

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

RECALLING, NOTING AND CONSIDERING that:

1. Rule 115 of the Rules of Procedure and Evidence (“Rules”) provides for the possible admission of additional evidence on appeal that was not available at the trial where the party seeking to admit such new evidence demonstrates that the criteria as set out in the Rule are fulfilled.²
2. On 19 July 2012, the Defence for Charles Taylor (“Taylor”) first indicated its intent to file a motion pursuant to Rule 115 for the admission of new evidence on appeal in connection with Taylor’s Grounds 36, 37 and 38.³ On 17 August 2012, Taylor confirmed that he still intends to move for the admission of additional evidence and further described in detail, by way of proffer, the evidence that he intends to submit.⁴ On 1 October 2012, Taylor repeated his “notice of [his] intent to present additional evidence to the Appeals Chamber as per Rule 115 of the Rules in support of [some] grounds [of appeal]”⁵ in his submissions filed pursuant to Rule 111. Taylor has now given notice of intent to move for the admission of additional evidence relevant to Grounds 7, 8, 9, 15, 16, 23, 32 and 33, for a total now of 11 grounds of appeal.⁶
3. As peculiar as it may seem that evidence relevant to one-fourth of the 45 appeal grounds raised by Taylor was not available during the five years of trial, and has only become available in the past few months, we trust that the notice has been given in good faith and is not simply speculative. Having identified the present availability of such evidence as would support good faith notice for filing of a 115 motion, Taylor of course has the right to apply to present such evidence.
4. Once the “additional evidence” has been identified and declared by a party, as it has in this matter, it is at the discretion of the Court to specify, consistent with its obligation to avoid undue delay, the deadline for filing the respective Rule 115 motion. A party has no right to intentionally

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

² Rule 115. See *Prosecutor v. Sesay, et al.*, SCSL-04-15-A-1311, Pre-Hearing Judge, Decision on Gbao Motion to Admit Additional Evidence Pursuant to Rule 115, 5 August 2009, para. 6.

³ *Prosecutor v. Taylor*, SCSL-03-01-A-1301, Notice of Appeal of Charles Ghankay Taylor, 19 July 2012, para. 104 (“Taylor Notice of Appeal”).

⁴ *Prosecutor v. Taylor*, SCSL-03-01-A-1319, Submission in Response to the Order for Clarification of 15 August 2012, 17 August 2012 (“Clarification Submission”).

⁵ *Prosecutor v. Taylor*, SCSL-03-01-A-1236, Appellant’s Submissions of Charles Ghankay Taylor, 1 October 2012, para. 16 (“Taylor Appeal”).

delay the filing of Rule 115 motions in order to lengthen the proceedings or limit the time available to the opposing party to identify rebuttal material.⁷

5. Under our Rules, a Rule 115 motion shall be filed “not later than” the deadline for the filing of Submissions in Reply pursuant to Rule 113.⁸ By setting the ultimate deadline as it has, Rule 115 takes into account that the moving party’s decision as to the necessity for the additional evidence it alleges was previously unavailable may depend on the non-moving party’s Response pursuant to Rule 112.

6. In order to ensure that the proceedings are not unduly delayed, the scheduling of the Prosecution’s Response under Rule 112 to Taylor’s submissions on Grounds 7, 8, 9, 15, 16, 23, 32, 33, 36, 37 and 38, and Taylor’s Submissions in Reply to that Response under Rule 113, shall be expedited. This measure is necessary to assist preparations for a fair and expeditious hearing.

7. Deadlines for Submissions and Replies for all other Grounds of Appeal remain unchanged.

ACCORDINGLY, pursuant to Rules 54, 106(C), 109(B)(i), 112, 113 and 115:

- (i) **ORDERS** the Prosecution to file its Rule 112 Response to Taylor’s Grounds 7, 8, 9, 15, 16, 23, 32, 33, 36, 37 and 38 no later than 26 October 2012;
- (ii) **ORDERS** Taylor to file by no later than 2 November 2012 his Rule 113 Submissions in Reply to the Prosecution’s Rule 112 Response to Taylor’s Grounds 7, 8, 9, 15, 16, 23, 32, 33, 36, 37 and 38, and any Motion pursuant to Rule 115;
- (iii) **ORDERS** that the Prosecution’s Response to such motion, if any, be filed no later than 14 November 2012 and the Defence’s Reply, if any, be filed no later than 16 November 2012; and
- (iv) **GIVES NOTICE** that in the event the Defence prevails on its motion to present additional evidence, and the Chamber “authorize[s] the presentation of any such additional evidence and any rebuttal material,”⁹ the authorized evidence shall be

⁶ Taylor Appeal, para. 16.

⁷ Contrary to Taylor’s submission, Rule 115 assists the Appeals Chamber to ensure a fair trial, not to give a party the opportunity to tactically surprise the opposing party with new evidence. *See* Clarification Submission, para. 9. In any event, rebuttal material is not additional evidence subject to the provisions of Rule 115. *See Prosecutor v. Kvočka, et al.*, International Criminal Tribunal for the former Yugoslavia, IT-98-30/1-A, Appeals Chamber, Decision on Prosecution’s Motion to Adduce Rebuttal Material, 12 March 2004.

⁸ Rule 115(A).

⁹ Rule 115(B).

presented at a hearing to be scheduled in The Hague, The Netherlands, for 28 November 2012 and such subsequent days as may be necessary.

Done in The Hague, The Netherlands, this 4th day of October 2012.



Hon. Justice Shireen Avis Fisher
Pre-Hearing Judge

