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SCSL-04-15-T
(18400 - 18408)

18400

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: 23 March 2006

THE PROSECUTOR

Against

Issa Hassan Sesay
Morris Kallon
Augustine Gbao

Case No. SCSL-04-15-T

PUBLIC

**PROSECUTION NOTICE UNDER RULE 92bis TO ADMIT THE TRANSCRIPTS OF
TESTIMONY OF TF1-156 AND TF1-179**

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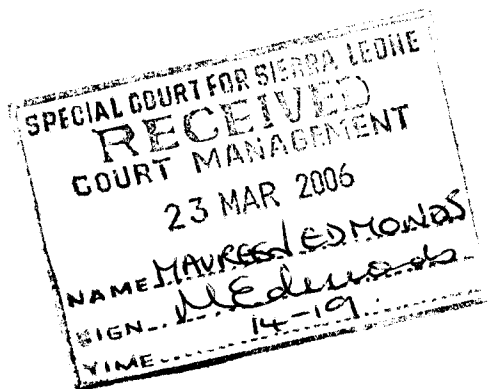
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I. INTRODUCTION

1. The Prosecution gives notice pursuant to Rule 92bis of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (the “Rules”), of its intention to submit the transcripts of evidence of TF1-156 and TF1-179 (the “Two Witnesses”), whose testimony was given before Trial Chamber II in *The Prosecutor v Alex Tamba Brima et al*¹.
2. Upon admission of the transcripts into evidence the Prosecution would not seek to examine-in-chief the Two Witnesses. The Prosecution takes no objection to cross-examination of the particular witnesses that are the subject of this Notice. If the Two Witnesses are cross-examined, the Prosecution relies on its right, stated in Rule 85(B),² to re-examine the Two Witnesses where such re-examination would be permitted as if the witnesses had given all of their evidence *viva voce*.
3. A list of the Transcripts of the testimony TF1-156 and of TF1-179 and their Court Management page numbers are shown at Appendices A and B respectively.

II. PROCEDURAL HISTORY

4. On 26 April 2004, the Prosecution filed its original witness list pursuant to the order of the Trial Chamber.³ The Two Witnesses are included on the original witness list.
5. The Two Witnesses testified before Trial Chamber II in *The Prosecutor v Alex Tamba Brima et al*: TF1-156 on 26 September 2005; TF1-179 on 27 July 2005. The transcripts of the testimony of the Two Witnesses in that case were disclosed to the Defence and

¹TF1-156: SCSL-2004-16-T, Transcript of 26 September 2005, pp. 33-67 and TF1-179: SCSL-2004-16-T, Transcript of 27 July 2005, pp. 31- 74.

² Rule 85(B) states: “Examination-in-chief, cross-examination and re-examination shall be allowed in each case. It shall be for the party calling a witness to examine him in chief, but a Judge may at any stage put any question to the witness.”

³ *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.

filed with Trial Chamber I on 10 February 2006.⁴

III. ARGUMENTS

6. Rule 92*bis* of the Rules provides that :

Rule 92*bis* : Alternative Proof of facts (amended 14 March 2004)

(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.

The purpose of Rule 92*bis*, is to facilitate a fair, efficient and expeditious trial.⁵

7. 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 which are consonant with the spirit of the statute and the general principles of law".

8. Commenting on the effect of Rule 92*bis*, the Appeals Chamber has stated:

The effect of the SCSL Rule is to permit the reception of "information"-assertions of fact (but not opinion) made in documents 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.⁶ [italics in original]

⁴ *Prosecutor v Issa Hassan Sesay et al*, SCSL-04-15-T-478, "Confidential Prosecution Witness Statements Seventh Trial Session", 10 February 2006; TF1-179: pages 17773-17818 and TF1-156: pages 17850-17886.

⁵ *Prosecutor v Sam Hinga Norman et al*, SCSL-04-14-T-398, "Fofana – Decision on Appeal Against Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence", ("*Fofana Appeal Decision on Judicial Notice*") 16 May 2005, para. 26; Separate Opinion of Justice Robertson, paras. 13 and 14.

⁶ *Id.*, para. 26.

The Appeals Chamber made it clear that: "...the weight and reliability of such 'information' admitted via Rule 92bis will have to be assessed in light of all the evidence in the case."⁷

9. The provisions of Rule 92bis of the Special Court Rules deliberately differ from Rule 92bis of the ICTY and ICTR Rules. The Appeals Chamber of the Special Court has noted that :

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....⁸

10. Whilst Rule 92bis of the ICTY and ICTR expressly limits the admission into evidence of the transcripts of evidence given by a witness in other proceedings to those which do not go to proof of the acts and conduct of the accused, the Special Court Rules do not have a similar restriction on the nature of the evidence that can be admitted under Rule 92bis. All that is required under the Special Court's Rule 92bis is that the evidence sought to be admitted is relevant and that its reliability is susceptible to confirmation.

11. In two recent decisions in the case of *Prosecutor v Issa Sesay et al.*, this Trial Chamber allowed the admission into evidence of the transcripts and related exhibits of witness testimony from the case of *Prosecutor v Alex Tamba Brima et al.*⁹ The Prosecution submits that the current Notice should be accepted on the same basis. This Notice is intended to expedite the trial, and it will assist in achieving a fair, efficient and timely trial. This Trial Chamber in its Decision of 9 November 2005 recognised that "it is in the interest of justice that the trial proceeds fairly and expeditiously...."¹⁰ The Prosecution submits that expedient and fair trials are promoted where sworn testimony before the

⁷ *Fofana Appeal Decision on Judicial Notice*, para. 27. See also Separate Opinion of Justice Robertson, para. 14.

⁸ *Fofana Appeal Decision on Judicial Notice*, para. 26. See also the Separate Opinion of Justice Robertson, paras. 13 and 14.

⁹ *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; *Prosecutor v Issa Hassan Sesay et al*, SCSL-04-15-T-48, "Decision on the Prosecution Confidential Notice under 92bis to Admit the Transcripts of Testimony of TF1-081", 21 February 2006.

¹⁰ *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 2003, p. 3.

tribunal, which includes prior cross-examination, is admitted in a subsequent trial in lieu of the Prosecution carrying out a second examination-in-chief.

12. The evidence the Prosecution seeks to admit pursuant to Rule 92bis is background evidence of the matters alleged in the Indictment as opposed to evidence directly implicating any of the Accused persons in the perpetration of a crime.¹¹ Therefore, the evidence does not go to prove acts and conduct of the Accused. Examples of such 'background' evidence include evidence demonstrating the occurrence of crimes in a certain location, or in a widespread or systematic manner.
13. The transcripts referred to in this notice are relevant and susceptible of confirmation. The Two Witnesses talk of events which they witnessed or heard of; they can be cross-examined, and corroboration can be sought through other witnesses. 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.¹²
14. The transcripts of TF1-156 and TF1-179 contain testimony about physical violence committed in Sierra Leone by the AFRC/RUF which evidence is relevant to the allegations stated in paragraphs 45-53, 61-67, 69-76 and 77-82 of the Indictment and is susceptible of confirmation.

¹¹ *Prosecutor v Natelitic*, ICTY-98-34, "Decision on the Prosecutor's Motion to Take Depositions for Use at Trial (Rule 71)" 10 November 2000, paras. 17-20.

¹² *Fofana-Appeal Decision on Judicial Notice*, (majority decision) para. 27.

IV. CONCLUSION

16. The Prosecution gives notice of its intention to tender in evidence, in lieu of examination-in-chief of the Two Witnesses, the following pages of transcript from the proceedings of *The Prosecutor v Alex Tamba Brima et al*:

- a. TF1-156 – transcript of 26 September 2005, pp. 33- 67; and
- b. TF1-179 - transcript of 27 July 2005, pp. 31- 74.

17. With respect to these particular witnesses the Prosecution does not object to cross-examination by the Accused, however, should there be cross-examination the Prosecution reserves its right to re-examine.

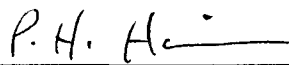
Filed in Freetown,

23 March 2006

For the Prosecution,



James C. Johnson



Peter Harrison

Index of Authorities

A. Orders Decisions and Judgments

1. *Prosecutor v Sam Hinga Norman et al*, 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.
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 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>

Rules of Procedure and Evidence

1. Rules of Procedure and Evidence of the Special Court, Rule 85(B), 89(B), 89(C), 92bis (A), (B) and (C), Amended 14 May 2005.

C. Publications

1. ICTR Press Release ICTR/INFO-9-13-22.EN dated 8 July 2002, p.3 <http://www.ictt.org/ENGLISH/pressbrief/2002/brief9-13-22.htm>

APPENDIX "A"

Transcript of evidence of TF1- 156 before Trial Chamber II in <i>The Prosecutor v Alex Tamba Brima et al</i> dated 26 September 2005 pages 33-67.	<i>Prosecutor v Issa Hassan Sesay et al</i> , SCSL-04-15-T-478, pages 17850-17886
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APPENDIX "B"

Transcript of evidence of TF1- 179 before Trial Chamber II in <i>The Prosecutor v Alex Tamba Brima et al</i> dated 27 July 2005, pp. 31- 74.	<i>Prosecutor v Issa Hassan Sesay et al</i> , SCSL-04-15-T-478, pages 17773-17818
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