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

Before: Hon. Justice Pierre Boutet, Presiding
Hon. Justice Bankole Thompson
Hon. Justice Benjamin Itoe

Registrar: Mr. Lovemore G. Munlo SC

Date filed: 5 June 2005

THE PROSECUTOR

Against

Issa Hassan Sesay
Morris Kallon
Augustine Gbao

Case No. SCSL-04-15-T

PUBLIC
PROSECUTION NOTICE UNDER RULES 92bis AND 89 TO ADMIT
THE STATEMENT OF TF1-150

Office of the Prosecutor:

Mr. James C. Johnson
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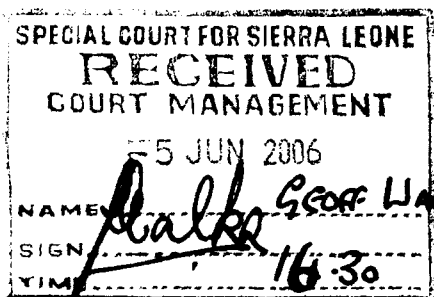
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I. INTRODUCTION

1. The Prosecution gives notice pursuant to Rules 92*bis* and 89 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (the “Rules”), of its intention to have admitted into evidence the Statement 18.04.05 RUF-AFRC Report of TF1-150 (the “Statement”) without direct examination or cross-examination of the witness. The Statement is not attached, however it was previously filed with Court Management as Folio 567 “Confidential Prosecution Witness Statements Eight Trial Session,” Court Management page numbers 21071-21140.
2. The Statement is signed by TF1-150, with an affirmation that it is true and correct, and the Statement provides general background information that goes to the widespread and systematic nature of the crimes alleged by the Prosecution. The content of the Statement is very similar to that of NGO and media reports previously tendered as part of a Rule 92*bis* Notice. TF1-150 is listed as a witness to testify but the Prosecution has been advised that the witness cannot attend Freetown during the 8th trial session, at the end of which the Prosecution expects to be in a position to close the Prosecution case.

II. PROCEDURAL HISTORY

3. On 26 April 2004, the Prosecution filed its original witness list pursuant to the order of the Trial Chamber.¹ The Witness is included on the original witness list.
4. On 18 April 2005, the Witness delivered the Statement to the Office of the Prosecutor summarizing monitoring activities in Sierra Leone from May 1998 to January 2000. The Statement was disclosed to the Defence on the 25 April 2005. Attached to the Statement are four documents, three of which were included as documents to be admitted into evidence as part of the Prosecution Notice to admit documents under Rule 92*bis* filed on 30 May 2006.²

¹ *Prosecutor v Issa Hassan Sesay et al*, SCSL-04-15-086, “Materials filed Pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for Commencement of Trial of 1 April 2004”, 26 April 2004.

² *Prosecutor v Issa Hassan Sesay et al*, SCSL-04-15-T-564, “Prosecution Notice Pursuant to Rule 92*bis* To Admit Information Into Evidence”, 30 May 2006. The documents included in the 30 May 2006 Notice are: “UNOMSIL Human Rights Situation Report and Preliminary Technical Assistance Needs Assessment, 19 July 1998”, which is Document No. 65 from the Prosecution List of Exhibits; “UNOMSIL Human Rights Assessment Mission to

5. TF1-150 testified in the CDF trial³ and was about to testify in the AFRC trial but a decision⁴ was issued regarding the confidentiality of information given to a human rights worker that resulted in the witness not being called to testify. The evidence given in the CDF trial often pointed to the individual criminal responsibility of one of the CDF accused and is unrelated to the information in the Statement. The transcripts from the CDF trial were disclosed to the RUF accused and filed with the Trial Chamber.

III. DISCUSSION

6. The modification of the traditional preference for oral testimony by allowing flexibility in the admission of documentary evidence, and the establishment of the principle of “extensive admissibility of evidence” are recent trends in international criminal law.⁵ The foundation for these principles is the competence of professional judges to receive evidence and subsequently to evaluate it in the light of all the other evidence.⁶
7. The basic principle applicable to any form of evidence is stipulated in Rule 89(C), which provides that any relevant evidence is admissible. According to international jurisprudence, wide discretion is granted to the Trial Chamber in deciding what constitutes “relevant” evidence. The Chamber is free to consider the reliability of the evidence, its probative value, prejudicial impact, or any other reasonably related factor.⁷
8. As noted by a Trial Chamber of the ICTY: “The threshold standard for the admission of

Freetown 25 January and 1 to 4 February 1999 Findings and Recommendations”, which is Document No. 23 from the Prosecution List of Exhibits; and “Joint Communique”, which is Document No. 57 from the Prosecution List of Exhibits.

³ *Prosecutor v. Norman et al*, SCSL-04-14, Transcript of 7 June 2005, pp. 1-101 and 8 June 2005, p. 1-9.

⁴ *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-389, “Decision on the Prosecution’s Oral Application for Leave to be Granted to Witness TF1-150 to Testify Without Being Compelled to Answer Any Questions in Cross-examination that the Witness Declines to Answer on Grounds of Confidentiality Pursuant to Rule 70(B) and (D) of the Rules”, 16 September 2005.

⁵ The first trend manifested, for example, in ICTY’s adoption of Rule 89(F) in December 2000. Regarding the second trend see *Prosecutor v. Blaškić*, IT-95-14, “Trial Judgment”, 3 March 2000, para. 34.

⁶ *Prosecutor v. Delalić et al.*, IT-96-21-T, “Decision on the Motion of the Prosecutor for the Admissibility of Evidence”, 19 January 1998, (“*Čelebići Evidence Decision*”), para. 20; *Blaškić*, “Trial Judgment”, 3 March 2000, para. 35.

⁷ See for example *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, “Decision on Admissibility of Proposed Testimony of Witness DBY”, 18 September 2003, para. 18: “Relevance, probative value and even prejudice are all relational concepts. The content of the putative facts must be defined and then evaluated in relation to their possible value as proof of the existence of a crime as described in the indictment. The nature of this evaluation explains the discretion conferred on the Trial Chamber by Rule 89(C).”

evidence...should not be set excessively high, as often documents are sought to be admitted into evidence, not as ultimate proof of guilt or innocence, but to provide a context and complete the picture presented by the evidence gathered.”⁸

9. Rule 92bis of the Rules provides that:

(A) A Chamber may admit as evidence, in whole or in part, information in lieu of oral testimony.

(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.

10. The purpose of Rule 92bis, like that of Rule 92bis of the ICTY and ICTR Rules, is to facilitate a fair, efficient and expeditious trial.⁹ The Appeals Chamber of the Special Court has noted that Rule 92bis was amended specifically to accommodate the operations and peculiarities of the Special Court envisioned to exist for a short period of time, which constitutes a more flexible and broad alternative mode of presentation of evidence than the regime existing in the *ad hoc* tribunals. According to the Appeals Chamber:

The judges of this Court, at one of their plenary meetings, recognised a need to amend ICTR Rule 92bis in order to simplify this provision for a court operating in what was hoped would be a short time-span in the country where the crimes had been committed....¹⁰

11. The Appeals Chamber went on to explain:

The effect of the SCSL Rule is to permit the reception of “information”-assertions of fact (but not opinion) made in materials or electronic communications - if such facts are relevant and their reliability is “susceptible of confirmation”. This phraseology was chosen to make clear that proof of reliability is not a condition of admission: all that is required is that the information should be capable of corroboration in due course.¹¹

12. The assessment of the weight and reliability of the information admitted under Rule 92bis

⁸ *Čelebići* Evidence Decision, 19 January 1998, para. 20.

⁹ See ICTR Press Release ICTR/INFO-9-13-22.EN dated 8 July 2002, p.3 : “New Rule 92bis is an important judicial reform measure. It has the potential to further speed up proceedings before the ICTR by significantly reducing as much as possible the consideration of time consuming evidence inside the courtroom. A similar rule already exists in the Rules of Procedure and Evidence of the ICTY.”

¹⁰ *Fofana* Appeal Decision, para. 26; Separate Opinion of Justice Robertson, paras. 13 and 14.

¹¹ *Id.*, para. 26.

is to be made by the Trial Chamber at the end of the trial in light of all the evidence presented.¹² In its Decision pursuant to Rules 92bis and 89(C) in the *Norman et al.* case of 14 July 2005, (“*Norman et al. Rule 92bis Decision*”) this Trial Chamber cited the findings of the Appeals Chamber and held that:

...proof of reliability is not a condition for admitting ‘information’ under Rule 92bis and that a requirement under this Rule of such information being capable of corroboration in due course leaves open the possibility for the Chamber to determine the reliability issue at the end of the trial in the light of all the evidence presented in the case and decide whether the information is indeed corroborated by other evidence presented at trial, and what weight, if any, should the Chamber attach to it.¹³

13. The Trial Chamber summed up by stating that what is required of the Chamber is to determine whether the documents are relevant and possess sufficient indicia of reliability and that their admission would not prejudice unfairly the Defence.¹⁴
14. Trial Chamber II has also recognized that documentary evidence may be admissible if the facts therein are relevant, reliable and susceptible of confirmation.¹⁵ Restrictions on cross-examination may be a factor in determining the weight to be given to the document, but the document remains admissible.¹⁶
15. The Witness is not available to attend Freetown to testify during the 8th Trial Session due to prior work commitments. Although, the witness was listed to testify in an earlier session his ability to testify was affected by decisions of Trial Chamber I and II regarding the confidentiality of information conveyed to human rights workers, which issue was resolved by the Appeals Chamber on 26 May 2006.¹⁷
16. The information the Prosecution seeks to admit pursuant to Rule 92bis is background evidence of matters alleged in the Indictment as opposed to evidence directly implicating

¹² Fofana Appeal Decision, para. 27. See also Separate Opinion of Justice Robertson, para. 14.

¹³ *Prosecutor v Norman, Fofana, Kondewa*, 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, (“*Norman et al. Rule 92bis Decision*”), p.4.

¹⁴ *Ibid.*

¹⁵ *Prosecutor v Brima, Kamara, Kanu*, SCSL-2004-16-T-423, “Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence,” 25 October 2005, para. 69.

¹⁶ *Prosecutor v Natelitic*, IT-98-34-PT, “Decision on the Prosecutor’s Motion to Take Depositions for Use at Trial (Rule 71)” 10 November 2000, p. 3.

¹⁷ *Prosecutor v Brima, Kamara, Kanu*, SCSL-04-16-AR73-506, “Decision on Prosecution Appeal Against Decision on Oral Application for Witness TF1-150 to Testify Without Being Compelled to Answer Questions on Grounds of Confidentiality and Separate and Concurring Opinion of Hon Justice Geoffrey Robertson QC”, 26 May 2006.

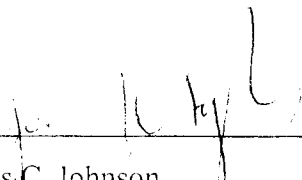
any of the Accused. Although the sentence has not been deleted from the copy of the Statement filed with Court Management, to preserve the full context, the Prosecution consents to the deletion of the first sentence of paragraph 61, which refers to one of the accused. Examples of the 'background' evidence in the Statement include evidence demonstrating the occurrence of crimes in a certain location, or the widespread or systematic nature of the alleged crime. Notably, in the *Norman et al.* Rule 92bis Decision,¹⁸ Trial Chamber I observed that international tribunals admit documentary evidence in various forms, including when it relates to crime bases or a widespread or systematic attack on a civilian population.


IV. CONCLUSION

17. The Prosecution gives notice of its intention to tender for admission into evidence, pursuant to Rules 89 and 92bis, the Statement filed with Court Management Court Folio 567 page numbers 21071-21140, or portions thereof that are relevant, reliable and susceptible of corroboration and confirmation and which will aid this Trial Chamber in making a fair determination of the matters before it, and requests that the Statement be admitted into evidence without direct examination or cross-examination of TF1-150.

Filed in Freetown, on 5 June 2006

For the Prosecution,


James C. Johnson


Peter Harrison

¹⁸ *Norman et al.* Rule 92bis Decision, p.4.

Index of Authorities

A. Orders Decisions and Judgments

1. *Prosecutor v Issa Hassan Sesay et al*, SCSL-04-15-086, “Materials filed Pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for Commencement of Trial of 1 April 2004”, 26 April 2004.
2. *Prosecutor v Issa Hassan Sesay et al*, SCSL-04-15-T-448, “Decision on the Prosecution Confidential Notice under 92bis to Admit the Transcripts of Testimony of TF1-023, TF1-104, and TF1-169,” 9 November 2005.
3. *Prosecutor v Issa Hassan Sesay et al*, SCSL-04-15-T-489, “Decision on the Prosecution Confidential Notice under 92bis to Admit the Transcripts of Testimony of TF1-081”, 21 February 2006.
4. *Prosecutor v. Issa Hassan Sesay et al*, SCSL-04-15-T-564, “Prosecution Notice Pursuant to Rule 92bis To Admit Information Into Evidence”, 30 May 2006.
5. *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-T-389, “Decision on the Prosecution’s Oral Application for Leave to be Granted to Witness TF1-150 to Testify Without Being Compelled to Answer Any Questions in Cross-examination that the Witness Declines to Answer on Grounds of Confidentiality Pursuant to Rule 70(B) and (D) of the Rules”, 16 September 2005.
6. *Prosecutor v. Brima, Kamara, Kanu*, SCSL-2004-16-T-423, “Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence,” 25 October 2005.
7. *Prosecutor v. Brima, Kamara, Kanu*, SCSL-04-16-AR73-506, “Decision on Prosecution Appeal Against Decision on Oral Application for Witness TF1-150 to Testify Without Being Compelled to Answer Questions on Grounds of Confidentiality and Separate and Concurring Opinion of Hon Justice Geoffrey Robertson QC”, 26 May 2006.
8. *Prosecutor v Norma, Fofana, Kondewa*, SCSL-04-14-T-398, “Fofana – Decision on Appeal Against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’”, 16 May 2005 and Separate Opinion of Justice Robertson, paras. 13 and 14.
9. *Prosecutor v Norman, Fofana, Kondewa*, 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.
10. *Prosecutor v Blaškić*, IT-95-14, “Trial Judgment”, 3 March 2000.
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11. *Prosecutor v. Delalić et al.*, IT-96-21-T, “Decision on the Motion of the Prosecutor for the Admissibility of Evidence”, 19 January 1998.
<http://www.un.org/icty/celebici/trialc2/decision-e/80119EV21.htm>

12. *Prosecutor v. Natelitic*, IT-98-34-PT, “Decision on the Prosecutor’s Motion to Take Depositions for Use at Trial (Rule 71)”, 10 November 2000.
<http://www.un.org/icty/naletilic/trialc/decision-e/001110.htm>

13. *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, “Decision on Admissibility of Proposed Testimony of Witness DBY”, 18 September 2003.
<http://69.94.11.53/ENGLISH/cases/Bagosora/decisions/180903.htm>

Rules of Procedure and Evidence

1. Rules of Procedure and Evidence of the Special Court, Rule 89 and 92bis, Amended 14 May 2005.