was Colonel Adamu.

16:48:17 5 Q. Do you know what Colonel Adamu belonged to?

6 A. Yes, he is from the AFRC.

7 Q. What happened after you were brought to Colonel Adamu?

8 A. Well, Corporal Bastard handed me over to him and he said I am a
9 pastor. Then he just left me like that. Then he went down to his own
10 place.

16:48:39 11 Q. Now, you just mentioned that you met some former students. Did you
12 see other civilians there?

13 A. Yes. And many civilians.

14 Q. How many civilians did you see at that stage?

16:49:07 15 A. Maybe around 200 civilians at Kola Tree.

16 Q. To your knowledge was it the free will of those civilians to stay at
17 Kola Tree?

18 A. I am not sure it's not their free will.

19 Q. So why were they staying there?

16:49:30 20 A. Because they were forced to.

21 Q. By whom?

22 A. By the rebels. Because they were all encaptured or abducted to come
23 with them.

24 Q. Now, you have just mentioned Colonel Adamu. Were there any other
16:49:56 25 commanders at Kola Tree?

26 A. Well, the names I can remember at that time were -- we have Mbayoh,
27 Mbayoh was a commander.

28 Q. Can you spell that name?

29 A. It is M-B-A-Y-O-H, Mbayoh. And you have Gumboots, one Gumboots. He

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1 too was a commander, Achempo [phon]. These are the few names I can
2 remember because for the few days I stayed with them at that particular
3 area.

4 Q. Do you know the rank of Gumboot?

16:50:48 5 A. Gumboots was a lieutenant .

6 Q. Now do you know what group those persons belonged to?

7 A. AFRC.

8 Q. Did you see any RUF in Kola Tree?

9 A. No, I did not see any RUF at Kola Tree.

16:51:14 10 Q. Mr witness, can you describe the behaviour of the soldiers at Kola
11 Tree towards civilians?

12 A. well, the behaviour of the soldiers who were civilians -- civilians
13 were doing domestic work and some have to cook for them. And others you
14 need to act as guards.

16:51:44 15 Q. Do you know whether it was the free will of the civilians to do so?

16 A. well, it is not their free will to do so.

17 MS THOMPSON: Your Honour, I have not objected before, but my
18 learned friend is asking questions which is more or less asking the
19 witness to speculate. He has done it before, I didn't say anything. He
16:52:01 20 is doing it again. He is asking him to speculate on others' free will.
21 unless he has had a conversation with these people, he is unlikely to be
22 able to tell us.

23 MR BRAUN: Your Honour, I just wanted to clarify that point.

24 PRESIDING JUDGE: [Microphone not activated] Your reply to Ms
16:52:18 25 Tompson's objection.

26 MR BRAUN: I don't think that the witness is speculating.

27 JUDGE LUSSICK: well, you have not really laid any foundation for
28 asking him that question.

29 MR BRAUN: If Your Honour will allow it, I will lay the foundation

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1 right now.

2 Q. So, Mr witness, how do you know that it was not the free
3 will of those civilians to work for the soldiers?

4 A. Because if you have been forced to join or to come along on a certain
16:53:01 5 thing which is not my desire or my view, then you can tell me to do
6 anything which I want to do. You see.

7 Q. And how do you know that those other civilians were forced to stay
8 there?

9 A. For instance, I am a typical example. You see, because I am forced
16:53:18 10 to do certain things which is not my desire. It is not my wish. And also
11 about two other people who would stay together was asked to do the beating,
12 you know, of rice and cooking. You see. And she was crying. I think with
13 that distinction you can even justify that, it is not her will to do it.

14 Q. Apart from you, were other civilians forcibly brought to kola Tree?

16:53:52 15 A. Well, apart from me -- well, I saw some of our youth members, you
16 see, who the place where I was sitting I was just watching at them as they
17 were bringing them in the area.

18 Q. who was bringing them in the area?

19 A. You see, well you have the young soldiers who come with them.

16:54:17 20 Q. Did you see that?

21 A. Yes, I saw it.

22 Q. what exactly did you see?

23 A. You see, well I saw, for instance, I cannot call the name of the boy
24 now, you see. Fortunately for him, when I saw him he started to glance at
16:54:37 25 me and he was a youth to the place I was working before. You see. And we
26 just glanced ourselves.

27 Q. But did you see him when they brought him in?

28 A. Yes, because another commander take care of him.

29 Q. And can you describe how they brought him in?

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1 A. well, you are under guards, you see. Then you need to go together
2 with the person. But I saw the tears on him.

3 Q. You mentioned a name, Justina, before. Did you ever speak to Justina
4 after you were brought to Kola Tree?

16:55:35 5 A. Yes, I spoke with her. She came along the place where Commander
6 Adamu stayed. Then I asked her what really happened. She say she too was
7 abducted and before she was brought in this place, she was molested
8 sexually. I said "My God, I said you are a very young chap, about 13 years
9 of age." I said, "well this kind of behaviour is not so good." However, I

16:56:16 10 asked her what about her parents. She said she doesn't know the
11 whereabouts of her parents.

12 Q. Mr witness, who sexually abused Justina?

13 A. well, the one who captured her; the AFRC soldier.

14 Q. when you arrived in Kola Tree, did you see anything in the evening?

16:57:11 15 A. well, when I arrived at Kola Tree I saw a heap which was - I had the
16 smell of the heap and one killer said, "If you try to escape, you see that
17 heap, there are corpse whom they have just there.'

18 Q. Is killer a name?

19 A. well that is the nickname. I met killer. That is what he told me
16:57:40 20 that is his name.

21 Q. what do you mean by the smell of the heap?

22 A. They have already buried somebody there.

23 Q. Is there anything else you noticed at Kola Tree?

24 A. Yes. I noticed one man hand was chopped by the -- it was cut off by
16:58:08 25 the right hand.

26 Q. How was this man dressed like?

27 A. well, the man dressed like a civilian. He is a civilian.

28 Q. Did you see how his hand was chopped off?

29 A. I was not at the scene when the hand was chopped off, but I saw him

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1 when the hand had been cut off.

2 Q. Do you know who cut off his hand?

3 A. I said well Achempo came to our place where Adamu was. Then he said
4 they have just cut one person's hand, but I did not know who cut the hand
16:58:56 5 of the man.

6 Q. Who is Achempo.

7 A. well, Achempo, he too is a member of the AFRC.

8 Q. Do you know the rank of Achempo?

9 A. He must have been a high rank person because he is highly educated,
16:59:21 10 but I cannot testify now the level of the rank according to the military --

11 MR MANLEY-SPAIN: We hate to interrupt, but this morning we were
12 talking about speculation. This is all speculation. He must have been
13 because he was a highly educated. They cannot be answers to the
14 questions being put.

16:59:46 15 PRESIDING JUDGE: Yes, the witness is giving evidence of his own
16 partly speculation and partly observation. It should be limited to what he
17 saw and heard.

18 MR MANLEY-SPAIN: I am much obliged.

19 MR BRAUN:

17:00:02 20 Q. Mr witness, did you ever hear Achempo giving orders to soldiers?

21 A. No, no, no.

22 Q. So what happened to the person whose hand was cut off?

23 A. well, I saw him going down kola Tree. I seen him moving towards
24 Calaba Town.

17:00:50 25 Q. why did he move there?

26 A. well, he was going towards Freetown.

27 Q. How do you know that?

28 A. Because when the man was going he was escorted by soldiers and they
29 said, "Let him go and show the hand to Tejan Kabbah."

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1 Q. Did you hear that?

2 A. Well, that is what they were saying. I heard that is what they were
3 saying.

17:01:37 4 MR BRAUN: Your Honour, this is maybe a convenient time to stop the
5 examination-in-chief.

6 PRESIDING JUDGE: We will adjourn the Court until Monday at 9.15. ■

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

17:02:14

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Case Name: **The Prosecutor – v- Charles Ghankay Taylor**
Case Number: **SCSL-03-01-T**
Document Index Number: **614**
Document Date **03 October 2008**
Filing Date: **03 October 2008**
Document Type: - **Confidential Annexes A TO D & FTO G**
Number of Pages **332** Numbers from: **20678-20809 & 20825-21036**
 Application
 Order
 Indictment
 Motion
 Other
 Correspondence

Document Title:

PUBLIC WITH CONFIDENTIAL ANNEXES A TO D & F TO G – PROSECUTION NOTICE UNDER RULE 92bis FOR THE ADMISSION OF EVIDENCE RELATED TO INTER ALIA FREETOWN AND WESTERN AREA – TF1-098,, TF1-104 AND TF1-227

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