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SCSL-03-01-T  
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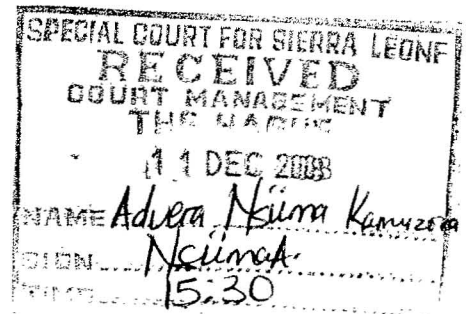
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**SPECIAL COURT FOR SIERRA LEONE**  
**OFFICE OF THE PROSECUTOR**  
Freetown – Sierra Leone

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: 11 December 2008



**THE PROSECUTOR**

**Against**

**Charles Ghankay Taylor**

Case No. SCSL-03-01-T

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**PUBLIC**

**PROSECUTION REPLY TO DEFENCE OBJECTION TO PROSECUTION MOTION FOR LEAVE TO  
CALL AN ADDITIONAL WITNESS AND NOTICE TO ADMIT WITNESS' SOLEMN DECLARATION  
AND, IN THE ALTERNATIVE, FOR ADMISSION OF SOLEMN DECLARATION**

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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 files this Reply to the “Public Defence Objection to Prosecution Motion for Leave to Call an Additional Witness and Notice to Admit Witness’ Solemn Declaration and, in the alternative, for Admission of Solemn Declaration.”<sup>1</sup>

## II. REPLY

### No objection to Addition of Witness

2. The Prosecution notes that at paragraph 6 of the Objection the Defence do not oppose the addition of Mr. Malik to the Prosecution’s Amended Witness List<sup>2</sup> nor, as a result, the disclosure of his Declaration.<sup>3</sup> However, out of an abundance of caution, the Prosecution underlines that the addition of this witness is a separate issue to the Prosecution’s various pending requests for the admission of documents. The Prosecution acknowledges that Mr. Malik’s testimony will concern the receipt and subsequent storage and custody of such documents. However, as stated in the relevant motions, the documents are relevant and admissible on their face. Any information which Mr. Malik may provide regarding these documents is information which goes to the weight ultimately to be accorded such documents and is not a condition of their admission.

### Mr. Malik must be available for cross-examination

3. In the Objection the Defence fail to establish sufficient grounds to justify their request that Mr. Malik be made available for cross-examination.<sup>4</sup> First, there is no automatic requirement that cross-examination be ordered. It is to be observed that Rule 92bis does not expressly allow cross-examination and it has been described as a “back-up arrangement”.<sup>5</sup> In this regard, it is noteworthy that the decision by Trial Chamber I in the

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<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-689, “Public Defence Objection to Prosecution Motion for Leave to Call an Additional Witness and Notice to Admit Witness’ Solemn Declaration and, in the alternative, for Admission of Solemn Declaration,” 8 December 2008 (“**Objection**”).

<sup>2</sup> As defined at para. 4 of *Prosecutor v. Taylor*, SCSL-03-01-T-683, “Prosecution Motion for Leave to Call an Additional Witness and Notice to Admit Witness’ Solemn Declaration and, in the alternative, for Admission of Solemn Declaration”, 1 December 2008 (“**Motion**”).

<sup>3</sup> As defined at para. 2 of the Motion.

<sup>4</sup> Objection, paras. 8-12.

<sup>5</sup> As described by Judge Shahabuddeen at para. 6 of his Separate Opinion Appended to the Appeals Chamber Decision in *Prosecutor v. Milosović*, IT-02-54-AR73.5, “Admissibility of Evidence-In-Chief in the Form of Written Statements”, 31 October 2003.

RUF Trial<sup>6</sup> referred to by the Defence in paragraphs 9 and 10 of the Objection in support of their request made no finding regarding the necessity of cross-examination in the circumstances. It is apparent that cross-examination of Mr. Sesay was ordered by Trial Chamber I as it was offered by the Prosecution. Second, no unfair prejudice will arise if the Defence is not given an opportunity to cross-examine Mr. Malik. The evidence which the Prosecution seeks to admit through this witness does not contain evidence which goes to proof of the acts and conduct of the Accused or evidence which could be considered sufficiently proximate to the Accused to warrant cross-examination. Rather, the evidence concerns how the Prosecution received certain documents and on their subsequent storage and custody. It can, therefore, fairly be described as evidence which will assist in lending weight to otherwise *prima facie* relevant admitted evidence. Third, the Defence argument that the incriminatory nature of the documents to which Mr. Malik would speak requires that he be made available for cross-examination, erroneously tries to conflate the admission of the documents with the substance of Mr. Malik's evidence.<sup>7</sup> The documents to which he will speak are relevant on their face and so admissible. Mr. Malik's testimony, therefore, does not determine whether they are admissible or not but instead will lend weight to the documents. Further, Mr. Malik's testimony will not be incriminatory to the Accused but, as stated above, will provide procedural background to their receipt and storage. Finally, the Defence's conflation of the admission of the documents with the addition of Mr. Malik as a witness is compounded in paragraph 12 of the Objection. As stated, Mr. Malik will not speak to the contents of the documents at issue.

4. Should the Chamber grant the Prosecution's request to add Mr. Malik to the Amended Witness List, and, notwithstanding the above arguments, order that he be made available for cross-examination, then the Prosecution will not seek to admit the Declaration under Rule 92*bis*. Instead, the Prosecution will lead this witness' direct examination entirely *viva voce*. In determining in the first instance to present this witness' evidence via Rule 92*bis*, the Prosecution seeks to balance the potential loss of relevant evidence with the

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<sup>6</sup> See *Prosecutor v. Sesay et al*, SCSL-04-15-T-534, "Decision on Prosecution Request for Leave to Call an Additional Witness and Notice to Admit Witness' Solemn Declaration Pursuant to Rules 73*bis*(E) and 92*bis*", 5 April 2006.

<sup>7</sup> Objection, para. 11.

expediency and efficiency afforded by the Rule and concludes that the loss will be outweighed by the expediency offered by the Rule.

**The Declaration can be admitted under Rule 89(C) alone**

5. The Defence erroneously contend that the Declaration may not be admitted under Rule 89(C) alone as the *Fofana* Bail Appeals Decision<sup>8</sup> was given prior to the May 2007 amendments.<sup>9</sup> This contention is erroneous as no where in the Appeals Chamber decision is Rule 92*bis* considered and rejected due to any ambiguity. Rather, the Appeals Chamber simply notes the applicability of Rule 89(C) to the admission of the declaration.<sup>10</sup> Accordingly, in light of this appellate level jurisprudence of the Special Court, the Declaration (the relevance of which it is clear from the Objection is not in dispute) may be admitted under Rule 89(C) alone.

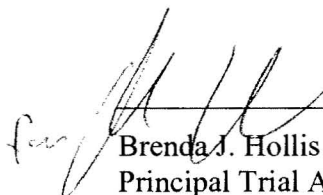
**III. CONCLUSION**

6. The Prosecution respectfully requests that the Trial Chamber grant the Prosecution leave to add the witness, Tariq Malik, to the Prosecution's witness list and, if leave is granted, approve the disclosure of the Declaration in conformity with Rule 66(A)(ii).
7. Should the Chamber grant the Prosecution's request, the Prosecution gives notice under Rule 92*bis* of its intention to seek admission of the Declaration into evidence. However, if the Chamber grants this request under Rule 92*bis* subject to the condition that the Prosecution make the witness available for cross-examination, then the Prosecution advises it will not seek to admit the Declaration under Rule 92*bis* but will instead lead the witness' evidence entirely *viva voce*.
8. In the alternative, the Prosecution respectfully requests that the Trial Chamber admit the Declaration into evidence under Rule 89(C).

Filed in The Hague,

11 December 2008

For the Prosecution,

  
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 Brenda J. Hollis  
 Principal Trial Attorney

<sup>8</sup> As defined in footnote 9 of the Motion.

<sup>9</sup> *Ibid*, para. 14.

<sup>10</sup> *Fofana* Bail Appeals Decision, paras. 22-24.

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## LIST OF AUTHORITIES

### **Prosecutor v. Taylor, SCSL-03-01-T**

*Prosecutor v. Taylor*, SCSL-03-01-T-683, “Prosecution Motion for Leave to Call an Additional Witness and Notice to Admit Witness’ Solemn Declaration and, in the alternative, for Admission of Solemn Declaration”, 1 December 2008

*Prosecutor v. Taylor*, SCSL-03-01-T-689, “Public Defence Objection to Prosecution Motion for Leave to Call an Additional Witness and Notice to Admit Witness’ Solemn Declaration and, in the alternative, for Admission of Solemn Declaration,” 8 December 2008

### **Prosecutor v. Sesay et al., SCSL-04-15-T**

*Prosecutor v. Sesay et al*, SCSL-04-15-T-534, “Decision on Prosecution Request for Leave to Call an Additional Witness and Notice to Admit Witness’ Solemn Declaration Pursuant to Rules 73bis(E) and 92bis”, 5 April 2006

### **ICTY Cases**

*Prosecutor v. Milosović*, IT-02-54-AR73.5, “Separate Opinion of Judge Shahabuddeen Appended to the Appeals Chamber Decision in Admissibility of Evidence-In-Chief in the Form of Written Statements”, 31 October 2003  
<http://www.un.org/icty/milosevic/appeal/decision-e/031031so.htm>