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SCSL-04-15-T  
(26952-26967)

26952

# THE SPECIAL COURT FOR SIERRA LEONE

**BEFORE:**

Hon. Justice Benjamin Itoe, Presiding  
Hon. Justice Pierre Boutet,  
Hon. Justice Bankole Thompson

Registrar: Mr. Herman von Hebel

Date filed: 4<sup>th</sup> June 2008

The Prosecutor

-v-

Issa Hassan Sesay  
Morris Kallon  
Augustine Gbao

Case No: SCSL-04-15-T

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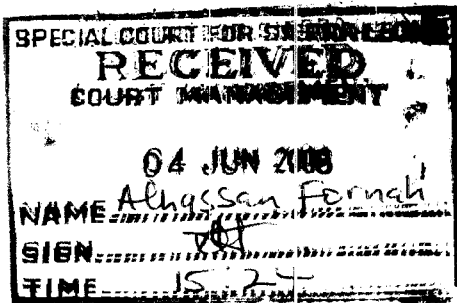
Public

Sesay Defence Reply to  
Prosecution Response to Application for Notice to be Taken of Adjudicated Facts  
Pursuant to Rule 94(B)

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## INTRODUCTION

1. On the 23<sup>rd</sup> May 2008, the Sesay Defence filed an application for notice to be taken of adjudicated facts pursuant to Rule 94(B) (“Application”).<sup>1</sup> On the 30<sup>th</sup> May 2008 the Prosecution filed its Response (“Response”).<sup>2</sup> Herewith the Defence files its Reply.

## REPLY

### **Timely Application**

2. The purported legal principle proposed by the Prosecution to the effect that “an application pursuant to Rule 94(B) should not be permitted [after the moving party closes its case] because the opposing party is not in a position to contest that evidence”<sup>3</sup> and so that “the proposed adjudicated facts can, at a minimum, be put to the witnesses of the moving party”<sup>4</sup> is without merit. Rule 94(B) provides no such restriction or qualification and none can properly be inferred.
3. The Prosecution’s argument concerning when a party should be required to file an adjudicated facts application would lead to a procedural absurdity. First, the Prosecution’s stance – that adjudicated facts must be “filed during the party’s case”<sup>5</sup> – would mean that there is no procedural bar preventing the Gbao Defence filing *this* identical adjudicated facts Application. Thus *these* facts could be accepted by the Trial Chamber for the purposes of the whole trial at the behest of Gbao but not Sesay. Would the Prosecution object to the Gbao application?
4. Second, the Prosecution’s stance would effectively deprive the Sesay Defence from making use of Rule 94(B) *at all* in the RUF case. The Prosecution is correct that – as cited in Paragraph 9 of the Response – “only facts in a judgement, from which there has been no appeal, or as to which any appellate proceedings have concluded, can truly be deemed ‘adjudicated facts’ within the meaning of Rule 94(B).”<sup>6</sup> Judicial notice cannot be taken of

<sup>1</sup> *Prosecutor v. Sesay et al.*, SCSL-04-15-1144, “Public Sesay Defence Application for Notice to be Taken of Adjudicated Facts Pursuant to Rule 94(B)”, 23<sup>rd</sup> May 2008.

<sup>2</sup> *Prosecutor v. Sesay et al.*, SCSL-04-15-1159, “Public Prosecution Response to Sesay Defence Application for Notice to be taken of Adjudicated Facts Pursuant to Rule 94(B)”, 30<sup>th</sup> May 2008.

<sup>3</sup> The Response, para. 10.

<sup>4</sup> The Response, para. 20.

<sup>5</sup> The Response, para. 20.

<sup>6</sup> Response, para. 9, citing *Prosecutor v. Ntakirutimana and Ntakirutimana*, Case No. ICTR-96-10-T and ICTR-96-17-T, “Decision on the Prosecutor’s Motion for Judicial Notice of Adjudicated Facts”, 22<sup>nd</sup> November 2001. The Prosecution’s “obvious logic” in Paragraph 8 of the Response that applications pursuant to Rule 94(B) should be filed during a party’s case is demonstrably false.

facts which will be the subject of any pending appeal under Rule 94(B).<sup>7</sup> Indeed, as also cited by the Prosecution in Paragraph 12 of the Response, the proposed adjudicated facts “must not be subject to pending appeal.”<sup>8</sup> In this regard – given that the Appeal Judgment in the AFRC case was not delivered until the 22<sup>nd</sup> February 2008 and the CDF Appeal Judgment in the CDF case not until the 28<sup>th</sup> May 2008 – the Prosecution would have still been denied the opportunity to “put [the adjudicated facts] to the witnesses”<sup>9</sup> of Mr. Sesay, who closed his case on the 13<sup>th</sup> March 2008. (The vast majority of witnesses who gave evidence for the first Accused between the 22<sup>nd</sup> February 2008 and 13<sup>th</sup> March 2008 were civilian witnesses from Bombali, Tonkolili, and Kono and they would not have been able to contest the AFRC insider evidence or the CDF evidence arising from Tongo) In other words, according to the Prosecution logic, Mr. Kallon and Mr. Gbao have a right to use Rule 94(B) but not Mr. Sesay.

### **Lack of Proper Response**

5. The Response consists of an interesting exposition of select bits of the basic law but little else. The Response fails to address the applicability of the law to the current Application and avoids taking any position on the accuracy or otherwise of the facts which are the subject of the Application. It should be obvious to any *bona fides* party that purports to object to the admission of facts – adjudicated or otherwise – that any objection should be foremost based on a non-acceptance of the facts.
6. As the Prosecution accepts, once a Trial Chamber takes notice of an adjudicated fact, the burden of proof to disqualify the fact shifts to the disputing party.<sup>10</sup> However, this principle is significant only if the facts *are* the subject of a “reasonable dispute”.<sup>11</sup> In other words the moving party has to state the facts which it wishes to have admitted and the responding party should state, in relation to each fact, whether it disputes the fact. This would appear to be the basis of a proper objection. In the absence of this indication it can safely be assumed that any opposition to the Application is nothing more than legal sophistry which will (or is designed to) undermine fairness or judicial economy.

<sup>7</sup> *Prosecutor v. Bizimungu*, ICTR-99-50-T, “Decision on Bicumupaka’s Motion for Judicial Notice”, 11<sup>th</sup> February 2004, paras. 7-8.

<sup>8</sup> Response, para. 12, citing *Bizimungu*.

<sup>9</sup> The Response, para. 20.

<sup>10</sup> *Krajišnik*, para. 16; cited in Paragraph 6 of the Response.

<sup>11</sup> *Ntakirutimana and Prosecutor v. Mejkic*, Case No. IT-02-65-PT, “Decision on Prosecution Motion for Judicial Notice Pursuant to Rule 94(B)”, 1<sup>st</sup> April 2004.

7. The Prosecution's failure to provide an indication is a reflection of the lack of proper basis for the legal objections proffered. It should be observed that the proposed facts are those which are either *identical to the Prosecution evidence in the RUF case* (Application, Annex A: AFRC adjudicated facts<sup>12</sup>) or are those which *have been led by the Prosecution in the CDF case* (Application Annex B: CDF adjudicated facts). The proposed facts are from evidence which *emanated from the Prosecution* and which were accepted by the AFRC and CDF Trial Chambers. It is bizarre for the current RUF Prosecution team to lament the loss of an opportunity to present a challenge to this evidence given that this would involve contradicting its own case against the RUF accused or, as regards the CDF facts, would involve contradicting the case led by their colleagues in the CDF case, both at trial and on appeal.<sup>13</sup> It follows that it would be wrong for the Trial Chamber to allow the Prosecution an opportunity to undermine the consistency of the case-law by opposing an application without a proper basis and when the facts sought arose as a result of the acceptance of Prosecution evidence.
8. The "opportunity" which the Prosecution wishes to elevate as a precondition for the acceptance of adjudicated facts is only relevant if the facts are subject of reasonable dispute; the "opportunity" is irrelevant for facts which are agreed, or those which are consistent with the case advanced by the Prosecution *and* which no party has sought to dispute during their case. The present application concerns a request to the Trial Chamber to settle some of these factual issues before the close of the case. It does not involve the admission of novel facts or the possibility of new factual conflicts but the resolution of previously anticipated disputes which never materialised. These "disputes" were the result of the evidence led by the Prosecution and either have been accepted by the various accused or in fact were factual issues which have never been in dispute (e.g. all the adjudicated facts from the CDF case).
9. The grant of the Application would involve the selection of some of the facts over other contradictory facts led by the Prosecution and/or would create a presumption in favour of the accuracy of the facts but would not involve disputes between the Prosecution and the Defence. In these circumstances these matters can properly be settled by judicial notice.<sup>14</sup>

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<sup>12</sup> Evidence arising from the RUF Prosecution's witnesses that support the relevant adjudicated facts is set out in detail in Annex A to this Reply.

<sup>13</sup> For example: *Prosecutor v. Fofana and Kondewa*, SCSL-04-14-810, "Appeal Brief", para. 2.36.

<sup>14</sup> *Nakirutimana and Mejakic*.

10. The Prosecution, Sesay and Kallon defence teams, have led evidence during their respective cases in support or otherwise of their positions in relation to these issues and purported disputes; no party can claim to have not been given an ample opportunity to contest or lead evidence demonstrating their positions on these issues. The Gbao team, currently presenting its case, will have the same opportunity.

### **CONCLUSION**

11. The Prosecution's opposition should not have been filed. It has no merit. It is difficult to understand how the Prosecution could, with *bona fides*, claim that the "adjudicated facts proposed by the Defence are not relevant to issues in the present case, since they largely refer to findings which concern the armed groups AFRC and CDF, their command structure and positions, acts or omissions of the convicted persons in" the CDF and AFRC cases.<sup>15</sup> It is precisely because they involve these groups that they serve the interests of judicial economy, by narrowing the issues and allowing all parties and the Trial Chamber to focus their resources and time on issues in the closing and the deliberations on the acts and conduct of the RUF groups and the three Accused.

12. In the aforementioned circumstances, the Prosecution's Response should be viewed as another regrettable refusal to assist the Trial Chamber or the Accused to understand the factual basis of the Prosecution's case or to assist in narrowing the factual and legal issues.

### **RELIEF SOUGHT**

13. For the reasons set out above, the Defence requests that the Trial Chamber take judicial notice, pursuant to Rule 94(B), of the adjudicated facts identified in Annexes A and B.


14. Additionally, in light of the Prosecution assertion that the evidence contained in Annexes A and B is irrelevant to the case against the RUF Accused, in the event that the Trial Chamber declines to grant the Application, the Defence requests that the Trial Chamber order the Prosecution to address each proposed fact and provide explanation concerning how the facts

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<sup>15</sup> The Response, para. 17.

are now no longer relevant to the case against the Accused. This will enable the Accused a greater understanding of the case against him and further promote judicial economy.

Dated 4<sup>th</sup> June 2008



Wayne Jordash  
Sareta Ashraph

## LIST OF AUTHORITIES

### Decisions

*Prosecutor v. Bizimungu*, ICTR-99-50-T, “Decision on Bicamumpaka’s Motion for Judicial Notice”, 11<sup>th</sup> February 2004.

*Prosecutor v. Krajišnik*, IT-00-39-PT, “Decision on Prosecution’s Motions for Judicial Notice of Adjudicated Facts and For Admission of Written Statements of Witnesses Pursuant to Rule 92bis”, 28<sup>th</sup> February 2003.

*Prosecutor v. Ntakirutimana and Ntakirutimana*, Case No. ICTR-96-10-T and ICTR-96-17-T, “Decision on the Prosecutor’s Motion for Judicial Notice of Adjudicated Facts”, 22<sup>nd</sup> November 2001.

*Prosecutor v. Mejkic*, Case No. IT-02-65-PT, “Decision on Prosecution Motion for Judicial Notice Pursuant to Rule 94(B)”, 1<sup>st</sup> April 2004.

### Motions

*Prosecutor v. Fofana and Kondewa*, SCSL-04-14-810, “Appeal Brief”.

*Prosecutor v. Sesay et al.*, SCSL-04-15-1144, “Public Sesay Defence Application for Notice to be Taken of Adjudicated Facts Pursuant to Rule 94(B)”, 23<sup>rd</sup> May 2008.

*Prosecutor v. Sesay et al.*, SCSL-04-15-1159, “Public Prosecution Response to Sesay Defence Application for Notice to be taken of Adjudicated Facts Pursuant to Rule 94(B)”, 30<sup>th</sup> May 2008.

**ANNEX A**



**Annex A: Evidence called by Prosecution witnesses called in the RUF trial which support adjudicated facts drawn from AFRC Judgment.**

1.	<p>Pursuant to the agreement reached with the AFRC on it taking power, Foday Sankoh was appointed Johnny Paul Koroma's deputy. As Sankoh was still absent, his post remained de facto vacant. At a later stage, SAJ Musa, a senior member of the SLA, became de facto deputy to Johnny Paul Koroma.</p>	<p><b>TF1-334</b>, AFRC transcript, 16 May 2005, pp. 92-93. (admitted under Rule 92bis)</p>
2.	<p>Both the AFRC and RUF factions officially declared that they were joining forces to bring peace and political stability to Sierra Leone.</p>	<p><b>TF1-361</b>, 11 July 2005; pp. 52.</p>
3.	<p>The office of the Principal Liaison Officer (PLO) was established by the AFRC government on 10 July 1997. According to the Decree establishing the office, the PLOs were responsible for "supervising, monitoring and coordinating the operations of any Department of State or such other business of Government, as may from time to time be assigned to them".</p>	<p><b>Exhibit 120 C</b></p>
4.	<p>The Principal Liaison Officers were members of the Supreme Council. They were responsible for supervising various ministries, and were superior to other members of the Supreme Council and the Council of Secretaries.</p>	<p><b>TF1-167</b>, 14 October 2004, pp. 26-30. <b>TF1-371</b>, 20 July 2006, pp. 39.</p>
5.	<p>As a PLO 2, the Accused Brima reported to PLO 1, Abu Sankoh, and ultimately to SAJ Musa and the Chairman, Johnny Paul Koroma.</p>	<p><b>TF1-184</b>, 5 December 2005, pp. 82-83. <b>TF1-334</b>, AFRC transcript, 16 May 2005, pp. 57, 99-101. (admitted under Rule 92bis)</p>
6.	<p>The AFRC Government also included three Regional Ministers, also known as Regional Secretaries: for the North (Mr. Kamara aka 'Bushfall'); South (AF Kamara, aka 'Ambush'); and East (Eddie Kanneh). These men reported directly to the Chairman and were also supervised by the Deputy Chairman.</p>	<p><b>TF1-334</b>, AFRC transcript, 17 May 2005, pp. 16-17. (admitted under Rule 92bis)</p>
7.	<p>The Commander-in-Chief of the Armed Forces was Johnny Paul Koroma. Avivavo Kamara, the Deputy Defence Minister, reported directly to Koroma but was also</p>	<p><b>TF1-334</b>, AFRC transcript, 17 May 2005, pp. 99, 102.. (admitted under</p>

	subordinate to SAJ Musa. Avivavo Kamara's immediate subordinate was the Director of Defence, Brigadier Mani. Brigadier Mani's subordinate was SFY Koroma, Johnny Paul Koroma's brother and the Chief of Defence Staff. SFY Koroma's immediate subordinate was the Chief of Army Staff, Brigadier SO Williams, also known as Kowas.	Rule 92bis)
8.	Resident Minister East, Eddie Kanneh, was heavily involved in diamond mining and had overall control of the diamond mining areas in Kono and Kenema Districts and reported directly to Johnny Paul Koroma.	<b>TF1-041</b> , 10 July 2006, pp. 21. <b>TF1-334</b> , AFRC transcript, 17 May 2005, pp. 17. (admitted under Rule 92bis)
9.	The Accused Brima was Principal Liaison Officer 2 in the AFRC government and was responsible for overseeing mining activities and reporting to SAJ Musa, the Mines Minister, in Freetown.	<b>TF1-167</b> , 14 October 2004, pp.40-41. <b>TF1-360</b> , 22 July 2005, pp. 31.
10.	The Accused Brima was in Kono when ECOMOG ousted the AFRC government in Freetown.	<b>TF1-167</b> , 19 October 2004, 00. 12-13. <b>TF1-360</b> , 22 July 2005, pp. 31, 46.
11.	The RUF and AFRC were allied in one Government and worked together during the AFRC Government period but the individuals continued to identify themselves as either RUF or SLA and that at an organisational level separate commanders for each group co-existed in the Districts.	<b>TF1-371</b> , 20 July 2006, pp. 37-38.
12.	The Accused Brima exercised effective control over members of the RUF merely by virtue of his de jure position within the AFRC Government administration in Freetown.	Reasonable inference based on points 3-5 above.
13.	The Supreme Council did not have the collective ability to effectively control the military, as the military retained its own distinct chain of command and organisational structure.	Reasonable inference.
14.	The retreat from Freetown was uncoordinated and without any semblance of military discipline. AFRC soldiers and RUF fighters fled with their families using either civilian cars or army vehicles. The fleeing troops passed through the villages of Lumley, Goderich, York and Tumbo. From Tumbo they crossed Yawri Bay to Fo-gbo. They then proceeded to Newton and Masiaka (Port Loko District). It took three to four days for the troops to reach Masiaka. This period is often referred to as "the intervention".	<b>TF1-167</b> , 19 October 2004, pp 83 <b>TF1-334</b> , AFRC transcript, 17 May 2005, pp. 68. (admitted under Rule 92bis) <b>TF1-360</b> , 22 July 2005, pp. 49 – 50. <b>TF1-371</b> , 20 July 2006, pp. 57.

15.	After the chaotic retreat from Freetown, the AFRC and RUF troops gathered in Masiaka but organisation and control remained minimal.	<b>TF1-184</b> , 5 December 2005, pp 83-85
16.	At Masiaka, Johnny Paul Koroma announced "Operation Pay Yourself" over the BBC. Koroma informed his troops that they he could no longer pay them and they would therefore have to fend for themselves. Immediately thereafter the rebels began a widespread campaign of looting.	<b>TF1-117</b> , 29 June 2006, pp. 101. <b>TF1-334</b> , AFRC transcript, 16 May 2005, pp. 57, 99-101. (admitted under Rule 92 <i>bis</i> )
17.	When SAJ Musa learned about Koroma's decision – that the AFRC soldiers should be subordinate to RUF command – he was furious. He would not accept the notion that untrained RUF fighters could be in charge of former soldiers, and insisted that the purpose of his group was to reinstate the army and that the RUF could not lead such a mission.	<b>TF1-184</b> , 5 December 2005, pp 88-89; 6 December 2005, pp. 33-41.
18.	Before the operation to recapture Kono took place, a dispute erupted over command and control issues resulting in hostilities between the two factions and the deaths of several fighters. As a result, SAJ Musa, and a significant number of AFRC troops loyal to him, opted not to participate in or support the operation. SAJ Musa and troops loyal to him were based in Koinadugu district.	<b>TF1-167</b> , 14 October 2004, pp. 57-59
19.	RUF commander Denis Mingo, the witness, Kamara and other soldiers then collected Johnny Paul Koroma from his village and moved to Makeni, Bombali District.	<b>TF1-167</b> , 19 October 2004, pp 16. <b>TF1-334</b> , AFRC transcript, 17 May 2005, pp. 85-86. (admitted under Rule 92 <i>bis</i> )
20.	Johnny Paul Koroma took overall command of the AFRC/RUF troops. Koroma and other former soldiers and RUF commanders attended a meeting at RUF commander Denis Mingo's house in Koidu. The discussion, chaired by Mingo, revolved around the relative positions of the AFRC and RUF. Koroma agreed with Mingo that the AFRC troops would be subordinate to the RUF, a decision which was unpopular with some of his own commanders.	<b>TF1-334</b> , AFRC transcript, 17 May 2005, pp. 117. (admitted under Rule 92 <i>bis</i> )
21.	Koroma did not have any form of contact whatsoever with any of his former associates from the time of his arrest in Kailahun in February/ March 1998 until the end of the Indictment period.	<b>TF1-167</b> , 19 October 2004, pp. 26-27 <b>TF1 -360</b> , 22 July 2005, pp. 43.

22.	<p>In February 1998, the Accused Brima was detained by the RUF in Kailahun District. In late April or early May 1998, he travelled from Kailahun to Kono District. Upon arrival Brima took overall command of the AFRC troops based in Kono District. Brima's arrival in Kono District marked the departure of the AFRC troops from Kono District towards Mansofinia in Koinadugu District.</p>	<p><b>TF1-167</b>, 14 October 2005, pp. 76-77.  <b>TF1-334</b>, AFRC transcript, 19 May 2005, pp. 7-8; 20 May 2005, pp. 20, 27, 38, 51; 17 June 2005, pp.45-46; 20 June 2005, pp. 14-15 (admitted under Rule 92bis)</p>
23.	<p>At a meeting in Koinadugu District, various AFRC commanders met with SAJ Musa to discuss the future and develop a new military strategy. The commanders agreed that the troops who had arrived from Kono District should act as an advance troop which would establish a base in north western area of Sierra Leone in preparation for an attack on Freetown. The purpose was to "restore the Sierra Leone Army". The RUF was not involved in these deliberations.</p>	<p><b>TF1-167</b>, 14 October 2004, pp. 76-77; 19 October 2004, pp 31, 59-60, 131-133.  <b>TF1-184</b>, 5 December 2005, pp. 16; 6 December 2005, pp. 39 – 41.  <b>TF1-334</b>, AFRC transcript, 20 May 2005, pp. 83-84, 86-87; 13 June 2005, pp. 26-27. (admitted under Rule 92bis)</p>
24.	<p>While SAJ appears to have been the overall strategist for the AFRC, once Brima left Mansofinia he had no contact with Musa until he reached Camp Rosos and even then communication was cursory. Thus, the Accused Brima was not subject to higher level supervision or command during this period.</p>	<p><b>TF1-334</b>, AFRC transcript, 24 May 2005, pp. 91-92, 97, 107. (admitted under Rule 92bis)</p>
25.	<p>The advance team returned to Mansofinia in May 1998 and started a three month journey through Sierra Leone to Rosos, which is located in eastern Bombali District. From Mansofinia they travelled south into Kono District and passed Kondea, Worodu and Yarya, the hometown of the Accused Brima. From there the troops headed north east [sic; west], back into Koinadugu District to Yifin, and then moved eastwards passing Kumala and Bendugu toward the area near Bumbuna (Tonkolili District). From there the troops headed further north east [sic; west] into Bombali District, passing Bonoya, Karina, Pendembu and Mateboi before finally arriving at Rosos. The civilian population was routinely targeted and attacked by soldiers and fighters on that route. Villages attacked by the troops on their path included Mandaha, Rosos, Bornoya, Mateboi and Gbendembu in Bombali District.</p>	<p><b>TF1-156</b>, AFRC transcript, 26/11/05, pp. 35 - 39. (admitted under Rule 92bis)  <b>TF1-167</b>, 14 October 2004, pp. 85-88, 91-92.  <b>TF1-334</b>, AFRC transcript, 23 May 2005, pp. 55-56, 77, 84. (admitted under Rule 92bis)  <b>TF1-343</b>, 17 March 2006, pp. 58-59  <b>TF1-360</b>, 21 July 2005, pp. 15.</p>
26.	<p>The Accused Brima was the overall commander of the AFRC forces that committed the crimes in Bombali District.</p>	<p><b>TF1-167</b>, 19 October 2004, pp. 47-48, 57-58, 125.</p>

27.	Between 1 May 1998 and 30 November 1998, members of the AFRC unlawfully killed an unknown number of civilians in Borno, Mateboi and Gbendembu in Bombali District	<p><b>TF1-156</b>, AFRC transcript, 26/11/05, pp. 35 - 39. (admitted under Rule 92bis)</p> <p><b>TF1-167</b>, 14 October 2004, pp. 91-92.</p> <p><b>TF1-343</b>, 17 March 2006, pp. 58-59</p> <p><b>TF1-360</b>, 21 July 2005, pp. 15.</p>
28.	Much of the journey was conducted by foot. The troops settled in Rosos, where they remained for around three months (July – September 1998). However, following ECOMOG discovery and bombardment of the camp, they travelled west to a village known as 'Colonel Eddie Town.' From 'Colonel Eddie Town' the troops staged a number of attacks on ECOMOG positions in order to supplement their dwindling stocks of arms and ammunition.	<p><b>TF1-334</b>, AFRC transcript, 23 May 2005, pp. 103; 24 May 2005, pp. 72-73; 25 May 2005, pp. 49-54. (admitted under Rule 92bis)</p>
29.	As the different factions were unable to communicate with each other, SAJ Musa sent a second advance group to locate the first advance team in or about September 1998. The route taken by this second group is not clear, but it appears that they travelled along a route similar to the one taken by the first advance team.	
30.	Upon his arrival in 'Colonel Eddie Town' in November 1998, SAJ Musa assumed command. He emphasised his disenchantment with the RUF and stressed that it was vital that his troops arrive in Freetown before the RUF. SAJ Musa reorganised the troops and began the advance towards Freetown. The troops passed through the villages of Mange, Lunsar, Masiaka and Newton before arriving in Benguema in the Western Area in December 1998. Throughout the advance, the troops withstood frequent attacks by ECOMOG.	<p><b>TF1-167</b>, 14 October 2004, pp. 106-109; 19 October 2004, pp. 52.</p> <p><b>TF1-360</b>, 21 July 2005, pp. 20 - 23.</p>
31.	On one occasion during the advance, SAJ Musa and the AFRC troops heard the British Broadcasting Corporation (BBC) interview Sam Bockarie over the radio. Bockarie explained that it was RUF troops who were approaching Freetown. Musa immediately contacted Sam Bockarie, insulted him and told him that he had no right to claim that the troops approaching Freetown were RUF troops.	<p><b>TF1-334</b>, AFRC transcript, 13 June 2005, pp. 46-48. (admitted under Rule 92bis)</p>
32.	A group of AFRC soldiers led by 'O-Five' arrived at 'Colonel Eddie Town' and ordered the arrest of the three Accused. SAJ Musa arrived subsequently and	<p><b>TF1-167</b>, 14 October 2004, pp. 106-108; 115 – 122; 19 October 2004,</p>

	became the overall commander of the AFRC troops, followed by 'O-Five' and 'Junior Mavin'. In Newton, on the outskirts of Freetown, SAJ Musa held a meeting in which he reinstated the Accused Brima, Kamara and Kanu.	pp. 125-126.
33.	On 5 January 1999 the Accused Brima gathered the troops in Allen Town and told them the time had come to attack Freetown. At this meeting he further instructed his troops to capture State House, burn police stations, release the prisoners held at Pademba road prison and execute 'collaborators,' meaning anyone who did not support the troops. He further informed his troops that as he did not have the wherewithal to pay them, they were free to loot from the civilian population although he expected his troops to hand any 'government property', meaning diamonds or dollars, to the Brigade.	<b>TF1-334</b> , AFRC transcript, 25 May 2005, pp. 100-103; 13 June 2005, pp. 100 (admitted under Rule 92bis)
34.	Witness TF1-334 was part of the advance troop and confirmed that when the AFRC captured new ground, they would wait for the brigade senior command, including the Accused Brima, to arrive and tell them what to do next. It was accepted that the soldiers would not do anything without the command of Gullit. Gullit ordered the soldiers to set fire to vehicles and this was a deliberate tactic to create an obstacle to prevent ECOMOG armoured cars reaching the AFRC position.	<b>TF1-334</b> , AFRC transcript, 13 June 2005, pp. 104-112 (admitted under Rule 92bis)
35.	Accused Kanu was Chief of Staff and also the commander in charge of civilian abductees throughout the attack on Freetown on 6 January 1999 and the retreat to Newton.	
36.	Upon capturing State House, the AFRC established its headquarters there. The Accused Brima was in command. Other senior commanders including the Accused Kamara and Kanu were also present there from time to time. On arrival at State House, Brima ordered the opening of Pademba Road prison.	<b>TF1-334</b> , AFRC transcript, 14 June 2005, pp. 21-22 (admitted under Rule 92bis)
37.	From the death of SAJ Musa until around the time the troops lost control of State House, the AFRC faction had a chain of command. After the loss of State House, this chain of command was interrupted until the troops regrouped. In the interim, individual commanders gave orders to the troops in their proximity.	<b>TF1-167</b> , 19 October 2004, pp. 69-71. <b>TF1-334</b> , AFRC transcript, 13 June 2005, pp. 100- 104; 14 June 2005, pp. 62-64 (admitted under Rule 92bis)
38.	From the State House, senior officers established radio contact with Sam Bockarie and asked for reinforcement. However, the support never arrived.	<b>TF1-167</b> , 20 October 2004, pp. 52. <b>TF1-184</b> , 5 December 2005, pp. 54-55

		TF1-361, 15 November 2005, pp. 24-25
39.	Following heavy assaults from ECOMOG, the troops were forced to retreat from Freetown. This failure marked the end of the AFRC offensive as the troops were running out of ammunition. While the AFRC managed a controlled retreat, engaging ECOMOG and Kamajor troops who were blocking their way, RUF reinforcements arrived in Waterloo. However, the RUF troops were either unwilling or unable to provide the necessary support to the AFRC troops.	TF1-167, 18 October 2004, pp. 56-58, 19 October 2004, pp. 69-70. TF1-184, 5 December 2005, pp. 54-55 TF1-361, 15 November 2005, pp. 24-25
40.	The AFRC forces withdrew, reorganised and established bases in the Western Area, including in Newton and Benguema. They remained there until approximately early April 1999, when the AFRC divided. One group travelled to Makeni in Bombali District to support one of several RUF factions involved in internecine battle.	TF1-167, 18 October 2004, pp. 83
41.	A smaller group moved to Port Loko District and settled in the region of Okra Hills near Rogberi. This group became known as the "West Side Boys" and frequently targeted and attacked the civilian population. Towns and villages attacked included Manarima, Nonkoba and Tendakum. These troops remained in Port Loko until the negotiation of the Lomé Peace Accord.	TF1-253, 28 July 2004, pp. 22-27, 29 July 2004, pp. 4-5 TF1-256, AFRC transcript, 14 April 2005, pp. 81-89, 96-105, (admitted under Rule 92bis)
42.	The three AFRC Accused retreated from Freetown to Newton and Benguema in the Western Area in late January 1999. In approximately early April 1999, the AFRC troop separated into two groups, with the Accused Brima and Kanu moving with some fighters to Makeni in Bombali district.	TF1-334, AFRC transcript, 14 June 2005, pp. 108-133; 15 June 2005, pp. 10-19, 24-25 (admitted under Rule 92bis) TF1-361, 18 July 2005, pp. 64
43.	The Accused Brima, accompanied by the Accused Kamara and a group of AFRC troops, went to Lunsar to assist 'Superman', who was fighting against Issa Sesay at the time.	TF1-361, 18 July 2005, pp. 64
44.	Upon withdrawing from Newton in late February or early March 1999, the Accused Kamara retreated to the region of Okra Hills in Port Loko District. During this same period, the Accused Brima and the Accused Kanu went to Makeni, Bombali District.	TF1-168, 3 March 2006, pp. 29
45.	The Accused Kamara was the overall commander of the AFRC forces also called	TF1-167, 18 October 2004, pp. 83 -

	<p>'West Side' in Port Loko District in 1999, and that he had substantial authority in this position.</p>	85.
46.	<p>The Accused Kamara was in command of a group of AFRC troops that went to Four Mile and Mamamah, near Mile 38. A series of orders were given by the Accused Kamara to the troops at Mamamah which were obeyed. From Mamamah they went to Gberibana, in the 'West Side'. At the 'West Side', Kamara called a meeting at which he restructured the troops and made appointments.</p>	<p>TF1-167, 18 October 2004, pp. 83 - 85</p>
47.	<p>Between February and April 1999, in Port Loko District, an unknown number of civilians were unlawfully killed by AFRC troops in Manaarma.</p>	<p>TF1-167, 18 October 2004, pp. 81 - 83.</p>