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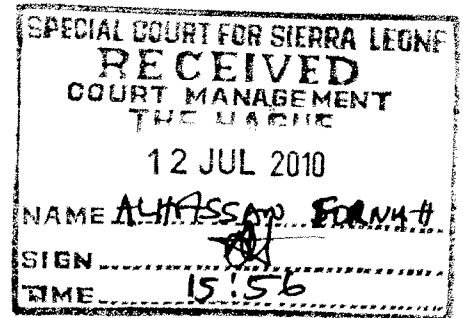
**SPECIAL COURT FOR SIERRA LEONE  
OFFICE OF THE PROSECUTOR**

**TRIAL CHAMBER II**

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

Registrar: Ms. Binta Mansaray

Date filed: 12 July 2010



**THE PROSECUTOR**

**Against**

**Charles Ghankay Taylor**

Case No. SCSL-03-01-T

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**PROSECUTION OBJECTION TO RULE 92bis STATEMENTS**

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Office of the Prosecutor:

Ms. Brenda J. Hollis  
Mr. Nicholas Koumjian  
Ms. Kathryn Howarth

Counsel for the Accused:

Mr. Courtenay Griffiths, Q.C.  
Mr. Terry Munyard  
Mr. Morris Anyah  
Mr. Silas Chekera  
Mr. James Supuwood

**I. INTRODUCTION:**

1. On Monday 5 July 2010 the Defence began the examination-in-chief of DCT-172, Issa Hassan Sesay (“Issa Sesay”). On the same day, the Defence disclosed to the Prosecution a set of six statements of five individuals other than the witness, which they propose to use during the examination-in-chief of DCT-172.<sup>1</sup>
2. The six witness statements appear to be summaries of interviews conducted by members of Issa Sesay’s Defence team in relation to his case before Trial Chamber I of the Special Court for Sierra Leone “Special Court”. Three of the five persons whose statements were disclosed testified under oath for Issa Sesay in the RUF case.<sup>2</sup>
3. The Prosecution objects to the use and/or admission of these witness statements in lieu of the oral testimony of these witnesses. Although the Defence has not filed a Motion for the admission of these statements under Rule 92*bis*, these statements fall squarely within this Rule and therefore are subject to the requirements and restrictions of the Rule. The Prosecution objects to the admission of these statements because the requirements of Rule 92*bis* cannot be met. The Prosecution further opposes the use of such material in connection with the testimony of Issa Sesay as such use is without legal basis.

**II. APPLICABLE LAW:**

4. Rule 92*bis* “Alternative Proof of Facts” provides that:
  - (A) In 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 the acts and conduct of the accused.
  - (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.

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<sup>1</sup> These were initially handed to the Prosecution Case Manager in court but were subsequently filed by the Defence as *Prosecutor v. Taylor*, SCSL-03-01-T-1001, “Public with Annex A Defence Notification of Additional Potential Exhibits to be Used in Connection to DCT-172”, 5 July 2010.

<sup>2</sup> Witness statements of DCT-436 Daniel Opande, DCT-437, Ali Hasan, and DCT-438 Ahmad Tejan Kabbah.

5. The Appeals Chamber of the Special Court has stated that:

“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”.<sup>3</sup>

6. Thus Rule 92*bis* does not allow for the admission of opinion evidence. Notably, Trial Chamber II during the course of these proceedings has relied upon this jurisprudence to refuse to admit opinion evidence under Rule 92*bis*.<sup>4</sup>

### III. ARGUMENT:

#### *Objections to the use and/or admissibility of the six witness statements:*

7. These six witness statements can only be characterized as Rule 92*bis* materials as they are statements that the Defence is seeking to use in lieu of oral testimony from the witnesses. As held by the Appeals Chamber, “the procedural scheme established by Rules 89(C) and 92*bis* does not allow a party to circumvent the stringency of the latter rule by simply tendering a document under the former”.<sup>5</sup> Thus the Defence cannot circumvent Rule 92*bis* by simply tendering the document – presumably under Rule 89(C), during DCT-172’s evidence-in-chief.
8. These witness statements fail to satisfy the requirements of the Rule. The six witness statements in large part amount to good character references in respect of Issa Sesay. As such, all six of these statements contain impermissible opinion evidence. Moreover, not only do these witness statements contain the witnesses’ impermissible opinion and assessment in relation to the character of Issa Sesay, they also include impermissible assessments and opinions in relation to the character and actions of other persons such as the Accused Charles Taylor, Foday Sankoh and other RUF commanders.
9. Taking the statements in turn, the witness statement of Alpha Konare (DCT-434) is, in essence, a good character statement in respect to Issa Sesay. In addition, the statement

<sup>3</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-2004-14AR13, “Fofana – Decision on Appeal Against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”, 16 May 2005, para. 26, *emphasis added*.

<sup>4</sup> See for example, *Prosecutor v. Taylor*, SCSL-03-01-T-745, “Decision on Prosecution Motion for Admission of BBC Radio Broadcasts”, 25 February 2009, para. 12 citing the above mentioned Appeals Chamber Decision, and para. 27 where the Trial Chamber disallowed parts of a BBC Clip dated 4 January 1999 because the Trial Chamber considered that parts of the Clip reflected the reporter’s own opinions rather than facts” and the Trial Chamber stated that “[s]uch opinion evidence is not admissible, although the remainder of the information in the Clip is relevant”.

<sup>5</sup> *Prosecutor v Taylor*, SCSL-03-01-AR73-721, “Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’”, 6 February 2009, para. 33.

also contains Alpha Konare's opinion and assessment of other persons involved with the implementation of the Lomé Accord and the peace process in Sierra Leone, including Foday Sankoh, Sam Bockarie and the Accused. With respect to the Accused, it opines that "[a]fter the Lomé Accord, the ECOWAS Heads of State – which included...President Taylor of Liberia – were keen to see the peace agreement succeed".<sup>6</sup> The witness statement of Oluyemi Adeniji (DCT 435) similarly contains Oluyemi Adeniji's opinion and assessment of both Issa Sesay and Foday Sankoh, in relation to their involvement with the implementation of the Lomé Accord. His statement at page 2 also includes the purported opinions of his staff who met with Issa Sesay. The witness statement of Daniel Opande (DCT 436) likewise contains Daniel Opande's views and assessments of various individuals involved in the implementation of the peace process and disarmament in Sierra Leone, including Foday Sankoh, General Jetley, Issa Sesay, Gibril Massaquoi, and Mike Lamin. The witness statement of Ali Hassan (DCT 437) expresses very directly Ali Hassan's opinion in relation to Issa Sesay,<sup>7</sup> and also contains his views and assessments of other RUF commanders, in particular in relation to the disarmament process in Sierra Leone, including Gibril Massaquoi, Bai Bureh, Dennis Mingo *aka* Superman, Morris Kallon and Base Marine. Finally, the witness statement of Ahmad Tejan Kabbah (DCT 438) contains opinion and assessment in relation to the character of Foday Sankoh and Issa Sesay. The opinions set forth in these statements are not permissible under Rule 92*bis* and should not be admitted into evidence.

10. Should the Trial Chamber nonetheless be inclined to admit the evidence of these individuals pursuant to Rule 92*bis*, the Prosecution objects to the use of statements in lieu of prior sworn testimony of witnesses DCT-436, 437, and 438. These witnesses testified on behalf of Issa Sesay during the RUF case, where their testimony was under oath and subjected to cross-examination. The sworn testimony of these three witnesses should be used rather than the un-sworn witness statements.
11. Further, should the Trial Chamber be minded to nonetheless allow these Rule 92*bis* statements, because they relate to a subordinate in close proximity to the Accused, the

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<sup>6</sup> Witness statement of Alpha Konare, pg 1, third para.

<sup>7</sup> Notably at pg 10 of his witness statements one of the sub-headings is entitled "My opinion of Mr. Sesay".

Prosecution requests and should be granted the right to cross-examine the witnesses.<sup>8</sup> Such cross-examination will safeguard the fairness of the proceedings by allowing the evidence to be tested under oath. However, should the Trial Chamber allow the prior sworn testimony of Ahmad Tejan Kabbah and Daniel Opande in place of their unsworn statements, the Prosecution would not request that these two witnesses be brought for cross-examination.

*Use / admission of the witness statements through the evidence-in-chief of DCT-172 is without legal basis*

12. The Prosecution objects to the use of these statements or prior sworn testimony in connection with the direct examination of witness Issa Sesay. There is no legal basis for so doing. As discussed above, the statements and prior sworn testimony amount in large part to third-party good character references in relation to Issa Sesay. The Defence ought not to be permitted to use good character references, which are usually appropriate at the sentencing phase, during the course of the examination-in-chief of a witness. Nor should the Defence be permitted to use them during the testimony of this witness to attempt to bolster the testimony of the witness. They may not be used to clarify or explain the witness' testimony, it is for Issa Sesay to do that, not others speaking through un-sworn statements. Issa Sesay appears here as a witness, not as an accused for whom the rules of evidence may perhaps be relaxed were he testifying to meet the charges against him.

#### **IV. CONCLUSION:**

13. The six witness statements are materials falling within the ambit of Rule 92bis. For the reasons discussed above, the statements should not be permitted to be used and / or admitted into evidence. Further, if the Trial Chamber determines such Rule 92bis material should be allowed, the Trial Chamber should allow only the prior sworn testimony of witnesses DCT 436, 437, 438, not the disclosed statements. In addition, should the Trial Chamber allow the use of this information in this written form, the

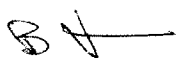
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<sup>8</sup> *Prosecutor v Taylor*, SCSL-03-01-T-556, "Decision on Prosecution Notice under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Kenema District and on Prosecution Notice Under Rule 92bis for the Admission of the Prior testimony of TF1-036 into Evidence", 15 July 2008, especially at pgs. 4 – 5.

Prosecution should be allowed to call the witnesses for cross examination, except that the Prosecution will not seek to cross examine former President Kabbah and Daniel Opande in the event their prior sworn testimony, not unsworn statements, are allowed by the Trial Chamber.

14. Finally, should the Trial Chamber determine such Rule 92*bis* evidence may be allowed, the Defence should not be permitted to use the statements in connection with the direct examination of Issa Sesay.

Filed in The Hague,  
12 July 2010,  
For the Prosecution,



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Brenda J. Hollis,  
The Prosecutor

## INDEX OF AUTHORITIES

### SCSL

#### *Prosecutor v. Taylor*

*Prosecutor v. Taylor*, SCSL-03-01-T-1001, Public with Annex A Defence Notification of Additional Potential Exhibits to be Used in Connection to DCT-172, 5 July 2010.

*Prosecutor v. Taylor*, SCSL-03-01-T-745, Decision on Prosecution Motion for Admission of BBC Radio Broadcasts, 25 February 2009.

*Prosecutor v Taylor*, SCSL-03-01-AR73-721, Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’, 6 February 2009.

*Prosecutor v Taylor*, SCSL-03-01-T-556, “Decision on Prosecution Notice under Rule 92*bis* for the Admission of Evidence Related to *Inter Alia* Kenema District and on Prosecution Notice Under Rule 92*bis* for the Admission of the Prior testimony of TF1-036 into Evidence”, 15 July 2008.

#### *Prosecutor v. Norman et al.*

*Prosecutor v. Norman, Fofana and Kondewa*, SCSL-2004-14AR13, Fofana – Decision on Appeal Against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence, 16 May 2005.