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SCSL-03-01-T  
(31390-31416)

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**THE SPECIAL COURT FOR SIERRA LEONE**

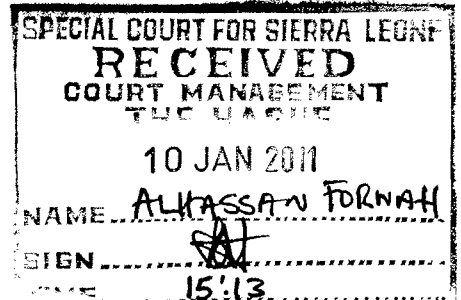
**Appeals Chamber**

**Before:** Justice Jon M. Kamanda, Presiding  
Justice Emmanuel Ayoola  
Justice Renate Winter  
Justice George Gelaga King  
Justice Shireen Avis Fisher

**Registrar:** Ms. Binta Mansaray

**Date:** 10 December 2010

**Case No.:** SCSL-03-01-T



**THE PROSECUTOR**

-v-

**CHARLES GHANKAY TAYLOR**

**PUBLIC, WITH REDACTIONS**

**NOTICE OF APPEAL AND SUBMISSIONS REGARDING THE DECISION ON THE  
DEFENCE MOTION FOR ADMISSION OF DOCUMENTS AND DRAWING OF AN ADVERSE  
INFERENCE RELATING TO THE ALLEGED DEATH OF JOHNNY PAUL KOROMA**

**Office of the Prosecutor:**

Ms. Brenda J. Hollis

**Counsel for Charles G. Taylor:**

Mr. Courtenay Griffiths, Q.C.  
Mr. Terry Munyard  
Mr. Morris Anyah  
Mr. Silas Chekera  
Mr. James Supuwood  
Ms. Logan Hambrick, Legal Assistant

## NOTICE OF APEAL

### I. INTRODUCTION

1. The Defence hereby files its Notice of Appeal, followed by its Submissions.
2. The Trial Chamber granted the Defence leave to appeal in its 2 December 2010 *Decision on Defence Motion Seeking Leave to Appeal the Decision on the Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma*.<sup>1</sup>
3. The Decision that is the subject of this appeal is the Trial Chamber's 11 November 2010 *Decision on Public with Confidential Annexes A-D Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma*.<sup>2</sup> The majority of the Trial Chamber, Justice Julia Sebutinde dissenting, dismissed the Defence Motion in its entirety.

### II. SUMMARY OF THE PROCEEDINGS REGARDING THE APPEALED DECISION

4. There are two sets of pleadings (in addition to those leading up to the Certification) which are relevant to the present appeal: a motion for disclosure of exculpatory material under Rule 68(B)<sup>3</sup> and a motion for admission of documents pursuant to Rule 92bis.<sup>4</sup>

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<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1131, Decision on Defence Motion Seeking Leave to Appeal the Decision on the Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 2 December 2010 (“**Certification**”). See also *Prosecutor v. Taylor*, SCSL-03-01-T-1122, Defence Motion Seeking Leave to Appeal the Decision on the Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 15 November 2010; *Prosecutor v. Taylor*, SCSL-03-01-T-1124, Prosecution Response to Defence Motion Seeking Leave to Appeal the Decision on the Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 19 November 2010; *Prosecutor v. Taylor*, SCSL-03-01-T-1127, Defence Reply to Prosecution Response to Defence Motion Seeking Leave to Appeal the Decision on the Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 24 November 2010.

<sup>2</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1119, Decision on Public with Confidential Annexes A-D Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 11 November 2010 (“**Admission Decision**”).

<sup>3</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1088, Public with Confidential Annexes A-D Defence Motion for Disclosure of Exculpatory Information Relating to DCT-032, 24 September 2010 (“**Motion for**

5. On 24 September 2010, the Defence filed a motion requesting an order for disclosure of exculpatory information relating to the alleged death of Johnny Paul Koroma, which had been withheld by the Prosecution. On 20 October 2010, the Trial Chamber issued a decision ordering that the Prosecution must disclose forthwith, pursuant to Rule 68(B):
  - a. The details and results of an investigation that was conducted by the Prosecution into the alleged death of Johnny Paul Koroma (“Johnny Paul” or “JPK”) including DNA tests on corpses that were exhumed during that investigation;
  - b. Records of all disbursements that were made to Defence witness DCT-032; and
  - c. An original duplicate copy of the letter of indemnity against the prosecution before the Special Court for Sierra Leone written by Stephen Rapp to Defence witness DCT-032.<sup>5</sup>
  
6. The Prosecution consequently made the ordered disclosure on 21 October 2010.<sup>6</sup>
  
7. In the “Background” section of the Disclosure Decision, the Trial Chamber succinctly and clearly sets out the significance of the exculpatory information when viewed against the allegations in the Prosecution case against the Accused, Mr Taylor. Part of that background is reproduced below for ease of reference:

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**Disclosure**”). See also *Prosecutor v. Taylor*, SCSL-03-01-T-1096, Prosecution Response to ‘Public with Confidential Annexes A-D Defence Motion for Disclosure of Exculpatory Information Relating to DCT-032’, 1 October 2010 (“**Response to Disclosure**”) and *Prosecutor v. Taylor*, SCSL-03-01-T-1098, Public with Confidential Annex A Defence Reply to Prosecution Response to Defence Motion for Disclosure of Exculpatory Information Relating to DCT-032, 5 October 2010 (“**Reply to Disclosure**”).

<sup>4</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1108, Public with Confidential Annexes A-D Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 27 October 2010 (“**Motion for Admission**”); *Prosecutor v. Taylor*, SCSL-03-01-T-1112, Prosecution Response to Public with Confidential Annexes A-D Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 2 November 2010 (“**Response to Admission**”); *Prosecutor v. Taylor*, SCSL-03-01-T-1114, Public with Confidential Annex One Defence Reply to Confidential Prosecution Response to Public with Confidential Annexes A-D Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 4 November 2010 (“**Reply to Admission**”).

<sup>5</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1104, Decision on Public with Confidential Annexes A-D Defence Motion for Disclosure of Exculpatory Information Relating to DCT-032, 20 October 2010 (“**Disclosure Decision**”).

<sup>6</sup> Admission Decision, para. 1, citing Motion for Admission, Annexes A-C.

“As part of its case against the Accused, the Prosecution has sought to adduce evidence of the actions of the Accused ‘after the Indictment period’, in particular, that he systematically ‘murdered or eliminated persons who were in his inner circles and who were aware of the crimes perpetrated by the Accused; in order to prevent their turning against him and exposing him during his trial, which conduct the Prosecution maintains, is indicative of ‘consciousness of his criminal responsibility’ for the crimes charged in the Indictment. One such individual who the Prosecution, through its evidence, maintains was murdered by or on the orders of Mr. Taylor in order to silence him is Johnny Paul Koroma, the former head of the AFRC/RUF Junta in Sierra Leone. In this regard, a number of Prosecution witnesses including Moses Blah, a former Vice-President of Liberia, Joseph ‘Zig Zag’ Marzah (TF1-399) and a protected Witness, TF1-375, testified regarding the circumstances of Johnny Paul Koroma’s alleged murder. While none of the said witnesses actually witnessed the alleged murder or saw the body of Johnny Paul Koroma, they gave evidence implicating a number of alleged subordinates of the Accused in the murder of Johnny Paul Koroma and in particular, the individual referred to in [the Motion for Disclosure] as Witness DCT-032, as the person or one of the persons who actually carried out the killing in Foya, Liberia, in 2003, on orders of the Accused.

As part of its investigations into the alleged death of Johnny Paul Koroma, the Prosecution contacted and interviewed DCT-032 in May, June, July and October 2008. DCT-032 provided the Prosecution with information about the alleged death of Johnny Paul Koroma, and in particular, about his alleged burial site at a location in Lofa County, Liberia. Following information provided by DCT-032, the Prosecution had exhumations carried out at two separate locations, and DNA tests carried out on the bodies.”<sup>7</sup>

8. Given the exculpatory nature of the disclosed material, which indicated that Johnny Paul was not buried at the site as indicated by DCT-032,<sup>8</sup> the Defence filed a motion seeking, *inter alia*, the admission of an affidavit from DCT-032,<sup>9</sup> the record of Prosecution payments to DCT-032<sup>10</sup> and the letter of indemnity written to DCT-032,<sup>11</sup> pursuant to Rule 92*bis*. The majority of the Trial Chamber (“Majority”)

<sup>7</sup> Disclosure Decision, paras. 1 and 2 (internal citations are to the Prosecution’s Opening Statement, *Prosecutor v. Taylor*, SCSL-03-01, Transcript 4 June 2007, p. 276-280).

<sup>8</sup> Motion for Admission, Confidential Annex A.

<sup>9</sup> Motion for Admission, Confidential Annex D.

<sup>10</sup> Motion for Admission, Confidential Annex B.

<sup>11</sup> Motion for Admission, Confidential Annex C.

dismissed the Motion for Admission in its entirety, Justice Julia Sebutinde, dissenting.

9. The Majority stated that the material in the affidavit relates to DCT-032's denial that he was involved in the killing of Johnny Paul Koroma pursuant to the orders of the accused.<sup>12</sup> The Majority also found that the material in the affidavit contradicts the evidence of Prosecution witnesses Moses Blah, Zig Zag Marzah and TF1-375 and is thus exculpatory information.<sup>13</sup> However, the Majority then determined that since the evidence of the Prosecution witnesses relates to a murder committed by subordinates of Mr Taylor on his orders, the affidavit goes to proof of the acts and conduct of the accused and therefore cannot be admitted under Rule 92*bis*.<sup>14</sup>
10. Furthermore, the Majority ruled that if the affidavit is not admissible, then the other materials sought to be admitted pursuant to Rule 92*bis* have no independent relevance and cannot be admitted.<sup>15</sup>

### III. GROUNDS OF APPEAL

11. The Defence appeals those aspects of the Admission Decision which constitute errors of law and/or fact, in that the Trial Chamber made a discernible error in the exercise of its discretion by:

#### Ground One

12. Committing errors of law and/or of drawing a patently incorrect conclusion of fact in deciding that exculpatory information contained in the affidavit of DCT-032, which contradicts the evidence of Prosecution witnesses relating to an alleged murder committed by subordinates of Charles Taylor on his orders, goes to proof of the acts and conduct of the Accused and thus is inadmissible at the request of the Accused

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<sup>12</sup> Admission Decision, para. 23.

<sup>13</sup> Admission Decision, para. 25.

<sup>14</sup> Admission Decision, para. 25.

<sup>15</sup> Admission Decision, paras. 31 and 32.

under Rule 92bis.<sup>16</sup> The Majority put undue focus on the acts and conduct of the accused, when the primary focus should have been on the credibility of Prosecution witnesses and the conduct of the party who put forward a positive case when material in their possession contradicted it;

#### Ground Two

13. Failing to consider all relevant factors and/or failing to give all relevant factors sufficient weight. Thus the decision that the affidavit of DCT-032 was inadmissible could not reasonably mean that *ipso facto* the other materials submitted had no independent relevance, including the record of payments made by the Prosecution to DCT-032<sup>17</sup> and the indemnity letter written by the Prosecution to DCT-032.<sup>18</sup>

### **SUBMISSIONS BASED ON GROUNDS OF APPEAL**

#### **IV. APPLICABLE STANDARDS OF REVIEW ON APPEAL**

14. The SCSL Appeals Chamber has applied the provisions relating to appeals of a conviction to appeals of an interlocutory nature.<sup>19</sup> Article 20(1) of the Statute and Rule 106 of the Rules provide that the Appeals Chamber shall hear appeals on the following grounds: (a) a procedural error; (b) an error on a question of law invalidating the decision; and (c) an error of fact which has occasioned a miscarriage of justice.

15. Trial Chambers have discretion with respect to the admission of evidence at trial. Specifically, under Rule 92bis, the Trial Chamber has the discretion to admit information, including written statements and transcripts, which do not go to proof of the acts and conduct of the accused.

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<sup>16</sup> Admission Decision, paras. 25 and 27.

<sup>17</sup> Admission Decision, para. 31.

<sup>18</sup> Admission Decision, para. 32.

<sup>19</sup> *Prosecutor v. Taylor*, SCSL-03-01-AR73-799, Decision on “Defence Notice of Appeal and Submissions Regarding the 4 May 2009 Oral Decision Requiring the Defence to Commence its Case on 29 June 2009”, 23 June 2009, para. 4 (“*Taylor Defence Case Appeal Decision*”).

16. The Appeals Chamber typically accords deference to such discretionary decisions.<sup>20</sup>

However, the Appeals Chamber will overturn the Trial Chamber's exercise of discretion if the challenged decision was based: (i) on an error of law; or (ii) on a patently incorrect conclusion of fact; or (iii) if the exercise of discretion was so unfair or unreasonable as to constitute an abuse of the Trial Chamber's discretion.<sup>21</sup> The scope of appellate review of discretion is limited. Even if the Appeals Chamber does not agree with the impugned decision, the decision will stand unless it was so unreasonable as to force the conclusion that the Trial Chamber failed to exercise its discretion judiciously, in that the Trial Chamber made a discernible error in the exercise of discretion.<sup>22</sup> A discernible error has occurred if the Trial Chamber misdirected itself as to the legal principle to be applied, took irrelevant factors into consideration, failed to consider relevant factors or failed to give them sufficient weight, or made an error as to the facts upon which it has exercised its discretion.<sup>23</sup> Where the Trial Chamber has made a discernible error in the exercise of its discretion, the Appeals Chamber will intervene, correct the error, and then exercise and substitute its own discretion.<sup>24</sup>

17. The burden is on the appellant to show that the Trial Chamber committed an error of law which invalidates the decision or an error of fact which resulted in an unreasonable conclusion.<sup>25</sup>

#### **V. FIRST GROUND OF APPEAL: INADMISSIBILITY OF AFFIDAVIT PURSUANT TO RULE 92BIS**

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<sup>20</sup> *Taylor* Defence Case Appeal Decision, para. 13, citing *Prosecutor v. Norman et al*, SCSL-04-14-AR73-688, Decision on Interlocutory Appeals Against Trial Chamber Decision Refusing to Subpoena the President of Sierra Leone, 11 September 2006, para. 5 ("*Norman Subpoena Appeal Decision*").

<sup>21</sup> *Norman Subpoena Appeal Decision*, para. 6 and *Prosecutor v. Milosevic*, IT-99-37-AR73, IT-01-50-AR73, IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 April 2002, para. 5.

<sup>22</sup> *Taylor* Defence Case Appeal Decision, para. 13, citing *Norman Subpoena Appeal Decision*, para. 5.

<sup>23</sup> *Taylor* Defence Case Appeal Decision, para. 13, citing *Norman Subpoena Appeal Decision*, para. 6.

<sup>24</sup> *Norman Subpoena Appeal Decision*, para. 5.

<sup>25</sup> *Norman Subpoena Appeal Decision*, para. 7.

18. The Majority finding that exculpatory information contained in the affidavit of DCT-032, which does not mention the Accused, but which contradicts the evidence of Prosecution witnesses relating to an alleged murder committed by subordinates of Charles Taylor on his orders, goes to proof of the acts and conduct of the Accused and thus is inadmissible at the request of the Accused under Rule 92bis is a discernible error in that the Trial Chamber's exercise of discretion was based on an error of law and/or on a patently incorrect conclusion of fact.

*Patently Incorrect Conclusion of Fact*

19. The Majority misstates the factual content of the affidavit of DCT-032 by finding that “the material in the affidavit relates to DCT-032’s denial that he was involved in the killing of Johnny Paul Koroma pursuant to the orders of the Accused”.<sup>26</sup> The primary focus of the affidavit describes DCT-032’s contact and interaction with the Prosecution and does not mention anything about Mr Taylor and/or his alleged order to kill Johnny Paul Koroma.

20. The affidavit states that in mid-2008 Prosecution Witness Moses Blah “referred” an intermediary named William Obey to meet with DCT-032. Obey put DCT-032 in touch with the “white people” from the Prosecution.<sup>27</sup> Special Court employees “Kelvin” and “Mustapha” met with DCT-032. Kelvin told him that Zig Zag Marzah had said DCT-032 had information on the killing of Johnny Paul Koroma and they wanted to talk to DCT-032 about that. DCT-032 then “denied any knowledge of JPK or his death”.<sup>28</sup> When asked about the “same Johnny Paul story” on another occasion, DCT-032 insisted “he knew nothing about it”. Kelvin then gave DCT-032 \$300 and told him buy a phone and to “think about the matter”.<sup>29</sup>

21. For the next few days, Obey “kept pushing” and said that the Prosecution had promised that they would give DCT-032 and Obey \$5000 if they showed them where

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<sup>26</sup> Admission Decision, para. 23.

<sup>27</sup> Motion for Admission, Confidential Annex D, paras. 4-5.

<sup>28</sup> Motion for Admission, Confidential Annex D, para. 7.

<sup>29</sup> Motion for Admission, Confidential Annex D, para. 8.



Johnny Paul Koroma was buried. DCT-032 told Obey that “he did not have any knowledge”.<sup>30</sup> The affidavit says that meanwhile, DCT-032 in fact received over \$1000 from the Prosecution at a time when he was not working.<sup>31</sup>

22. Finally, DCT-032 states that he received a letter from the Chief Prosecutor undertaking that the Special Court would not arrest him and so he eventually “gave in to the pressure”. He then concocted a story about how Johnny Paul was killed and where he was buried.<sup>32</sup> In the affidavit, DCT-032 insists that in reality, he had never met Johnny Paul and that his descriptions were entirely based on what they were suggesting to him;<sup>33</sup> furthermore that he had fabricated a story about Johnny Paul’s death.<sup>34</sup>

23. In the affidavit, DCT-032 says nothing about whether Johnny Paul was actually killed, much less anything about whether Johnny Paul was killed pursuant to the orders of the accused. DCT-032 simply states that his own personal knowledge of Johnny Paul and his alleged death is essentially nonexistent. Thus the Majority mistakenly reads into the affidavit a denial that is not there, in finding that “the material in the affidavit relates to DCT-032’s denial that he was involved in the killing of Johnny Paul Koroma *pursuant to the orders of the Accused*”.<sup>35</sup> This is a patently incorrect conclusion of fact which should be overturned by the Appeals Chamber.

*Taking Irrelevant Factors into Consideration, Leading to an Absurd Application of Rule 92bis*

24. In its Admission Decision, the Majority goes on to conclude that the exculpatory material in the affidavit contradicts inculpatory material elsewhere in the trial record, relating to the alleged murder of Johnny Paul committed by subordinates of Mr

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<sup>30</sup> Motion for Admission, Confidential Annex D, para. 9.

<sup>31</sup> Motion for Admission, Confidential Annex D, paras. 10 and 11.

<sup>32</sup> Motion for Admission, Confidential Annex D, paras. 16-22.

<sup>33</sup> Motion for Admission, Confidential Annex D, para. 27.

<sup>34</sup> Motion for Admission, Confidential Annex D, para. 22.

<sup>35</sup> Admission Decision, para. 23.

Taylor on his orders. Therefore, that the affidavit goes to proof of the acts and conduct of the Accused and is inadmissible pursuant to Rule 92bis.<sup>36</sup> This is a discernible error in that the Trial Chamber has taken irrelevant factors into consideration. It also leads to an absurd application of Rule 92bis. The Trial Chamber should have confined its determination of whether the affidavit went to proof of the acts and conduct of the accused to what was stated in the affidavit, rather than by comparison of the content of the affidavit to Prosecution evidence on record. The affidavit in relation to Johnny Paul essentially contains crime base evidence – did a killing occur and was DCT-032 involved. The Majority’s approach to Rule 92bis admissions in this instance, taken to its logical conclusion, would render the rule obsolete. It would prohibit the introduction of crime based evidence which could later be linked to subordinates of the Accused in comparison to Prosecution evidence otherwise on record.

Error of law in finding that the affidavit goes to proof of acts/conduct of the Accused

25. Assuming *arguendo* that it is appropriate to consider the affidavit of DCT-032 against the totality of the Prosecution evidence, the Majority still committed an error of law in essentially finding that the contents of the affidavit go to proof of the “acts and conduct of the Accused”, including an omission to act which is not related to a breach of duty alone, thus ruling the affidavit inadmissible pursuant to Rule 92bis.<sup>37</sup>

26. The Trial Chamber has previously adopted into its jurisprudence the ICTY Appeals Chamber’s statement of law interpreting “acts and conduct of the accused” as meaning that Rule 92bis:

“excludes any written statement which goes to proof of any act or conduct of the accused (including his omission to act) upon which the prosecution relies to establish –

[...]

b) That he planned, instigated, or *ordered* the crimes charged,

[...]

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<sup>36</sup> Admission Decision, paras. 25 and 27.

<sup>37</sup> Admission Decision, Sebutinde Dissent, paras. 9-13.

Those are the ‘acts and conduct of the accused as *charged in the indictment*,’ not the acts and conduct of others for which the accused is charged in the indictment with responsibility’.<sup>38</sup>

27. Firstly, the Defence notes that the alleged death of Johnny Paul Koroma occurred in 2003, which is outside the indictment period. Thus, it was a discernible error for the Majority to have considered proof of the acts and conduct of the accused, regarding the Accused’s conduct (or not) of giving orders to kill someone which is outside the indictment period (having ended in January 2002). These allegations do not relate to acts and conduct of the accused as charged in the indictment, but are relevant to contradict allegations put forward by the Prosecution as Rule 93 evidence, and therefore should not have been deemed inadmissible.
28. Secondly, it is well established in SCSL jurisprudence that a distinction must be drawn between “the acts and conduct of those others who commit the crimes for which the indictment alleges that the accused is individually responsible” and the “acts and conduct of the accused as charged in the indictment which establish his responsibility for the acts and conduct of others”. Only written statements which go to proof of the latter acts and conduct are excluded by Rule 92*bis*.<sup>39</sup> As the ICTR Appeals Chamber has noted, any other interpretation of this rule “would effectively denude it of any real utility”.<sup>40</sup> The affidavit of DCT-032 and Prosecution evidence relating to DCT-032 are properly characterized as the former, admissible, type of information, which goes to acts and conduct of others who allegedly commit the crimes for which the accused is charged as responsible. In other words, the evidence specifically implicating DCT-032 in the killing of Johnny Paul is crime base evidence, and does not implicate “linkage” evidence which ties the orders of the

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<sup>38</sup> Admission Decision, Sebutinde Dissent, para. 9, quoting *Prosecutor v. Galic*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C), 7 June 2002, paras. 10-11 (“**Galic Decision**”) (emphasis added). See also Admission Decision, para. 16 citing *inter alia*, *Prosecutor v. Taylor*, SCSL-03-01-T-748, Decision on Prosecution Motion for Admission of Documents and of Certain Intergovernmental Organizations & of Certain Governments, 26 February 2009, para. 17.

<sup>39</sup> *Galic* Decision, para. 9, cited in *Prosecutor v. Taylor*, SCSL-03-01-T-736, Decision on Prosecution Motion for Admission of Liberia Search Documents, 18 February 2009, para. 19.

<sup>40</sup> *Galic* Decision, para 9, as quoted by *Prosecutor v. Karemera et al*, ICTR-98-44AR73(C), Decision on Prosecutor’s Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006, para. 52.

killing back to Mr Taylor. While TF1-375 does provide linkage evidence, this is separate from his evidence in relation to DCT-032.

29. Thirdly, the Majority made a discernible error in law when it determined that evidence in the affidavit of DCT-032 which *arguendo* goes to proof of the acts and conduct of the accused, is inadmissible because it indicates that the accused did not do something, ie, that the Accused, Mr Taylor, did not order Johnny Paul to be killed. The Majority, citing the *Galic* Decision, found in support of this contention that “the ‘conduct’ of an accused person may also include his omission to act”.<sup>41</sup> However, in *Galic*, this determination was made directly following the statement that acts and conduct are limited to those as charged in the indictment. Thus the Defence submits the type of omission that *Galic* was describing is an omission that leads to the commission of a crime as charged in the indictment, such as failing to take reasonable steps to prevent crimes or failing to punish those who committed crimes;<sup>42</sup> not proof that an accused did not commit and act for which he is charged. As Justice Sebutinde notes, “clearly the ICTY Appeals Chamber was not referring to exculpatory evidence”.<sup>43</sup>

30. Fourthly, the cases the Majority cite in support of its contentions that a statement goes to proof of the acts and conduct of the accused if it tends to prove or disprove his acts and conduct<sup>44</sup> and if it refutes allegations laid out against the accused<sup>45</sup> can be distinguished from the present circumstances. In *Bagosora*, statements going to proof of the acts and conduct of the accused which tended to prove or disprove his acts and conduct were only excluded because of the impact their admission might have had on

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<sup>41</sup> Admission Decision, para. 17, citing *Prosecutor v. Taylor*, SCSL-03-01-T-1099, Decision on Public with Annex A Defence Motion for Admission of Documents Pursuant to Rule 92bis – Newspaper Article, 5 October 2010, p. 4, in turn citing *Galic* Decision, para. 11.

<sup>42</sup> Admission Decision, Sebutinde Dissent, para. 13.

<sup>43</sup> *Id.*

<sup>44</sup> Admission Decision, para. 17, citing *Prosecutor v. Bagosora*, ICTR-98-41-T, Decision on Prosecutor’s Motion for the Admission of Written Witness Statements Under Rule 92, 9 March 2004, para. 16 (“*Bagosora* Decision”).

<sup>45</sup> Admission Decision, para. 17, citing *Prosecutor v. Nsabimana et al*, ICTR-97-29-T, Decision on Nsabimana’s Motion to Admit the Written Statements of Witness JAMI in Lieu of Oral Testimony Pursuant to Rule 92bis, 15 September 2006, para. 34 (“*Nsabimana* Decision”).

a co-accused. In the present case, there is no co-accused. In *Nsabimana*, statements refuting the acts and conduct of the accused were only excluded because the evidence was so pivotal to the Prosecution case that, in fairness, admission would require cross-examination of the witness. In the present case, given that the alleged death of Johnny Paul occurred outside the scope of the indictment, it cannot be seen to be so pivotal to the Prosecution case.<sup>46</sup> Thus the Majority committed a discernible error in equating these cases to the present situation and consequently holding the affidavit of DCT-032 inadmissible.

#### Misconstrued Rationale of Rule 92bis

31. Rule 92bis was primarily intended as a tool for the Prosecution to easily seek admission of crime base evidence and to promote the efficiency of the proceedings.<sup>47</sup> Yet this had to be done in a way that did not impact upon the fair trial rights of the accused, and thus we have the safeguard against the admission of information going to proof of the acts and conduct of the Accused. The Defence submits that the Majority committed a discernible error by misconstrued the rationale behind the exclusion of material under Rule 92bis which go to proof of the acts and conduct of the Accused.
32. The exclusion of information directly implicating the acts and conduct of the accused under Rule 92bis is a safeguard intended to protect (not frustrate) the fair trial rights of the Accused.<sup>48</sup> Article 17(4)(e) of the Special Court Statute guarantees the Accused the right to confront witnesses against him, stating that he should be allowed to examine them. This safeguard has been previously explained by Trial Chamber I.<sup>49</sup> As Justice Sebutinde further acknowledges, this safeguard ensures that the Accused “has an opportunity to confront live testimony on matters pertaining directly to his

<sup>46</sup> Justice Sebutinde agrees that this is an issue that is “peripheral to the indictment”. Admission Decision, Sebutinde Dissent, para. 4.

<sup>47</sup> Admission Decision, Sebutinde Dissent, paras. 6-8.

<sup>48</sup> *Prosecutor v. Norman et al*, SCSL-04-14-T-447, Decision on Prosecution’s Request to Admit into Evidence Certain Documents Pursuant to Rule 92bis and 89(C), 14 July 2005. See also Admission Decision, Sebutinde Dissent, paras. 3-4 and 5-8; Motion for Admission, paras. 9-10 and 23.

<sup>49</sup> *Prosecutor v. Fofana*, SCSL-04-14-AR73, Decision on Appeal Against Decision on Prosecution Motion for Judicial Notice and Admission of Evidence, 16 May 2005, para. 26.

guilt and to cross-examine witnesses against him, which opportunity he would not have if the incriminating evidence were to be admitted in a form other than oral testimony, such as statements or transcripts”.<sup>50</sup>

33. However, should the Accused seek admission of evidence of his “acts and conduct” on peripheral issues in written form, it should be admissible, provided it meets the other requirements of Rule 92*bis*. The safeguard in Rule 92*bis* should not be applied in a way that is prejudicial to the fair trial rights of the accused.

34. It should be remembered, bearing in mind the fair trial rights of the Accused, that the question of admissibility under Rule 92*bis* arose as a result of the Prosecution’s abject failure to discharge its disclosure duties under Rule 68.<sup>51</sup> The Accused thus suffers two prejudices: the failure to disclose, and the failure to admit exculpatory information. The Majority committed a discernible error in its failure to give sufficient weight to the impact the late disclosure had<sup>52</sup> on the Defence’s ability to coordinate its Defence case and schedule witnesses.<sup>53</sup> The Majority made a factual distinction between the present circumstances and the ICTR *Ndindiliyimana* case cited by the Defence<sup>54</sup> in support of its argument that since the evidence at issue concerns and stems from a disclosure violation, the Trial Chamber should exercise its discretion in favor of admission pursuant to Rule 92*bis*, even if it contains material going to proof of the acts and conduct of the accused. While the two scenarios are not exactly the same, the Defence submits that exceptional circumstances do exist in the present case since the affidavit of DCT-032 also results from and contains cogent evidence of malfeasance on the part of the Prosecution, which is going to great lengths to make sure the evidence stays out of the record.

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<sup>50</sup> Admission Decision, Sebutinde Dissent, para. 3.

<sup>51</sup> Motion for Admission, paras. 13-16.

<sup>52</sup> Admission Decision, paras. 26-27.

<sup>53</sup> Motion for Admission, paras. 22 and 26-27.

<sup>54</sup> Motion for Admission, para. 13, citing *Prosecutor v. Ndiliyimana et al*, ICTR-00-56-T, Decision on Nzuwonemeye’s Urgent Motion for Admission of Witness CN’s Statement into Evidence, 20 March 2009, para. 11.

**VI. SECOND GROUND OF APPEAL: INDEPENDENT RELEVANCE OF PAYMENTS & INDEMNITY LETTER**

35. The Trial Chamber's majority finding that if the affidavit of DCT-032 is not admissible then the other materials submitted have no independent relevance, including the record of disbursements made by the Prosecution to DCT-032 and the indemnity letter written by the Prosecution to DCT-032, is a discernible error that should be corrected by the Appeals Chamber.

36. Evidence of inducements made by the Prosecution to witnesses and sources, even those whom did not come to testify before the Court are relevant and thus admissible pursuant to Rule 92*bis*. The Defence has consistently made the issue of improper payments and inducements to witnesses, potential witnesses and sources a live issue in this trial.<sup>55</sup> It should be enough for purposes of a Rule 92*bis* application for the Defence to have stated in general terms, as it did, the relevance of the proposed material. Thus the Trial Chamber committed a discernible error in finding that the Prosecution's record of payments made to DCT-032 and the Prosecution's indemnity letter written to DCT-032, had no independent relevance absent the affidavit of DCT-032. The majority of the Trial Chamber failed to give sufficient weight to the evidence of payments to witnesses already on record and failed to consider at all the timing and context of payments to DCT-032 vis-à-vis the timing and content of the testimony of Zig Zag Marzah, Moses Blah and TF1-375. As argued in this Appeal at paragraphs 39 *et seq*, the Defence submits that there is a direct connection between the payments made to these witnesses, especially TF1-375 and DCT-032, and the rejuvenated and detailed allegations regarding the death of Johnny Paul Koroma and the involvement of Accused's subordinates.

37. Had the majority of the Trial Chamber properly considered these factors, the Trial Chamber could not have reasonably concluded that the record of payments and indemnity letter had no independent relevance.

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<sup>55</sup> Reply to Admission, paras. 8-9.

38. The Defence position is supported by Justice Julia Sebutinde, dissenting, stating that, “While I agree that the affidavit does provide context ... it is not altogether true that the other documents cannot stand on their own. This is because each ... is comprehensive and speaks for itself and can be used by the parties in their final briefs or closing arguments without reference to the affidavit”.<sup>56</sup>

39. To assist the Appeals Chamber the Defence will explain the independent relevance of the proposed materials and how the Defence would have argued the issue in its Final Brief, were it given the opportunity:

*Explanation of Relevance of Prosecution Payments and Indemnity Letter*

40. Although the Prosecution considered DCT-032 only a “source” of information, the Trial Chamber has determined that DCT-032 should in fact be classified as a potential Prosecution witness.<sup>57</sup> The Trial Chamber opined that the Prosecution payments made to DCT-032 were “not used to buy information from a source, but were given to a potential witness for his own benefit”.<sup>58</sup>

41. The Trial Chamber has also properly acknowledged that the evidence of Prosecution payments to witnesses which go beyond that which is reasonably required for the management of witnesses and victims is evidence which may affect the credibility of Prosecution evidence.<sup>59</sup> In its Disclosure Decision relating to DCT-032, the Trial

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<sup>56</sup> Admission Decision, Sebutinde Dissent, para. 14 and 16. See also *Prosecutor v. Taylor*, SCSL-03-01-T-1118, Decision on Public with Confidential Annexes A-J and Public Annexes K-O Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 11 November 2010, para. 40 (“**Contempt Decision**”) (stating that an alleged abuse of discretion under Rule 39(ii) will be considered at the stage of final deliberations).

<sup>57</sup> Disclosure Decision, paras. 23-27 (specifically paras. 25 and 27).

<sup>58</sup> Disclosure Decision, para. 26.

<sup>59</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-1084, Decision on Defence Motion for Disclosure of Statement and Prosecution Payments Made to DCT-097, 23 September 2010 (“**Payments Decision**”) (the Defence notes that in this instance, the Trial Chamber ordered the disclosure of Prosecution payments to DCT-097 despite the fact that he was ultimately not called as a witness by either the Prosecution or the Defence).



Chamber found: i) that funds were provided to DCT-032 amounting to \$1500<sup>60</sup> which were used to buy things such as buying a phone, food, rent and school fees, ii) that a further \$5000 was promised to DCT-032 if “the body exhumed was confirmed to be that of Johnny Paul Koroma” and iii) that DCT-032 admits he was “making up a story in order to get money from the Prosecution”. Based on these facts, the Trial Chamber found that these payments went beyond that which is reasonably required for the management of a witness and assumed a potentially exculpatory character.<sup>61</sup>

42. The Index of Disbursements itself includes information about the date money was given by the Prosecution to DCT-032 (more than \$3000)<sup>62</sup>, the alleged purpose of the money given by the Prosecution to DCT-032 and the amount of money given by the Prosecution to DCT-032. Justice Julia Sebutinde, dissenting, further determined that the Index of Disbursements was relevant and should have been admitted pursuant to Rule 92bis.<sup>63</sup> From information provided in this Index, even absent the context provided by the affidavit of DCT-032, it is possible for the Defence to make arguments relevant to its general position that the Prosecution has improperly paid and induced witnesses.

43. An examination of the timing of payments to DCT-032 vis-à-vis Prosecution witness testimony regarding the alleged death of Johnny Paul Koroma is instructive. On 12 March 2008, Zig Zag Marzah (a former NPFL fighter and SS member in Liberia) testified for the Prosecution. Marzah testified that he had heard a story from Sweet Candy (a soldier in the Navy Division fighting under Roland Duoh) that Mr Taylor had ordered Johnny Paul to be killed and that in fact Johnny Paul had been executed as a betrayer. Marzah said that he later saw Sweet Candy wearing Johnny Paul’s jacket.<sup>64</sup>

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<sup>60</sup> Following this Disclosure Decision, the Prosecution disclosed an index of payments made to DCT-032 which actually totaled over \$3000 (instead of what the Defence had estimated as \$1500). See Index of Disbursements for DCT-032, Confidential Annex B of the Motion for Admission.

<sup>61</sup> Disclosure Decision, para. 31.

<sup>62</sup> See Index of Disbursements for DCT-032, Confidential Annex B of the Motion for Admission.

<sup>63</sup> Admission Decision, Sebutinde Dissent, para. 16.

<sup>64</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of TF1-399**, 12 March 2008, p. 5935-5937.

44. On 15 May 2008, Moses Blah (the former Vice-President of Liberia under Mr Taylor) testified for the Prosecution. Blah testified that in 2003 he heard rumors from his radio operator that Johnny Paul Koroma had been killed in the Lofa forest, close to the Foya airfield and the Sierra Leone border.<sup>65</sup> Blah further testified that Roland Duo was in command of that area at that time.<sup>66</sup>

45. Also on 15 May 2008, the Prosecution interviewed Witness TF1-375 for what appears to be the seventeenth time.<sup>67</sup> TF1-375 had been interviewed by the Prosecution since 2005 about many events, [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

.<sup>68</sup> At this point, TF1-375 had been paid over \$4000 by the Prosecution.<sup>69</sup>

46. The Prosecution's "Proffer" in relation to DCT-032 states that DCT-032 provided them information in May, June and July 2008 (the exact dates are not given).<sup>70</sup> According to the Prosecution's Index of Disbursements for DCT-032, on 8 June 2008, the Prosecution paid him \$30 (\$20 for information and \$10 for transportation). On 10 June 2008, the Prosecution paid \$200 to DCT-032 for information. On 11 June 2008, the Prosecution paid \$20 to DCT-032 for transportation. On 12 June 2008, the Prosecution paid \$120 to DCT-032 for information and lost wages.

<sup>65</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of TF1-561**, 15 May 2008, p. 9998-10,000.

<sup>66</sup> *Id.*, p. 9999.

<sup>67</sup> This is based on disclosure of statements from the Prosecution relating to TF1-375.

<sup>68</sup> The Prosecution disclosed a "Proffer" to the Defence on 29 May 2008, stating that TF1-375 had given the Prosecution the information relating to Johnny Paul Koroma's death on 15 May 2008. The Proffer itself is not in evidence as a separate exhibit, but Defence Counsel Terry Munyard read the entirety of the Proffer to TF1-375 in Private Session and the witness commented on the evidence contained in the Proffer. See *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of TF1-375**, 25 Aug 08, p. 14504-28; 26 Aug 08, p. 14531-9. These excerpts were also cited in the Defence's Motion for Disclosure, para. 8.

<sup>69</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of TF1-375**, 26 Aug 08, p. 14636-14669 and 27 Aug 08, p. 14701-14719 (Defence Counsel Terry Munyard went through a disclosed list of Prosecution disbursements to TF1-375 and the witness generally confirmed the payments).

<sup>70</sup> Disclosure Decision, para. 2; Response to Admission, Confidential Annex 1.

47. Also on 12 June 2008, the former Prosecutor Stephen Rapp wrote a letter to DCT-032 stating:

“As Prosecutor of the Special Court for Sierra Leone, I would like to take this opportunity to assure you that I have not laid any criminal charges nor do I intend to lay any charges against you because of your affiliation with any parties that have been charged by this court. I trust that this letter may help put your mind at ease with regards to this matter.”<sup>71</sup>

This indemnity letter mirrors indemnity letters written by the Prosecution to numerous other insider witnesses, including Moses Blah.<sup>72</sup> The letter is relevant to show the Prosecution’s investigative *modus operandi* and how it recruited insider witnesses. The Defence should be able to rely on evidence of these indemnity letters to argue that the Prosecution offered them as an inducement for witnesses to testify regarding incriminating information (truthful or otherwise) that could implicate the Accused. Justice Julia Sebutinde, dissenting, noted that the Trial Chamber had already determined that “prior to his listing as a defence witness, DCT-032 was a potential Prosecution witness and that consequently the said letter of indemnity was potentially exculpatory”, and thus the letter complied with the requirements of Rule 92*bis*, including that of relevance, and that it should have been admitted.<sup>73</sup>

48. Continuing with the chronology of payments and testimonies: on 14 June 2008, the Prosecution paid \$50 to DCT-032 for information and transportation. On 15 June 2008, the Prosecution paid \$20 to DCT-032 for information and transportation. On 18 June 2008, the Prosecution paid \$250 to DCT-032, again for lost wages. That assumes that between 12 June when the Prosecution first paid DCT-032 up to \$100 for lost wages and 18 June when the Prosecution paid DCT-032 another \$250 for lost wages, DCT-032 had actually lost earnings worth \$250 in the intervening six days. The Defence notes that the Prosecution has never provided proof that DCT-032 was

<sup>71</sup> Motion for Admission, Confidential Annex C.

<sup>72</sup> Exhibit P-119 (letter from Acting Prosecutor James Johnson to Prosecution Witness Moses Blah, dated 30 October 2006). See Reply to Admission, para. 10. The other insider witnesses whom the Prosecution has provided such letters to are **TF1-371** (Closed Session, Trial Transcript, 1 Feb 08, p. 2918-22), **TF1-532** (Trial Transcript, 7 Apr 08, p. 6718-20), and **TF1-274** (Trial Transcript, 8 Dec 08, p. 21893-7). See also *Prosecutor v. Taylor*, SCSL-03-01-T-516, Decision on Confidential Defence Motion for the Disclosure of Exculpatory Material Pursuant to Rule 68 of the Rules of Procedure and Evidence, 22 May 2008, p. 5.

<sup>73</sup> Admission Decision, Sebutinde Dissent, para. 17.

working during this period or actually had a job which could have earned him \$250 in a six day period had he not been instead dealing with the Prosecution during the same time. Rule 39(ii), which allows the Prosecution to take measures deemed necessary for the purpose of the investigation, including measures to provide for the safety and support and assistance of potential witnesses and sources, surely does not give the Prosecution the unfettered right to give a potential witness or source money categorized as lost wages where in fact there is no indication that wages were actually lost.<sup>74</sup>

49. Three days later, on 21 June 2008, the Prosecution paid \$650 to DCT-032 for family maintenance and more undocumented lost wages as well as \$50 for information and transportation while DCT-032 was in Freetown providing further information to the Prosecution.

50. On 25 June 2008, Witness TF1-375 testified for the Prosecution. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].<sup>77</sup>

51. TF1-375 testified that [REDACTED]

[REDACTED].<sup>78</sup> It is clear from the schedule of payments given to TF1-375 by the Prosecution, and as discussed during his testimony, that the Prosecution used TF1-375 as both a “source” and as a “witness”.<sup>79</sup> TF1-375 was often paid money for

<sup>74</sup> See Reply to Admission, para. 8, FN 3 which cites to the **Defence Motion for Contempt**, Annex N. Annex N indicates that at least one other Prosecution witness (TF1-532 / Isaac Mongor) who was paid money classified as “lost wages” for times when he admittedly was not working.

<sup>75</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of TF1-375**, 25 June 08 (private session), p. 12751.

<sup>76</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of TF1-375**, 25 June 08 (private session), p. 12752-3.

<sup>77</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of TF1-375**, 25 June 08 (private session), p. 12764.

<sup>78</sup> *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of TF1-375**, 25 Aug 08, p. 14494 and p. 14501-3.

<sup>79</sup> See Reply to Admission, para. 8, FN 3 which cites to the Defence Motion for Contempt, SCSL-03-01-T-1090, Annex N. Annex N indicates that TF1-375 was used as both a Prosecution witness and a source of

“information” just like DCT-032 was often paid money for “information”. The Defence submits that the payments to DCT-032 for information are relevant to show that this is a regular investigative practice by the Prosecution. Thus the Index of Disbursements to DCT-032 should have been admitted by the Trial Chamber under Rule 92bis.

52. On 25 June 2008 the testimony of TF1-375 was halted until August 2008 (and TF1-375 sent back to West Africa) so that the Defence could investigate aspects of his testimony that had been disclosed without sufficient time for the Defence to investigate.<sup>80</sup> Meanwhile, in the first two weeks of July 2008, DCT-032 received an additional \$700 total from the Prosecution, which are listed by the Prosecution as “source payments”, “support” and “source assistance, clothing, lost wages”. On 23 July 2008, the Prosecution paid DCT-032 a lump sum amount of \$500, classified as a “source payment” and an additional 175,000Le as DSA and communication expenses.
53. DCT-032 received another \$125 from the Prosecution for “source information” in August 2008. Witness TF1-375 returned to Court and resumed his testimony on 22 August 2008.
54. In October 2008, the Prosecution paid \$250 to DCT-032 for “source assistance”, “source travel expenses” and “source transport, meals, lodging and assistance”. After October 2008, there was a long absence of payments from the Prosecution.
55. Then in September 2009, as part of his evidence in Chief, the Accused testified in relation to DCT-032. Mr Taylor stated that he did not know this individual, but that he hoped he would be able to come forward and testify.<sup>81</sup> Again in November 2009,

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information, for which he was paid, and cites *Prosecutor v. Taylor*, SCSL-03-01-T, **Testimony of TF1-375**, 26 Aug 08, p. 14644-69 and 27 Aug 08, p. 14708-12.

<sup>80</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-545, Urgent Defence Application for Temporary Adjournment of the Testimony of Witness TF1-375, 25 June 2008, and *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 25 Aug 08, p. 12796-809.

<sup>81</sup> Reply to Admission, para. 9 and Confidential Annex One.

Mr Taylor testified that he hoped those implicated by Prosecution witnesses in the alleged killing of Johnny Paul Koroma would “give explanations on this”.<sup>82</sup>

56. Suddenly, in early February 2010, the Prosecution gives another \$50 to DCT-032, ostensibly for “source transportation and communication expenses”. The Defence submits that evidence of this payment to DCT-032, following Mr Taylor’s testimony that the Defence would be looking for DCT-032, is relevant to the Defence argument that the Prosecution used monetary incentives to keep witnesses “on side” and/or to influence the substance of their testimony.
57. Certainly from this sequence of events, the relevance of the denied materials (evidence of payments and indemnity letter) is evident and the Trial Chamber made a discernible error in not admitting the materials. In its Final Brief, the Defence should be allowed to draw inferences from the timing of the evidence of Moses Blah, Zig Zag Marzah and TF1-375 and the payments made and indemnity letter written to DCT-032 by the Prosecution. Such an inference casts doubt on the credibility of the Prosecution evidence at issue as well as on the integrity of the Prosecution case as a whole, given the Defence’s contentions regarding the impact payments have on the truthfulness of testimony.
58. Recently, in *Prosecutor v. Lubanga*, an ICC Trial Chamber granted a Defence request for admission of documents containing evidence of payments to Prosecution “intermediaries” and witnesses.<sup>83</sup> The Trial Chamber determined that “[g]iven that the role of certain intermediaries, as well as the alleged improper payments to intermediaries and witnesses, have become live issues in this case...these documents [regarding payments to intermediaries] are relevant to ‘matters that are properly to be considered by the Chamber in its investigation of the charges against the accused’”.<sup>84</sup>

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<sup>82</sup> Reply to Admission, para. 9 and Confidential Annex One.

<sup>83</sup> *Prosecutor v. Lubanga*, ICC-01/04-01/06, Redacted Decision on the Defence Request for the Admission of 422 Documents, 17 November 2010, paras. 59-65 (“*Lubanga Decision*”).

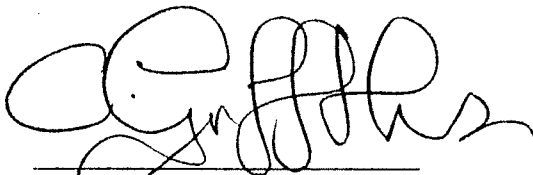
<sup>84</sup> *Lubanga Decision*, para. 63.

59. Consequently, the majority of the Trial Chamber has made a discernable error in the exercise of its discretion. The Appeals Chamber should intervene, correct the error, and then exercise its own discretion to admit the Index of Disbursements and Indemnity Letter under Rule 92*bis*. Certainly, if the affidavit of DCT-032 is found to be admissible, then there should be no bar to the admission of these additional materials.

#### VII. RELIEF REQUESTED

60. The Defence has identified a number of errors of law and/or fact committed by the Majority in its Admission Decision which resulted in the dismissal of the Defence's Motion for Admission of documents which undermine the credibility of Prosecution evidence and provide evidence of Prosecution malfeasance. The Appeals Chamber should consequently exercise its own discretion and order the Trial Chamber to admit into evidence the affidavit of DCT-032, the record of Prosecution payments totaling more than \$3000 made to DCT-032 and the letter of indemnity written by the Prosecution to DCT-032.

Respectfully Submitted,



**Courtenay Griffiths, Q.C.**  
**Lead Counsel for Charles G. Taylor**  
Dated this 10th Day of December 2010,  
The Hague, The Netherlands

## Index of Authorities

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*Prosecutor v. Taylor*, SCSL-03-01-T-1108, Public with Confidential Annexes A-D Defence Motion for Admission of Documents and Drawing of an Adverse Inference Relating to the Alleged Death of Johnny Paul Koroma, 27 October 2010



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*Prosecutor v. Taylor*, SCSL-03-01-T-1104, Decision on Public with Confidential Annexes A-D Defence Motion for Disclosure of Exculpatory Information Relating to DCT-032, 20 October 2010

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Other Cited Motions and Decisions

*Prosecutor v. Taylor*, SCSL-03-01-T-1118, Decision on Public with Confidential Annexes A-J and Public Annexes K-O Defence Motion Requesting an Investigation into Contempt of Court by the Office of the Prosecution and its Investigators, 11 November 2010

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*Prosecutor v. Taylor*, SCSL-03-01-T-1084, Decision on Defence Motion for Disclosure of Statement and Prosecution Payments Made to DCT-097, 23 September 2010

*Prosecutor v. Taylor*, SCSL-03-01-T-748, Decision on Prosecution Motion for Admission of Documents and of Certain Intergovernmental Organizations & of Certain Governments, 26 February 2009

*Prosecutor v. Taylor*, SCSL-03-01-T-736, Decision on Prosecution Motion for Admission of Liberia Search Documents, 18 February 2009

*Prosecutor v. Taylor*, SCSL-03-01-T-545, Urgent Defence Application for Temporary Adjournment of the Testimony of Witness TF1-375, 25 June 2008

*Prosecutor v. Taylor*, SCSL-03-01-T-516, Decision on Confidential Defence Motion for the Disclosure of Exculpatory Material Pursuant to Rule 68 of the Rules of Procedure and Evidence, 22 May 2008

Relevant Transcripts and Exhibits

Exhibit P-119

*Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, **TF1-399**: 12 March 2008

*Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, **TF1-561**: 15 May 2008

*Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, **TF1-375**: 25 June 2008, 25-27 August 2008

*Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, **TF1-371**: 1 February 2008

*Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, **TF1-532**: 7 April 2008

*Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, **TF1-274**: 8 December 2008

Other SCSL Cases

*Prosecutor v. Norman et al*, SCSL-04-14-T-447, Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rule 92*bis* and 89(C), 14 July 2005

*Prosecutor v. Fofana*, SCSL-04-14-AR73, Decision on Appeal Against Decision on Prosecution Motion for Judicial Notice and Admission of Evidence, 16 May 2005

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<http://www.ictrcaselaw.org/docs/20090320-dco-0056-01-en.pdf>

*Prosecutor v. Bagosora*, ICTR-98-41-T, Decision on Prosecutor's Motion for the Admission of Written Witness Statements Under Rule 92, 9 March 2004

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*Prosecutor v. Nsabimana et al*, ICTR-97-29-T, Decision on Nsabimana's Motion to Admit the Written Statements of Witness JAMI in Lieu of Oral Testimony Pursuant to Rule 92bis, 15 September 2006

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*Prosecutor v. Karemera et al*, ICTR-98-44AR73(C), Decision on Prosecutor's Interlocutory Appeal of Decision on Judicial Notice, 16 June 2006

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