(632)

SCSL-03-01-T
(21198 – 21215)

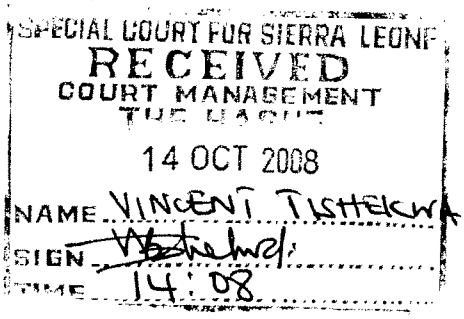
21198

SPECIAL COURT FOR SIERRA LEONE
OFFICE OF THE PROSECUTOR
Freetown – Sierra Leone

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

Registrar: Mr. Herman von Hebel

Date filed: 14 October 2008



THE PROSECUTOR **Against** **Charles Ghankay Taylor**

Case No. SCSL-03-01-T

PUBLIC WITH CONFIDENTIAL ANNEX

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

Office of the Prosecutor:
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I. INTRODUCTION

1. The Prosecution files this Reply to the "Public, with Confidential Annex A Defence Objection to 'Prosecution Notice under Rule 92*bis* for the Admission of Evidence Related to *inter alia* Freetown and Western Area – TF1-098, TF1-104 and TF1-227' and Other Ancillary Relief".[1]

2. Contrary to the Defence assertions[2] and as noted by the Prosecution previously, Rule 92*bis* of the Rules of Procedure and Evidence ("**Rules**") does not preclude the Prosecution from filing a reply to any objections filed by the Defence under Rule 92*bis*(C) and such a reply has been accepted in proceedings before this Court including these proceedings.[3] Further, where the Objections also include an application to rescind protective measures which should have properly been made by motion,[4] then a reply to the Objections is required and again such an approach has been accepted in these proceedings.[5]

3. In relation to the issues raised in the Objections, the Prosecution replies as set out below.

II. REPLY

Rule 92ter

4. The Defence continues to ignore the clear purpose of Rule 92*ter* and this Chamber's recent ruling on this point.[6] Indeed, this Chamber has held that notices such as that filed on 3 October 2008[7] are properly made under Rule 92*bis*[8] and has also failed to find the Defence claims regarding Rule 92*ter* as valid in relation to the admission of the prior evidence of

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[1] *Prosecutor v. Taylor*, SCSL-01-03-T-626, "Public, with Confidential Annex A Defence Objection to 'Prosecution Notice under Rule 92*bis* for the Admission of Evidence Related to *inter alia* Freetown and Western Area – TF1-098, TF1-104 and TF1-227' and Other Ancillary Relief," 8 October 2008 ("**Objections**").
[2] *Ibid*, para. 9.
[3] See *Prosecutor v. Norman et al.*, SCSL-04-14-T-444, "Prosecution's Reply to Joint Defence Objections to Consequential Request to Admit into Evidence Certain Documents Pursuant to Rule 92*bis* and 89(C)", 4 July 2005 which was noted without objection in 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. In relation to these proceedings see *Prosecutor 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 and *Prosecutor v. Taylor*, SCSL-01-03-T-467, "Confidential Prosecution Reply to 'Defence Objection to Prosecution Notice under Rule 92bis for the Admission of Evidence related to inter alia Kenema District'", 14 April 2008 which were noted without objection in SCSL-01-03-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 ("***Taylor* Rule 92*bis* Decision**").
[4] Objections, para. 7, 8 & 25 – 33.
[5] See footnote 3 above.
[6] Objections, paras. 10 & 11.
[7] *Prosecutor v. Taylor*, SCSL-01-03-T-614, "Public with Confidential Annexes A to D & F to G Prosecution Notice under Rule 92*bis* for the Admission of Evidence Related to *inter alia* Freetown and Western Area – TF1-098, TF1-104 & TF1-227," 3 October 2008 ("**Notice**").
[8] *Taylor* Rule 92*bis* Decision, p. 5.

TF1-072, TF1-074, TF1-076 and TF1-077.[9] Therefore, the Prosecution refers to the practice of this Chamber in support of the fact that Rule 92*bis* is the applicable Rule.

Admissibility under Rule 92bis

5. Objections to portions of the prior testimony sought to be introduced into evidence are without merit.[10] Contrary to the jurisprudence and its own apparent acceptance of that jurisprudence,[11] the Defence assertions continue to characterize evidence of the acts of others, in particular subordinates, as evidence of the acts and conduct of the Accused.[12] The Objections simply repeat the same arguments[13] previously rejected by this Court.[14]

"Linkage" information / information which goes to proof of the acts and conduct of the Accused

6. As stated in the Notice, the testimonies of TF1-098, TF1-104, and TF1-227 (**"Witnesses"**) do not contain evidence which goes to proof of the acts and conduct of the Accused. The link between the "Acts and Conduct of the Accused" "tick box" in the Defence Annex and the corresponding testimony does not withstand scrutiny nor is it supported by the recent findings of this Chamber in its two recent Rule 92*bis* decisions, which decisions the Defence appear to ignore.[15] In view of these recent findings of the Chamber, the Prosecution simply confirms that none of the 23 portions identified as being "Acts and Conduct of the Accused" are actually evidence of the acts and conduct of the Accused as defined by the jurisprudence and refers to its previous submissions on this point which the Chamber has accepted.[16]

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[9] See *Prosecutor v. Taylor*, SCSL-01-03-T-623, "Decision on Prosecution Notice under Rule 92*bis* for the Admission of Evidence Related to *Inter Alia* Kono District", 8 October 2008 (**"Kono Rule 92*bis* Decision"**), which ordered that the prior trial transcripts and related exhibits of TF1-072, TF1-074, TF1-076 and TF1-077 be admitted under Rule 92*bis* and made no reference to Rule 92*ter*.

[10] Objections, para. 5.

[11] *Ibid*, paras. 12 & 13.

[12] At para. 17, the Objections acknowledge that "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. The first is admissible under Rule 92*bis*, the latter is not."

[13] See *Prosecutor v. Taylor*, SCSL-03-01-T-449, "Public with Confidential Annex A Defence Objection to Prosecution Notice under Rule 92*bis* for the Admission of the Prior Testimony of TF1-036 into Evidence", 31 March 2008, paras. 9 to 17; *Prosecutor v. Taylor*, SCSL-01-03-T-456, "Public with Confidential Annex Defence Objection to Prosecution Notice under Rule 92*bis* for the Admission of Evidence related to *inter alia* Kenema District", 4 April 2008, paras. 11 to 19; and *Prosecutor v. Taylor*, SCSL-01-03-T-579, "Public with Confidential Annex A Defence Objection to 'Prosecution Notice under Rule 92*bis* for the Admission of Evidence Related to *inter alia* Kono District – TF1-218 & TF1-304'", 9 September 2008, paras. 10 to 24.

[14] The submissions made by the Defence in the above listed objections that certain evidence should not be admitted under Rule 92*bis* were not accepted in the *Taylor* Rule 92*bis* Decision or the recent Kono Rule 92*bis* Decision.

[15] See Taylor Rule 92*bis* Decision, p. 5 and the Kono Rule 92*bis* Decision, p. 3.

[16] See the Prosecution's submissions regarding this same point in the following filings: (i) *Prosecutor v. Taylor*, SCSL-01-03-T-588, "Public Prosecution Reply to Defence Objection to Prosecution Notice under Rule 92bis for the

7. The Defence erroneously argues that the Witnesses' testimonies contain evidence which is sufficiently proximate to the Accused to warrant cross-examination and that the evidence should be excluded if such cross-examination is not ordered.[17] First, the evidence at issue of TF1-098 and TF1-104 is not sufficiently proximate to the Accused. Neither of these witnesses refers to the acts of high ranking rebel commanders taking direct orders from the Accused. Instead, all the Defence "Acts and Conduct of Accused" objections relating to these witnesses simply dispute crime base evidence.[18] The Prosecution acknowledges that all legal elements relating to the crime base are critical to the Prosecution's case in the sense that, absent stipulation or judicial notice, the Prosecution must prove all these elements beyond a reasonable doubt. However, the critical nature of evidence, in this context, cannot be the measure of admissibility under Rule 92*bis*. A bar to critical evidence in this context will prove a bar to all evidence, thus negating the rule's very purpose or effectiveness. Given the ordinary, non-legal meaning of the term, the Prosecution highlights that the evidence of TF1-098 and TF1-104 being offered pursuant to Rule 92*bis* is not, of itself, evidence which is critical to proof of the Accused's guilt.

8. Secondly, in so far as the testimony of Witness TF1-227, which refers to "Brigadier Five-Five" and his position as the senior commander, might be considered to contain evidence proximate to the Accused, cross-examination or exclusion are not the only options. Rule 92*bis* does not expressly allow cross-examination and it has been described as a "back-up arrangement".[19] Instead, a more detailed consideration and assessment of the evidence is required - such as whether it has been sufficiently tested[20] and whether the opposing party has made a showing of good cause as to why further cross-examination is required in the

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Admission of Evidence Related to inter alia Kono District – TF1-218 & TF1-304", 12 September 2008, para. 6; and (ii) *Prosecutor v. Taylor*, SCSL-01-03-T-601, "Public Prosecution Reply to 'Public with Confidential Annex A Defence Objection to Prosecution Notice under Rule 92*bis* for the Admission of Evidence Related to *inter alia* Kono District' and Other Ancillary Relief", 22 September 2008, para. 6.

[17] Objections, paras. 16-19.

[18] The portions of evidence identified in the Annex to the Objections as "Acts and Conduct of Accused" concern the attack on Freetown and the campaign of terror, shootings and killings by junta soldiers, evidence on RUF child soldiers, an attempted rape by RUF junta soldiers, the attire of the RUF junta soldiers, beating and torturing of civilians, testimony regarding the language spoken by the RUF soldiers, identification of RUF junta commanders, corpses seen by the witnesses, abduction of the witness by AFRC rebels, and the burning of houses by the AFRC.

[19] As described by Judge Shahabuddeen at para. 6 of his Separate Opinion Appended to the Appeals Chamber Decision in *Prosecutor v. Milosović*, IT-02-54-AR73.5, "Admissibility of Evidence-In-Chief in the Form of Written Statements", 31 October 2003.

[20] For example, by the cross-examination of witnesses giving similar evidence in these proceedings or by the cross-examination of the witnesses at issue in other proceedings.

interests of justice.[21] The Prosecution notes that the evidence of TF1-227 has been tested by all three defence counsel in the AFRC trial, including defence counsel acting for Santigie Borbor Kanu aka "Five-Five". Further, the Prosecution refers the Trial Chamber to its Notice on the matter of cross-examination for more details on prior testing of this testimony.[22]

Relevant evidence

9. The Defence assert in Annex A of the Objections that the Supplemental Statement of TF1-098 is irrelevant because the Prosecution has not indicated which part of the statement is relevant to the testimony of the witness. The Prosecution submits that the statement is relevant in its entirety because it concerns the impact the crimes have had both on the witness and on his family. Such evidence is relevant in particular at the sentencing stage of proceedings. However, on the basis of the dicta in the Sentencing Judgement issued in the AFRC Trial, such impact evidence must be led during proceedings and should not be sought to be admitted separately at the sentencing stage.[23]

10. The Defence also objects to several portions of TF1-227's testimony of 11 April 2005 as irrelevant because the events described lie outside the time limits and/or the area stated in the indictment. The Prosecution submits that the Defence has mischaracterized the evidence and these events do fall squarely within the requirements of the Indictment, as detailed in its Confidential Annex to this Reply. In addition, as discussed in prior pleadings on this topic, evidence outside the time period of the crimes charged may also be relevant to establish the chapeau elements of crimes and also admissible under Rule 93(A).

Opinion or conclusion evidence

11. In paragraph 5(c) of the Objections, the Defence states without argument that some of the evidence can be considered the Witnesses' own opinions or conclusions. To the extent this is correct, not all opinion or conclusory evidence given by a fact witness is inadmissible. In its Objections, the Defence identifies five portions of evidence as being "Opinion or Conclusion" evidence. Where, as in these cases, the opinion is rationally based on a witness' perception, (i.e. the witness perceived with his senses the matters on which his opinion is based and there is a rational connection between the opinion and his

[21] See *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. 40 on this issue.
[22] Notice, paras. 25-28.
[23] *Prosecutor v. Brima et al.*, SCSL-04-16-T-624, "Sentencing Judgement", 19 July 2007, paras. 8 – 9.

perceptions), such evidence is admissible. As detailed in the Confidential Annex, this evidence is based on first hand knowledge and are opinions or conclusions which a normal person would form from observed facts; they are not such that can only be based on scientific, technical or other specialized knowledge.

12. There is, therefore, no legal basis on which the portions of evidence identified as being opinion evidence should be excluded from admission under Rule 92*bis*.

Request to cross-examine

13. The Objections regarding cross-examination are erroneous.[24]

14. First, as noted at paragraph 8 above, cross-examination has been described as a "back-up arrangement". Second, the Defence argument that "[t]he right of cross examination is the Defence's absolute prerogative in each case"[25] overstates the right invoked. When granted, the right to cross-examine is not without limits. The jurisprudence establishing conditions which would allow for cross-examination under Rule 92*bis* are proof of those limits, contrary to what the Defence appears to argue at paragraph 23. Nor does the Defence have the right to cross-examine on irrelevant matters, nor to conduct an unduly cumulative examination of a witness. The ICTY imposes limits on the time allowed and the subject matter of cross-examination where witnesses are being called for such under Rule 92*bis*.[26] It is in this context and alongside the qualification noted by the Prosecution previously[27], that one must consider the continued reliance by the Defence on this Chamber's dismissal

[24] Objections, paras. 22-24.
[25] *Ibid*, para. 23.
[26] See *Prosecution v. Milošević*, IT-02-54-T, "Decision on Confidential Prosecution Motion for Admission of a Transcript and Statement Pursuant to Rules 92bis(D) and 89(F) for Witness B-1805", 12 January 2004, p. 3 order 2 where cross-examination by the accused and the *Amici Curiae* was limited to two hours in total; and *Prosecutor v. Delic*, IT-04-83-T, "Decision Adopting Guidelines on the Admission and Presentation of Evidence and Conduct of Counsel in Court", 24 July 2007, Annex, para. 17 which states *inter alia* that cross-examination might be limited to "matters which the Trial Chamber has decided to allow the witness to be called for cross-examination". In *Delić*, the approach taken by the Trial Chamber in *Prosecutor v. Milan Martić*, IT-95-11-T, "Decision on Prosecution's Motion for the Admission of Written Evidence Pursuant to Rule 92*bis* of the Rules", 16 January 2006 was referred to with approval. In *Martić*, the Chamber ordered that the areas of cross-examination be limited as follows: "Witness MM-06, appear for cross-examination on matters going to the existence of a joint criminal enterprise in which the Accused allegedly participated, to the alleged goal of the joint criminal enterprise, and to the effective control the Accused allegedly had over units committing crimes; that Witness MM-07 appear for cross-examination on matters concerning the Arkan's Tigers, the alleged effective control of the Accused over units committing crimes, and a "policy" in "the area of responsibility in the Kordun area" "to get as many Croats as possible out of the territory"; that Witness MM08 appear for cross-examination on matters concerning the existence of a joint criminal enterprise in which the Accused allegedly participated, to the relationship of the Accused with other members of this alleged joint criminal enterprise, and to the "Red Berets"; that Witness MM-037 and Witness MM-044 appear for cross-examination on matters concerning "Martic's Police" (see para. 37).
[27] *Prosecutor v. Taylor*, SCSL-01-03-T-588, "Public Prosecution Reply to Defence Objection to Prosecution Notice under Rule 92*bis* for the Admission of Evidence Related to *inter alia* Kono District – TF1-218 & TF1-304", 12 September 2008, para 19.

of similar arguments on the basis that "the Accused would be prejudiced if judicial economy were allowed to take precedence over his fair trial rights."[28] Furthermore, fairness and expediency are not contrary principles. The Prosecution relies on its submissions made on this point in previous submissions.[29]

15. Thirdly, as stated above, there is no basis to the Defence claim that "the information sought to be tendered goes to the acts and conduct of the accused …, [such that] cross-examination must be allowed."[30] Therefore, the Defence explanation of their prior statements concerning their approach to the crime base evidence must be viewed in this light.[31] Nor is the evidence so proximate as to require cross-examination. Even if portions of evidence are considered sufficiently proximate, as also stated above, this does not automatically require that the evidence be made subject to cross-examination.

16. Finally, the Defence argument that it must be shown that the line of defence in previous proceedings coincides with that of the Defence in the current proceedings[32] does not sit squarely with its previous submissions regarding the similarity of other SCSL proceedings to the current proceedings. In the Defence motion filed in December 2007, the Defence argued that the nexus between the RUF case and the Taylor case was such that it should be allowed access to closed session defence witness testimony from the RUF trial and limited disclosure of RUF defence witness names and related potentially exculpatory material.[33] Yet it now seeks to distance itself from any similarities with the RUF case for purposes of the Objections.

17. Notwithstanding the foregoing, should the Chamber order cross-examination, then, as argued previously, such cross-examination should be limited to relevant areas of inquiry not previously examined. Such limits are justified as all of the witnesses' cross-examination in the prior proceedings was full, rigorous and effective and carried out by

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[28] Objections, para. 22.
[29] *Supra*, footnote 25.
[30] Objections, para. 23.
[31] *Ibid*, footnote 36.
[32] Objections, para. 24.
[33] *Prosecutor v. Taylor*, SCSl-03-01-T-377, "Public Defence Motion Pursuant to Rule 75(G) to Modify Sesay Defence Protective Measures Decision of 30 November 2006 for Access to Closed Session Defence Witness Testimony and Limited Disclosure of Defence Witness Names and Related Exculpatory Material", 14 December 2007. A similar motion is also currently pending in respect of Kallon and Gbao defence witnesses – see *Prosecutor v. Taylor*, SCSL-03-01-T-506, "Public with Annexes A and B Defence Motion Pursuant to Rule 75(G) to Modify Kallon & Gbao Defence Protective Measures Decisions of 19 March 2007 and 1 March 2007 for Access to Closed Session Defence Witness Testimony and Limited Disclosure of Defence Witness Names and Related Exculpatory Material", 15 May 2008.

defence counsel for an accused with a similar interest to the Accused in the present proceedings.[34] Further, limits on cross-examination, particularly in relation to witnesses whose testimony in chief is admitted under Rule 92*bis*, are not contrary to the fair trial rights of the Accused but, rather in balance with these rights, have ensured the promotion of one of the central purposes of the rule which is an expeditious trial.

18. The Prosecution is cognisant of the logistical arrangements and advance planning which must be undertaken for witnesses to travel from Sierra Leone to the Hague. The Prosecution, therefore, advises that, should the Chamber order that these witnesses be made available for cross-examination, then the Prosecution shall endeavour that they be available from the end of October 2008.

Request to Rescind Previously Granted Protective Measures

19. Should this Trial Chamber grant cross examination of Witness TF1-104, making the Defence request to rescind protective measures a justiciable issue, the application is fatally flawed. The Objections fail to provide evidence sufficient to satisfy the relevant test for rescission or lessening of existing protective measures. This test was recently reaffirmed by the Appeals Chamber when it found that the party seeking to rescind the existing measures must:

> "present supporting evidence capable of establishing on a preponderance of probabilities that the witness is no longer in need of such protection. The *Trial Chamber* must thus be satisfied that there is a change in the security situation facing the witness such as a diminution in the threat level faced by the witness that justifies a variation of protective measures orders."[35]

20. Therefore, in accordance with the Appeals Chamber's ruling, the Trial Chamber must first determine whether the Defence has provided supporting evidence capable of establishing "on a preponderance of the probabilities that the witness is no longer in need of ... protection" and then determine the nature and extent of the variations sought.[36]

21. The Defence's generalized assertions regarding the location of the trial and the current

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[34] The nexus between the RUF case and the Taylor case was recently argued by the Defence in their motion seeking access to closed session defence witness testimony from the RUF trial and limited disclosure of RUF defence witness names and related potentially exculpatory material in *Prosecutor v. Taylor*, SCSL-03-01-T-377, "Public Defence Motion Pursuant to Rule 75(G) to Modify Sesay Defence Protective Measures Decision of 30 November 2006 for Access to Closed Session Defence Witness Testimony and Limited Disclosure of Defence Witness Names and Related Exculpatory Material", 14 December 2007.

[35] *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1146, "Decision on Prosecution Appeal of Decision on the Sesay Defence Motion Requesting the Lifting of Protective Measures in Respect of Certain Prosecution Witnesses", 23 May 2008, para. 37, emphasis added.

[36] *Ibid*, para. 38.

security situation in Sierra Leone fail to meet the burden required to rescind or lessen protective measures.[37] The continuing security threat to the witnesses is evidenced by the fact that this Trial Chamber has continued to grant and apply protective measures in these proceedings. Furthermore, to suggest that moving the trial to The Hague has somehow lessened the need for protection ignores the reality that this trial is perhaps even more accessible than prior proceedings held in Freetown. Passages of witness testimony are frequently directly quoted on radio broadcasts and in newspapers in both Liberia and Sierra Leone, as well as in the international media. Liberians and Sierra Leoneans may gain direct access to the proceedings on the Internet, allowing a wider audience to view the trial than the limits set by the number of seats available in a courtroom in Freetown. Moreover, upon completion of his testimony, TF1-104 must return to his home in Sierra Leone and will not be isolated from threats just because the court proceedings are being held in Europe.

22. Further, the Defence assertions do not claim that witness TF1-104 has no subjective security concerns. This witness was beaten, he received multiple wounds in a shooting where fifteen people were killed, and he was locked in his house with his family and the house was set on fire. These brutal atrocities give credence to substantial fears even today. Furthermore, woven throughout his testimony are references to his job, his home's proximity to his workplace, and things he saw and experienced in those two locations. The combination of these facts would identify him to his community if closed session was rescinded. Closed session is the only measure that would protect his security and privacy rights because his entire testimony is comprised of what he saw and experienced at work and at home and cannot simply be discussed in private session and then set aside in open proceedings. The Defence states that it recognizes the right to strike a balance between the rights of a witness and the rights of the Accused but then insists that the rights of the Accused should prevail.[38] The Prosecution reiterates that the jurisprudence states that it is not a violation of the Accused's rights to prevent the public from knowing the identity of the witness.[39] Thus, upholding the protective measures in place both honor the rights of the witness and those of the Accused.

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[37] Objections, paras. 27 to 29.
[38] Objections, para. 33.
[39] See for example, *Prosecutor v. Sesay et al.*, SCSL-04-15-T-180, "Decision on Prosecution Motion for Modification of Protective Measures for Witnesses", 5 July 2004, para. 28 and *Prosecutor v. Norman et al.*, SCSL-04-14-T, "Ruling on Motion for Modification of Protective Measures for Witnesses", 18 November 2004, p. 13.

23. Finally, the Defence submissions are similar to those made when seeking rescission of *inter alia* TF1-076's protective measures.[40] In relation to these submissions, this Chamber found that "the Defence [had] not established on a balance of probabilities that [TF1-076 was] no longer in need of such protection."[41]

III. CONCLUSION

24. The Defence Objections are without merit.

25. The application by the Prosecution was properly made under Rule 92*bis*.

26. The Defence have not established any legal basis on which any of the evidence submitted for admission under Rule 92*bis* should be excluded.

27. The Defence have not established that it is in the interests of justice that the Witnesses be cross-examined as none give evidence which is critical of itself to establish linkage nor pivotal to establishing the guilt of the Accused. However, assuming, *arguendo,* that the Chamber does find good cause has been established, then cross-examination should be limited only to relevant areas of inquiry not covered by the prior cross-examination. To hold otherwise, would be to completely frustrate the purpose of Rule 92*bis*.

28. The Defence application to have the protective measures of the Witnesses varied or rescinded is fatally flawed and should be dismissed.

29. The Prosecution requests that the prior testimony as submitted by the Prosecution, the related exhibits and statements of the Witnesses be admitted into evidence under Rule 92*bis*.

Filed in The Hague,

14 October 2008

For the Prosecution,

Brenda J. Hollis
Principal Trial Attorney

[40] *Prosecutor v. Taylor,* SCSL-03-01-T-589, "Public with Confidential Annex A Defence Objection to 'Prosecution Notice under Rule 92*bis* for the Admission of Evidence Related to *inter alia* Kono District' and Other Ancillary Relief," 12 September 2008.

[41] Kono Rule 92*bis* Decision, p. 4.

LIST OF AUTHORITIES

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Prosecutor 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

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SCSL-01-03-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. Taylor, SCSL-01-03-T-579, "Public with Confidential Annex A Defence Objection to 'Prosecution Notice under Rule 92*bis* for the Admission of Evidence Related to *inter alia* Kono District – TF1-218 & TF1-304'", 9 September 2008

Prosecutor v. Taylor, SCSL-01-03-T-588, "Public Prosecution Reply to Defence Objection to Prosecution Notice under Rule 92*bis* for the Admission of Evidence Related to *inter alia* Kono District – TF1-218 & TF1-304", 12 September 2008

Prosecutor v. Taylor, SCSL-03-01-T-589, "Public with Confidential Annex A Defence Objection to 'Prosecution Notice under Rule 92*bis* for the Admission of Evidence Related to *inter alia* Kono District' and Other Ancillary Relief," 12 September 2008

Prosecutor v. Taylor, SCSL-01-03-T-601, "Public Prosecution Reply to 'Public with Confidential Annex A Defence Objection to Prosecution Notice under Rule 92*bis* for the Admission of Evidence Related to *inter alia* Kono District' and Other Ancillary Relief", 22 September 2008

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Prosecutor v. Taylor, SCSL-01-03-T-623, "Decision on Prosecution Notice under Rule 92*bis* for the Admission of Evidence Related to *Inter Alia* Kono District", 8 October 2008

Prosecutor v. Taylor, SCSL-01-03-T-626, "Public, with Confidential Annex A Defence Objection to 'Prosecution Notice under Rule 92*bis* for the Admission of Evidence Related to *inter alia* Freetown and Western Area – TF1-098, TF1-104 and TF1-227' and Other Ancillary Relief," 8 October 2008

***Prosecutor v. Sesay et al.*, SCSL-04-15-T**

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See *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

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

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☐ Application
☐ Order
☐ Indictment
☐ Motion
☒ **Reply**
☐ Correspondence

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

Name of Officer:

Vincent Tishekwa

Signed: