

626)

SCSL-03-01-T  
(21129-21151)

21129



**THE SPECIAL COURT FOR SIERRA LEONE**

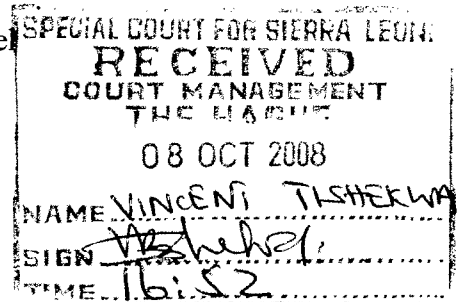
**In Trial Chamber II**

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

**Registrar:** Mr. Herman von Hebel

**Date:** 08 October 2008

**Case No.:** SCSL-2003-01-T



**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

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PUBLIC, WITH CONFIDENTIAL ANNEX A

**DEFENCE OBJECTION TO "PROSECUTION NOTICE UNDER RULE 92bis FOR THE ADMISSION OF EVIDENCE RELATED TO *INTER ALIA* FREETOWN & WESTERN AREA - TF1-098, TF1-104 and TF1-227" AND OTHER ANCILLARY RELIEF**

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**Office of the Prosecutor**

Ms. Brenda J. Hollis

Ms. Leigh Lawrie

**Counsel for Charles G. Taylor**

Mr. Courtenay Griffiths Q.C.

Mr. Terry Munyard

Mr. Andrew Cayley

Mr. Morris Anyah

## I. INTRODUCTION

1. The Defence hereby files its Objection to the Prosecution Notice under Rule 92*bis* for the Admission of Evidence related to *inter alia* Freetown & Western Area. The Defence submits that the Notice is defective in several respects and is therefore objectionable.
2. On 11 September 2008, the Prosecution filed a Notice,<sup>1</sup> under Rule 92*bis*, of its intention to seek the admission of the prior trial transcripts, related exhibits of witnesses, and supplemental statements of TF1-098, TF1-104 and TF1-227 (the “Witnesses”) in other proceedings before the Special Court for Sierra Leone.<sup>2</sup>
3. The witnesses are characterized by the Prosecution as “Core Predominately Crime Base Witnesses” in its Amended Witness List, filed on 7 February 2008.<sup>3</sup> The Prosecution submits that the evidence of these witnesses is relevant as it concerns, *inter alia*, crimes committed in Freetown and the Western Area during the Indictment period, including evidence of burning, unlawful killings, rape, physical violence, looting, abduction, forced labour of civilians, and use of child soldiers.<sup>4</sup> In addition, the witnesses will provide evidence relevant to the chapeau requirements of the crimes charged in the Second Amended Indictment.<sup>5</sup>

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<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-614, “Prosecution Notice Under Rule 92*bis* for the Admission of Evidence Related to *Inter Alia* Freetown & Western Area – TF1-098, TF1-141 & TF1-227”, 03 October 2008 (the “Notice”).

<sup>2</sup> The Annexes are detailed as follows:

Annex A : Trial Transcripts of TF1-098 , 5 April 2005 (AFRC)

Annex B : Supplemental Statement of TF1-098, 11 May 2007

Annex C : Trial Transcripts of TF1-104, 30 June 2005 (AFRC) and 28 November 2005 (RUF)

Annex D : Supplemental Statement of TF1-104, 25 May 2007

Annex E : Trial Transcripts of TF1-227, 8 April 2005 (AFRC)

Annex F : Trial Transcripts of TF1-227, 11 April 2005 (AFRC) and 12 April 2005 (AFRC)

Annex G : Supplemental Statement of TF1-227, 1 November 2007

<sup>3</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-410, Prosecution’s Amended Witness List, 7 February 2008 (“Amended Witness List”).

<sup>4</sup> Notice, para. 16.

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

4. Rule 92bis (A) specifically prohibits the admission of evidence that goes to proof of the acts and conduct of the accused. Furthermore, it has been established in the jurisprudence of this Court that where information goes to a critical element of the Prosecution's case, it is proximate enough to the accused as to require cross-examination, which a Chamber may, in its discretion, order.
5. The Defence files this Objection to the admission of the prior testimony and related exhibits of witnesses TF1-098, TF1-104 and TF1-227 under Rule 92bis, on the grounds that:
  - a) The prior trial transcripts, related exhibits of the witnesses, and particularly Witnesses' supplemental statements, should be submitted under 92ter;
  - b) Some of the evidence is not relevant as it falls outside the Indictment period;
  - c) Some of the evidence reflects the Witnesses' own respective opinions or conclusions; and,
  - d) Most importantly, some of the information is "linkage" in nature and goes to proof of the acts and conduct of the Accused and cannot, therefore, be admitted under Rule 92bis without the opportunity for cross-examination.
6. The Defence therefore submits that:
  - a) The admission of the prior trial transcripts, related exhibits of the Witnesses, and particularly supplemental statements of the Witnesses must be denied.
  - b) Alternatively, if the Trial Chamber does not deny the admission of the prior transcripts and related exhibits under Rule 92bis completely, then only those portions of the Witnesses' prior testimony and related exhibits that are not objected to in Annex A hereto should be admitted into evidence.
  - c) Alternatively, if the Trial Chamber does not deny the admission of the prior transcripts and related exhibits under Rule 92bis completely, then it should exercise its discretion and order the Prosecution to ensure that witnesses TF1-098, TF1-104 and TF1-227 are available for cross-examination.

## II. LEGAL BASIS AND SUBMISSION

### Page Limit For The Present Filing

7. In terms of Article 6(C) of the Practice Direction of Dealing with Documents in The Hague – Sub-Office, adopted on 16 January 2008, “[p]reliminary motions, motions, responses to such motions and replies to such shall not exceed 10 pages or 3000 words, whichever is greater.”
8. In this case, as the Defence combines otherwise two separate filings – its Objection to the Prosecution’s Rule 92bis Notice and an Application for the Rescission of Protective Measures – this rule should not strictly apply. If at, the page limit should double. Alternatively, should it be held to the page limit in Article 6(C), the Defence seeks the Court’s indulgence should the filing exceed the prescribed page limit.

### Prosecution’s Right Of Reply

9. The Defence notes that under Rule 92bis (C), the Prosecution does not have an automatic right to reply to this Objection.<sup>6</sup> Should it be inclined to reply to this Objection, the Prosecution must therefore seek leave of the court.

### Application Should Have Been Made Under Rule 92ter

10. As the Prosecution’s Notice includes information directly related to proof of the acts and conduct of the Accused,<sup>7</sup> it should have been brought under Rule 92ter, which requires the agreement of the parties and that the witness be present for cross-examination. Rule 92ter states:

With the agreement of the parties, a Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or a transcript of evidence given by a witness in proceedings before the Tribunal, under the following conditions:

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<sup>6</sup> *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.22

<sup>7</sup> See Annex A.

- (i) the witness is present in court;
- (ii) the witness is available for cross-examination and any questioning by the Judges; and
- (iii) the witness attests that the written statement or transcript accurately reflects that witness' declaration and what the witness would say if examined.

11. The Prosecution therefore could only resort to Rule 92*bis* where there is no agreement between the parties, or where there is genuinely no information that goes to proof of the acts or conduct of the accused.

#### Objection Under Rule 92*bis*

12. Rule 92*bis*(A) states that, “[i]n addition to the provisions of Rule 92*ter*, 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”. In terms of Rule 92*bis* (B), the information submitted must be reliable and susceptible of confirmation.

13. The prohibition on the admission of information that goes to proof of the acts and conduct of the accused is well-established in international law and has been affirmed in the decisions of this court. For the most part, the phrase, “acts and conduct of the accused” should be given its ordinary meaning: deeds and behaviour of the accused.<sup>8</sup> In *Prosecutor v. Galic*, the ICTY Appeals Chamber sets out various examples of what should be considered acts and conduct of the accused. These include:<sup>9</sup>

- That the accused **committed** (that is, that he personally physically perpetrated) any of the crimes charged himself, or
- That he **planned, instigated or ordered** the crimes charged, or

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<sup>8</sup> *Prosecutor v. Milosevic*, ICTY-02-54-T, “Decision on Prosecution’s Request to Have Written Statements Admitted Under Rule 92*bis*”, 21 March 2002, para. 22.

<sup>9</sup> *Prosecutor v. Galic*, ICTY-98-29-AR73.2, “Decision on Interlocutory Appeal Concerning Rule 92*bis*(C)”, 7 June 2002, paras. 10 and 11 (“*Galic 92bis Appeals Decision*”) (emphasis added) (copy provided with Prosecution Notice).

- That he otherwise **aided and abetted** those who actually did commit the crimes in their planning, preparation or execution of those crimes, or
  - That he was a **superior** to those who actually did commit the crimes, or
  - That he **knew or had reason to know** that those crimes were about to be or had been committed by his subordinates [relevant state of mind], or
  - That he **failed to take reasonable steps to prevent** such acts or to punish those who carried out those acts [omission to act], or
  - That he **participated in a joint criminal enterprise**, or
  - That he shared with the person who actually did commit the crimes charged the **requisite intent** for those crimes (as part of a Joint Criminal Enterprise).
14. Notwithstanding the Prosecution's assertions, that the prior trial transcripts, related exhibits and supplemental statements in the Notice do not go to proof the act and conduct of the Accused<sup>10</sup>, the Defence lists those portions of the relevant transcripts which contain information going to proof of the acts and conduct of the accused, which must not be admitted under Rule 92bis.
15. The Defence notes that the admission of a prior transcript of a witness does not necessarily include exhibits and other documents related to the transcript.<sup>11</sup> Therefore in Annex A, the Defence also objects to the admission of the exhibits related to the evidence of the Witnesses.
16. This Court has also decided that another consideration under Rule 92bis is whether the admission of certain information would unfairly prejudice the opposing party, because in fairness it is too closely linked to the acts and conduct of the Accused to be admitted without the opportunity for cross-examination.<sup>12</sup>

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<sup>10</sup> Notice, para.22.

<sup>11</sup> *Prosecutor v. Martić*, IT-95-11-T, "Decision on Prosecution's Motions for Admission of Transcripts Pursuant to Rule 92bis and of Expert Reports Pursuant to Rule 94bis", 13 January 2006, para. 47.

<sup>12</sup> *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-1049, "Decision on Defence Application for the Admission of the Witness Statement of DIS-129 Under Rule 92bis, or in the Alternative, Under Rule 92ter", 12 March 2008, pg. 2 ("Sesay 92bis Decision"), citing *Prosecutor v. Norman, Fofana, Kondewa*, SCSL-04-14-T-447, "Decision on Prosecutor's Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C)", 14 July 2005, pg. 4 ("CDF 92bis Decision"). See also *Prosecutor v.*

17. Trial Chamber I has also determined that acts of co-perpetrators or subordinates of the Accused<sup>13</sup> are relevant in determining if cross-examination should be allowed, but not in determining if a document should be admitted under Rule 92bis.<sup>14</sup> Thus, there remains a distinction between (a) acts and conduct of those others who commit the crimes, for which the indictment alleges that the accused is individually responsible, and (b) the acts and conduct of the Accused as charged in the Indictment which establish his responsibility for the acts and conduct of those others.<sup>15</sup> The first is admissible under Rule 92bis, the latter is not. Significantly, the **proximity** of the acts and conduct of the alleged subordinate to the Accused, as described in the evidence sought to be admitted, is relevant to this determination.<sup>16</sup> Furthermore, this Trial Chamber has ruled that the absence of cross-examination would unfairly prejudice the Accused and it is in the interest of justice to afford the Accused such an opportunity.<sup>17</sup>
18. More specifically, the Special Court has held that where a witness statement contains information “material to the command responsibility and joint criminal enterprise allegations in the Indictment”, that information goes to a “critical element of the Prosecution’s case” and is therefore “proximate enough to the Accused so as to require cross-examination”, as is the Trial Chamber’s discretion

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*Sesay et al*, SCSL-2004-15-T-559, “Decision on Prosecutor’s Notice Under Rule 92bis to Admit the Transcripts of Witness TF1-334”, 23 May 2006, pg. 3 (“RUF 92bis Decision”).

<sup>13</sup> For purposes of this Objection, and based generally on Prosecution allegations, the following non-exhaustive list of personalities should be considered “subordinates” of Mr. Taylor: Foday Sankoh, Sam Bockarie, Issa Sesay, Morris Kallon, Augustine Gbao, Johnny Paul Koroma, Alex Tamba Brima, Brima Bazzy Kamara, Santigie Borbor Kanu, Benjamin Yeaten, Ibrahim Bah, Daniel Tamba Jungle, Eddie Kanneh, Zig Zag Marzah,.

<sup>14</sup> CDF 92bis Decision, pg. 4.

<sup>15</sup> See Galic 92bis Appeals Decision, para. 9.

<sup>16</sup> Galic 92bis Appeals Decision, para. 13; *Prosecutor v. Martić*, ICTY-95-11-T, “Decision on Prosecution’s Motions for Admission of Transcripts Pursuant to Rule 92bis and of Expert Reports Pursuant to Rule 94bis”, 13 January 2006, para. 20.

<sup>17</sup> *Prosecutor v Taylor*, SCSL-01-556, “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, pg.5, para.4

to order under Rules 26*bis* and 54.<sup>18</sup> This is simply, but crucially, a matter of fairness.<sup>19</sup>

19. The Defence submits that through the admission of the prior trial transcripts and related exhibits of the witnesses, and particularly the supplemental statements of witnesses TF1-098, TF1-104 and TF1-227, without the opportunity for cross-examination, the Prosecution is improperly attempting to introduce into evidence the acts and conducts of alleged subordinates of Mr. Taylor.<sup>20</sup> On the basis of the Accused's statutory right to a fair trial<sup>21</sup>, this can not be allowed. The Defence agrees that the acts and conduct of an alleged subordinate of Mr. Taylor cannot be equated with the acts and conduct of Mr. Taylor himself, and therefore may be admissible. The Defence however reiterates the caveat that this is only if cross-examination of the witness is possible.<sup>22</sup> If the witnesses are not available for cross-examination, then the Defence submits that the relevant portions objected to in Annex A should not be admitted into evidence.

#### The Evidence is Not Entirely Relevant

20. It is trite law that all information tendered into evidence must be relevant.<sup>23</sup> In the Notice the Prosecution highlights the evidence of TF1-098, TF1-104 and TF1-227 relevant to the charges in the Prosecution's Second Amended Indictment.<sup>24</sup> These

<sup>18</sup> Sesay 92*bis* Decision, pgs. 1,3.

<sup>19</sup> Galic 92*bis* Appeals Decision, para. 15; *Prosecutor v. Martić*, ICTY-95-11-T, "Decision on Prosecution's Motions for Admission of Written Evidence Pursuant to Rule 92 bis of the Rules", 16 January 2006, paras. 29, 33.

<sup>20</sup> For instance, TF1-023 alleges that Brigadier Bazzy gave orders to kill people at Mamama. Bazzy is a direct subordinate of the Accused (see AFRC Transcript of 10/3/2005 at pg 36 line 2-29). Moreover, Mamama is in Bombali District, which is outside the prescribed areas in the Indictment for unlawful killings (see Second Amended Indictment, 3 August 2007 ("the Indictment"), paras 10-13).

<sup>21</sup> Article 17, Statute of Special Court of Sierra Leone.

<sup>22</sup> For instance, Trial Chamber I has determined that a witness' testimony that he was released from custody by soldiers after they received a letter from Superman ordering the soldiers to stop the killing is evidence **regarding the acts and conduct of others** who committed the crimes for which the Accused [Gbao] is alleged to be responsible and **not evidence of the acts and conduct of the Accused** which establish his responsibility for the acts and conduct of others. However, in admitting this testimony the Chamber was "Mindful of the fact that the Defence will be given the opportunity to fully cross-examine Prosecution Witness TF1-334". RUF 92*bis* Decision p.5.

<sup>23</sup> Rule 89(C) of the Rules.

<sup>24</sup> Notice, para.16.



include charges for crimes allegedly committed in Freetown and Western Area, during limited time frames:

- i. Terrorizing civilian population between about 21 December 1998 and about 28 February 1999;<sup>25</sup>
- ii. Unlawful killings between about 21 December 1998 and about 28 February 1999;<sup>26</sup>
- iii. Sexual violence between about 21 December 1998 and about 28 February 1999;<sup>27</sup>
- iv. Physical violence between about 21 December 1998 and about 28 February 1999;<sup>28</sup>
- v. Abduction and forced labour between about 21 December 1998 and about 28 February 1999<sup>29</sup>; and,
- vi. Looting between about 21 December 1998 and about 28 February 1999.<sup>30</sup>

21. Therefore any evidence that falls outside these respective temporal jurisdictions must be excluded under Rule 92*bis*,<sup>31</sup> except where such evidence is shown to be relevant under Rule 93(A), and only to that limited extent.

#### Cross Examination

22. In the Notice, the Prosecution submits that should further cross-examination of the witnesses be allowed, limiting it to matters not previously covered would be efficient and would not impact on the fair trial right of the Accused.<sup>32</sup> This assertion is ill-conceived. This Chamber has dismissed similar arguments in other proceedings before it on the basis that the Accused would be prejudiced if judicial

<sup>25</sup> *Prosecutor v Taylor*, SCSL-03-01-263, Public Prosecution's Second Amended Indictment, 29 May 2007 ("the Indictment"), para.8.

<sup>26</sup> The Indictment, para.13.

<sup>27</sup> The Indictment, para.17.

<sup>28</sup> The Indictment, para.21.

<sup>29</sup> The Indictment, para.27.

<sup>30</sup> The Indictment, para.31.

<sup>31</sup> See specific examples in Annex A.

<sup>32</sup> Notice, para. 27.

economy were allowed to take precedence over his fair trial rights.<sup>33</sup> The Prosecution's submission should therefore fail on the same basis.

23. The Prosecution also suggests that it would be superfluous to allow cross-examination in this case because the evidence of the witnesses is crime-based, which the Defence would not seek to challenge.<sup>34</sup> Further, that the evidence has already been tested in cross-examination by defence counsel in *other* proceedings anyway [emphasis added].<sup>35</sup> With respect to the first issue, it is not for the Prosecution to assert with such authority what the Defence may or may not do. The right of cross-examination is the Defence's absolute prerogative in each case.<sup>36</sup> With respect to the second issue, it has been established in this court that a Chamber will only deny cross-examination under those circumstances if the information in the statements tendered under Rule 92*bis* cannot be considered to be so critical to an important issues between the parties in the present proceedings.<sup>37</sup> In this case as the information sought to be tendered goes to the acts and conduct of the Accused as argued above, it is critical to an important issue between the parties and cross-examination must be allowed.
24. Moreover, the Defence submits, the mere fact that a witness has been subjected to cross-examination in previously proceedings does not of itself constitute a sufficient basis to limit cross-examination in this case. It must be shown that the line of defence and scope of the cross examination in the previous proceedings coincides with that of the Defence in the present proceedings. Issues crucial to the present Defence would otherwise go unchallenged. Furthermore, in this case, the

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<sup>33</sup> *Prosecution v. Taylor*, SCSL-03-01-T-458, "Confidential Prosecution Reply to 'Defence Objection to Prosecution Notice under Rule 92*bis* for the Admission of the Prior Testimony of TF1-036 into Evidence'", 7 April 2008, para. 4.

<sup>34</sup> Notice, para. 25.

<sup>35</sup> Notice, para. 26.

<sup>36</sup> The Defence submits that the statements by its Lead Counsel on its attitude towards the cross-examination of crime based witnesses did not and could not amount to a blanket waiver of the right to cross examine all crime based witnesses, as the Prosecution contends. Notwithstanding Prosecution's assertions that the materials are only pertaining to crime base evidence, the Defence observes that it is not the fact and therefore submits this objection.

<sup>37</sup> *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 92*bis*", 15 May 2008, para. 42.

evidence in the supplemental statements of the witnesses has not been challenged at all. The Prosecution's argument therefore simply cannot stand.

#### Request for Previously Granted Protective Measures To Be Rescinded

25. TF1-104 was granted additional protective measures of closed session under 11 May 2005 Decision.<sup>38</sup> In the present application, the Defence requests that those specific measures be rescinded or varied. The Defence submits that there has been a substantial change of circumstances that justifies a reconsideration of the protective measures in place for witness.
26. The context in which the witness will testify in the present proceedings is no longer the same as that in which he testified previously proceedings. The Defence observes the witness TF1-104 testified before the Special Court more than three years ago. By mere passage of time the circumstances under which he testified then has since changed and no longer apply now.
27. The Defence observes that this trial was transferred from Sierra Leone to The Hague due to security concerns. While there is no reasoned decision on the granting of proactive measures to the witness, the Defence notes that one of the main reasons why the Special Court, unlike the ICTR and ICTY, has often been persuaded to extend protection to witnesses before the court has been "the unique feature of the Special Court being located in Sierra Leone, the locus of the alleged offences".<sup>39</sup> Further, the courts also emphasised the fragile security environment that once obtained in Sierra Leone. These considerations however do not apply to the present case.

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<sup>38</sup> *Prosecutori v Sesay et al, and Prosecutor v Brima et al*, SCSL-04-16-T-259, "Decision on Urgent and Confidential Prosecution Application to Vary Protective Measures Regarding Witnesses TF1-104 and TF1-081", 11 May 2005

<sup>39</sup> See for instance, *Prosecutor v. Gbao*, Case No. SCSL-2003-09-PT, Decision on the Prosecution Motion for Immediate Protective Measures for Victims and Witnesses and for Non-Public Disclosure, 10 October 2003, paras. 21-25; *Prosecutor v. Norman et al*, Case No. SCSL-2004-14-T, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 8 June 2004, para. 29.

28. While the Defence accepts that trials held *in situ* require a different and stricter protective measures regime, the converse should generally follow. In this case the transfer of the present trial to The Hague effectively removed the basis upon which the original order was made. Once the trial was transferred to The Hague, the basis upon which protective measures were ordered fell away.
29. Further, to the extent that the witness and his family still reside in the country, the Defence also notes that the security situation in Sierra Leone and West Africa in general is longer as volatile as it was in 2005 when protective measures were ordered with respect to the witness. For instance, general elections were peacefully held in Sierra Leone late last year and new government was duly elected. Further, save for very isolated security incidents, the weekly security advisories from the court's Security Section show a relatively safe and calm environment in Sierra Leone.
30. The Defence submits that the commonly accepted legal principle that the law ceases once the reason for that law ceases should guide the Trial Chamber on this procedural issue. On the basis of foregoing, the Defence therefore calls on the Trial Chamber to rescind the protective measures in place for this witness.
31. The Defence submits that under Rule 78, the preference at the Special Court is for public hearings and open session testimony. This preference is also clear from the rights granted to the Accused in Article 17(2) of the Statute. The right to a public hearing may be only be infringed by the "need to guarantee the utmost protection and respect for victims and witnesses".<sup>40</sup> Given the importance of the Accused's rights to a fair and public hearing, which includes the right to conduct thorough investigations, the use of closed session should remain an "extraordinary

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<sup>40</sup> *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-180, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004, paras. 33-34.

measure”,<sup>41</sup> and should only be granted if less restrictive measures are not sufficient

32. The Defence further avers that, especially considering the time that has lapsed since the current order for closed session for Witness TF1-104 was granted, this order can now be rescinded without material prejudice to the witness. Alternatively, the Defence submits that lesser restrictive measures would strike a balance between the right of the Accused to a public trial and witness protection.
33. The Defence recognises the need to balance the rights of the Accused and the protection of witnesses and submits that in this instance, the rights of the Accused should prevail. The Defence reiterates the Accused’s right to a fair and public hearing and submits that the prevailing protective measures for the witnesses would effectively translate to “in camera” justice for the Accused.<sup>42</sup> In those circumstances, given the changes in the security circumstances of the Witnesses as argued above, the protective measures should be rescinded.

### III. CONCLUSION

34. The Defence requests the Trial Chamber to:
- (A) Dismiss the Prosecution Notice entirely as it should have been filed under Rule 92ter; or
  - (B) Admit into evidence only those portions of the Witnesses’ prior testimony and related exhibits that are not objected to in Annex A.
  - (C) In the event that the Trial Chamber admits the objectionable portions Witnesses’ testimony and related exhibits, the Defence further requests the Trial Chamber to:

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<sup>41</sup> *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-577, Decision on Prosecution Motion for the Testimony of Witnesses TF1-367, TF1-369, TF1-371 to be held in Closed Session and for other Relief of Witness TF1-369, 14 June 2006, pg. 5.

<sup>42</sup> See *Prosecutor v. Tadic*, IT-94-1-T, “Decision on the Prosecutor’s Motion Requesting Protective Measures for Victims and Witnesses”, 10 August 1995, paras 32-35.

- i) Order the Prosecution to make witnesses TF1-098, TF1-104 and TF1-227 available for cross-examination; and
- ii) Vary or rescind the protective measures previously granted to TF1-104 as the court sees fit in order to balance the rights of the Accused and the protection of the witness.

Respectfully Submitted,



SCUPS CHARLES

f. **Curtis Griffiths Q.C.**

**Lead Counsel for Charles G. Taylor**

Dated this 08<sup>th</sup> Day of October 2008

The Hague, The Netherlands.

## Table of Authorities

### SCSL

*Prosecutor v Taylor*, SCSL-03-01-263, “Public Prosecution’s Second Amended Indictment”, 29 May 2007

*Prosecutor v. Taylor*, SCSL-03-01-T-410, Prosecution’s Amended Witness List, 7 February 2008

*Prosecution v. Taylor*, SCSL-03-01-T-458, “Confidential Prosecution Reply to ‘Defence Objection to Prosecution Notice under Rule 92bis for the Admission of the Prior Testimony of TF1-036 into Evidence’”, 7 April 2008

*Prosecutor v Taylor*, SCSL-01-556, “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-03-01-T-614, “Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Freetown & Western Area – TF1-098, TF1-141 & TF1-227”, 03 October 2008

*Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-180, Decision on Prosecution Motion for Modification of Protective Measures for Witnesses, 5 July 2004

*Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-577, Decision on Prosecution Motion for the Testimony of Witnesses TF1-367, TF1-369, TF1-371 to be held in Closed Session and for other Relief of Witness TF1-369, 14 June 2006

*Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-1049, “Decision on Defence Application for the Admission of the Witness Statement of DIS-129 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 Sesay et.al, and Prosecutor v Brima et.al*, SCSL-04-16-T-259, “Decision on Urgent and Confidential Prosecution Application to Vary Protective Measures Regarding Witnesses TF1-104 and TF1-081”, 11 May 2005

**ICTY**

*Prosecutor v. Milosevic*, ICTY-02-54-T, “Decision on Prosecution’s Request to Have Written Statements Admitted Under Rule 92bis”, 21 March 2002

*Prosecutor v. Galic*, ICTY-98-29-AR73.2, “Decision on Interlocutory Appeal Concerning Rule 92bis(C)”, 7 June 2002

*Prosecutor v. Martić*, IT-95-11-T, “Decision on Prosecution’s Motions for Admission of Transcripts Pursuant to Rule 92bis and of Expert Reports Pursuant to Rule 94bis”, 13 January 2006





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Court Management Section – Court Records

**CONFIDENTIAL DOCUMENT CERTIFICATE**

This certificate replaces the following confidential document which has been filed in the Confidential Case File.

Case Name: **The Prosecutor – v- Charles Ghankay Taylor**  
Case Number: **SCSL-03-01-T**  
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- Application
- Order
- Indictment
- Motion
- Objection**
- Correspondence

Document Title:

**PUBLIC WITH CONFIDENTIAL ANNEX A – DEFENCE OBJECTION TO  
“PROSECUTION NOTICE UNDER RULE 92BIS FOR THE ADMISSION OF  
EVIDENCE RELATED TO INTER ALIA FREETOWN & WESTERN AREA – TF1-  
098, TF1—104 AND TF1-227” AND OTHER ANCILLARY RELIEF**

Name of Officer:

Vincent Tishekwa

Signed: 