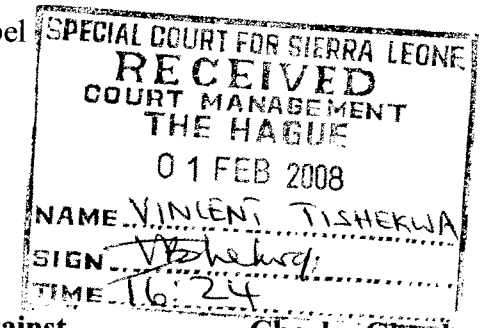
406) SCSL-03-01-T (14558-14572) 14558

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: 1 February 2008



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

Case No. SCSL-03-01-T

PUBLIC

PROSECUTION RESPONSE TO DEFENCE APPLICATION TO EXCLUDE THE EVIDENCE OF PROPOSED PROSECUTION EXPERT WITNESS CORINNE DUFKA, OR IN THE ALTERNATIVE, TO LIMIT ITS SCOPE

Office of the Prosecutor:
Ms. Brenda J. Hollis
Mr. Mohamed A. Bangura
Ms. Kirsten Keith

Counsel for the Accused:
Mr. Courtenay Griffiths
Mr. Andrew Cayley
Mr. Terry Munyard
Mr. Morris Anyah

I) Introduction

1. The Prosecution files this Response to the "Defence Application to the Exclude the Evidence of Proposed Prosecution Expert Witness Corinne Dufka or, In the Alternative, to Limit Its Scope" ("**Application**"), dated 28 January 2008.
2. This Response is filed in accordance with the oral Order issued by this Trial Chamber on 22 January 2008.[1]
3. The Defence object to the expert evidence of Ms. Dufka on the following five (5) grounds:

> The Witness is not an Expert; The Witness's Objectivity and Impartiality are impugned by her previous role as a member of the Office of the Prosecutor ("OTP") and her stated position on the guilt of the Accused; Her evidence is not necessary to assist the Trial Chamber; Some of her evidence relates to issues of fact that go to the guilt of the Accused ("Ultimate Issues"); and Her evidence undermines the Accused's Right to a Fair Trial.

4. The title of the Defence Application also states that in the alternative, the scope of the evidence is to be limited. However, no submissions were made on this point except perhaps for the areas of her evidence identified in Annex 1. Nowhere has the Defence Application identified any opinions from Ms. Dufka's report or testimony, which it seeks to exclude.
5. The Prosecution submits that the Application is unfounded and that the evidence of Corinne Dufka should be admitted.

II) The Witness is an Expert

Legal Principles for Qualification as an Expert

6. Rule 94*bis* does not provide an explicit definition of the term expert. However this Trial Chamber, relying on ICTY and ICTR jurisprudence, has adopted the qualitative definition that:

> "an expert must possess relevant specialized knowledge acquired through education, *experience or training* in the proposed field of expertise".[2] (emphasis added)

7. This Trial Chamber has defined the role of an expert as being "to assist the Chamber to understand or determine an issue in dispute and the context in which the events took place."[3]

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[1] Trial Transcript ("TT") 22 January 2008, p.1945, lines 15-19.
[2] *Prosecutor v. Brima et al.*, SCSL-04-16-T-365, Decision on Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E) and Joint Defence Application to Exclude the Expert Evidence of Zainab Hawa Bangura or Alternatively to Cross-Examine Her Pursuant to Rule 94*bis*, 5 August 2005, para. 31. Justice Doherty in her Separate and Concurring Opinion to this Decision adopted the same qualitative definition, para. 50

8. The ICTR Appeals Chamber has held that the: "purpose of expert testimony is to supply specialized knowledge that might assist the trier of fact in understanding the evidence before it."[4] The ICTY Appeals Chamber that recalled that "the evidence of an expert is meant to provide some specialized knowledge – be it a skill or knowledge acquired through training – that may assist the fact finder to understand the evidence presented."[5]

9. The Defence claim to have identified a "universal test" that applies higher standards regarding expert evidence and a lower standard that has been applied in some ICTY cases. The Defence assert that their universal test" is supported by domestic jurisprudence but fail to provide any authorities. Further, the Defence fail to draw the distinction between those principles that relate to the admission of expert evidence and those that relate to the qualification of an expert.[6]

Submissions: Witness is an Expert

10. It is submitted that Ms. Dufka is an expert as she satisfies the legal requirements set out above.

Field of expertise

11. There is nothing in the Rules of Procedure and Evidence ("Rules") or the jurisprudence of the International Tribunals that limits the scope of fields of expertise.[7] Ms. Dufka's field of expertise is within the field of investigating and researching human rights abuses within the West Africa region. Specifically, her area of expertise is: "*Events in Liberia and Sierra Leone leading to and during the ongoing conflict including human rights violations.*"[8]

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[3] *Ibid*, para. 31. Trial Chamber I adopted a similar position, noting that expert testimony is "testimony intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a particular field", *Prosecutor v. Norman et al.*, SCSL-04-14-T-650, Decision on Fofana Submissions Regarding Proposed Expert Witness Daniel J. Hoffman Ph.D, 7 July 2006

[4] *Prosecutor v. Semanza*, ICTR-97-20-A, Appeals Judgement, 20 May 2005, para. 303. The Prosecution acknowledges that the Trial (and Appeal Chambers) of the Special Court of Sierra Leone are not bound to follow the decisions of the ICTY/ICTR, and shall simply be guided by them; *See Prosecutor v. Sesay*, SCSL-03-05-PT-, Decision on the Prosecutor's Motion for Immediate Protective Measures for Victims and Witnesses and for Non-Public Disclosure, 23 May 2002, para. 11.

[5] *Prosecutor v Popovic et al*, Case No. IT-05-88-AR73.2, Appeals Chamber "Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness", 30 January 2008, para. 27

[6] The factors listed in para. 9 of the Application go to issues of admissibility and the majority of those listed in para. 10 go to the issue of whether the witness qualifies as an expert witness.

[7] *Supra* note 2, para.31. This Trial Chamber found that a witness who had extensive experience monitoring and documenting human rights abuses in Sierra Leone, possessed the relevant experience and was entitled to be called an expert witness.

[8] *Prosecutor v Taylor*, SCSL-03-01-T-279, Prosecution Filing of Expert Report pursuant to Rule 94 *bis*, 1 June 2007, para. 5.

Specialised knowledge acquired through education, experience or training

12. Lack of academic qualifications does not preclude a person from being an expert within a particular field of expertise. A person may be an expert based on their educational qualifications, *experience or training*. This Trial Chamber has attributed importance to the *actual experience* rather than the formal qualifications of a witness in determining that she was an expert.[9] In that case, the expert testimony was based on the witness' experience as a campaigner in the field of human rights and upon extensive secondary and primary data.[10]

13. Ms. Dufka possesses in-depth, specialised knowledge of the human rights situation in West Africa, particularly during the conflict periods in Sierra Leone and Liberia. Her broader human rights knowledge has been acquired over a period of 12 years including her work in El Salvador, for Lutheran World Relief, where she investigated abuses suffered by members of the church community, and her work for HRW. Her specialist knowledge of human rights within the context of West Africa is derived from the 14 years in which she has lived and worked in Africa, and specifically West Africa.[11] Her work for Reuters also contributes to her specialist knowledge of events in conflicts in general. and specifically, Liberia and Sierra Leone.[12] Illustrative of the extent of her specialist knowledge are the numerous publications she has researched and written.[13]

14. The attempt to undermine her expertise by highlighting reports that she did not fully author is misconstrued. The Defence state that MFI 10 it is not clear as to which parts are based on her collected testimonies and which are not.[14] However this assertion needs to be put in its proper context. On cross-examination, the witness stated:

> "I would probably be able to recognise the testimonies that I have taken, yes, but I can't say with certainty [...] but usually I can remember which ones I took from the details."[15]

15. The witness was then instructed to look through the report over lunch in order to identify the portions of MFI 10 that rely on her specific interviews. However, the Defence did not continue with this issue after lunch. It is therefore incorrect to claim that she is unable to state which parts of MFI-10 are based on collected testimonies.

16. It was evident from her testimony that Ms. Dufka has extensive experience in investigating, researching and documenting human rights abuses across Sierra Leone

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[9] *Supra* note 2, para. 31 and Separate and Concurring Opinion of Justice Doherty, para. 59.
[10] *Ibid.*
[11] TT. 21 January 2008,p. 1745; MFI-1, Report of Corinne Dufka, Appendix 1- CV.
[12] TT. 21 January 2008, p. 1761
[13] MFI 1, Appendix 2 to her Report. TT. 21 January 2008, pp. 1755-1756.
[14] Application, para. 19
[15] TT. 22 January 2008, p. 1907, lines 7-10

and in neighbouring Liberia and Guinea. This is demonstrated by both her factual knowledge of specific incidents and her wider knowledge of events within the region.

17. The contention that the material Ms. Dufka produced does not constitute expertise as it is the collecting of testimonies over a period of a few months; is duplicative of testimony the Prosecution intends to call; and does not constitute specialist knowledge beyond the capability of the court to understand is unfounded.

18. Experts often give their opinion based on facts collected from numerous sources.[16] Further, as is evident from her testimony, Ms. Dufka did not merely put forward factual evidence in summary form; she established that there were clear patterns that could be established based on the detailed research and analysis undertaken.[17] It is submitted that such conclusions can only be drawn with a detailed and specialised knowledge of the conflicts and human rights abuses within Sierra Leone and Liberia.

19. Accordingly, the Prosecution submits that Ms. Dufka does qualify as an expert.

III) Impartiality of Expert Witnesses

20. The Prosecution agrees that experts must be impartial but robustly refutes the allegation that Ms. Dufka is not impartial due to her work for the OTP and her answers to questions on cross-examination regarding her views as to the guilt of the Accused.

21. The ICTR and ICTY Appeals Chamber both concur with the principle that "the mere fact that an expert witness is employed or paid by a party does not disqualify him or her from testifying as an expert." In Ms. Dufka's case, the great majority of the research she conducted for HRW preceded her employment with the OTP and further, at the time she authored the report for the court and testified, she was no longer an employee of the OTP. Given the clear jurisprudence that employment by a party does not preclude a witness from qualifying as an expert, it follows *a fortiori* that former employment with a party should not disqualify a witness from testifying as an expert.

22. The ICTY Appeals Chamber has recognised that "concerns relating to witness' independence and impartiality [...] are matters of weight, not admissibility", which is consistent with the ICTR Appeals Chamber finding that a party alleging bias on the part

[16] *Prosecutor v Kovacevic*, IT-97-24-T, TT 6 July 2000. In this case, the testimony of Hanne Sophie Greve was admitted as expert testimony notwithstanding the fact that her research was based on the collection of witness interviews.
[17] TT. 21 January 2008, pp. 1778, 1799-1801.

of an expert witness "may demonstrate the said bias through cross-examination, by calling its own expert witness or by means of an expert opinion in reply."[18]

23. In the instant case, Ms. Dufka's testimony reflected her impartiality and objectivity.[19]

24. There is no basis to support a claim that Ms. Dufka is impartial because she has a view that the accused is guilty. The evidence she gave needs to be read in full. [20] It is submitted that at most the witness said that the evidence she collected led her to conclude that the Accused has "a case to answer" but that it is for the court to determine his guilt.

25. Even if the witness does hold a personal view about the Accused, it has clearly not adversely affected her ability to research and analyse the material and to present her results objectively and impartially.

IV) Evidence is Necessary to assist the Trial Chamber

26. Ms. Dufka's evidence is necessary to assist the Trial Chamber in its deliberations. She provided the Chamber with valuable evidence as to overall findings of fact and of specific patterns that could be identified based on her extensive research and interviews with a great number of victims. In a case where many thousands of persons were affected by the crimes committed, it is not realistic to expect the Trial Chamber to be able to hear from each of them. The research conducted by HRW, when considered by this Trial Chamber along with all the other evidence including that of both victims and perpetrators who testify before the court, provides the Trial Chamber with critical evidence in understanding the scale and patterns of violence in this case.

27. Further, Ms. Dufka's evidence provides the Trail Chamber with important contextual information. As an example, in her post conflict research work contained in MFI 6 "West Africa, Youth, Poverty and Blood", Ms. Dufka examined the phenomenon of youths in armed conflict which had gripped much of the West Africa sub-region. It is submitted that the Trial Chamber will be assisted by this material in understanding the dynamic complexities of the conflict in Sierra Leone. The political, social, economic,

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[18] *Supra* note 5, para. 21

[19] For instance, in relation to a video clip MFI-13 clip 3 Ms Dufka corrected the record to indicate that the victim had not been amputated. (TT. 22 January 2008, p. 1862, lines 1-14) Such a correction is indicative of her impartiality. Further, throughout her testimony and reports she documented atrocities committed by all parties involved in the conflict and did not limit her focus on one particular group. Such an approach illustrates her professionalism and impartiality. See for instance: TT 22 January 2008, 1932 regarding MFI 10 – a report that documented cases of sexual exploitation by ECOMOG.

[20] TT. 22 January 2008 pp. 1888-1890 for the complete line of questioning.

geographical, temporal and cultural issues identified in this work will help to give context to the human rights violations that occurred in Sierra Leone.

V) Evidence does not go to Ultimate Issues or is Beyond the Scope of the Indictment

28. Ms. Dufka's evidence does not address the ultimate issues to be determined by this Court. Her Report and testimony consider human rights violations within Sierra Leone and Liberia as committed by *all* the various warring factions. Her findings do not assign criminal culpability to any specific group, far less any specific individual.

29. As to evidence beyond the temporal or territorial scope of the Indictment, it is clear that the Rules do not exclude the admission of such documents if they are relevant to the case. Rule 89 is silent as to any jurisdictional limitation on the admission of evidence; it simply states that a Chamber may admit *any* relevant evidence. Further, Rule 93 permits evidence of a consistent pattern of conduct relevant to the charges in the Second Amended Indictment providing such evidence is disclosed to the Defence. This Rule is also silent as to any jurisdictional limitations.

30. As held by the ICTY Appeals Chamber, evidence can be admitted "concerning events not charged in the indictment as corroborating evidence establishing acts charged in the indictment." [21] Where the evidence is used to prove an issue relevant to the charges such as motive, opportunity, intent, preparation, plan or knowledge, it may be admitted as relevant under Rule 89 notwithstanding the fact that it covers acts of the accused other than those charged in the Indictment.[22]

31. Evidence outside the temporal limits of the Indictment can also provide the basis from which to draw inferences, "in the sense that from one fact a reasonable inference may sometimes be made that another fact also existed".[23]

Submissions

32. There is evidence already before this court that indicates a number of fundamental facts: i) that fighting started in Liberia by the NPFL, who then, combined with the RUF, launched attacks into Sierra Leone;[24] ii) that the Accused had control over these

[21] *Prosecutor v Strugar*, Case No. IT-01-42-T, "Decision on the Defence Objection to the Prosecution's Opening Statement concerning Admissibility of Evidence" 22 January 2004, citing with approval the Appeals Chamber Judgement in *Kupreskic et al.*
[22] *Ibid.*
[23] *Prosecutor v Ngeze et al*, ICTR-99-52, Separate Opinion of Judge Shahabudeen, 5 September 2000. para. 10. This opinion has been widely used in other cases, see for instance *Prosecutor v Simba*, ICTR-01-76-AR72.2 "Decision on Interlocutory Appeal Regarding Temporal Jurisdiction", 29 July 2004 and *Prosecutor v Bagosora*, ICTR-98-14-T, "Decision on Admissibility of Proposed Testimony of Witness DBY", 18 September 2003
[24] TT. 25 January 2008, pp.2215-2225

forces;[25] iii) that he also had a relationship with the RUF forces which spanned into 2003, after the war was officially declared over in Sierra; iv) that the RUF forces were used in conflicts in Liberia and Guinea, spanning into 2002.[26] It is submitted that to be able to properly evaluate such evidence and give it the weight it deserves, the Chamber will be assisted if it admits Ms. Dufka's evidence, which corroborates these facts.

33. As Stephen Ellis testified, the history of Sierra Leone and Liberia "have long been, and still are, closely intertwined."[27] Due to such interconnectedness, the broader temporal and territorial evidence will assist the Chamber in understanding the contextual facts surrounding the events charged. Absent such evidence the conflict in Sierra Leone would be taken out of context and viewed in artificial isolation.

34. The Prosecution submits that Ms.Dufka's evidence is relevant evidence as it provides information on the scale and patterns of crimes and important contextual background to events within the region that enable inferences to be drawn as to the intent of the Accused and his modus operandi. No prejudice flows to the Accused as the Trial Chamber can place appropriate weight on this contextual evidence. The response to the specific objections raised by Defence in their Annex is attached in **Annex A**.

VI) Evidence does not undermine the Accused's Rights (Hearsay and Reliability)

35. The contention as to the Accused's rights is unwarranted. As Defence conceded, hearsay evidence is permissible before this Court.[28] Moreover, the jurisprudence of the International Tribunals has recognised that hearsay evidence can be admitted through expert's reports,[29] and as recently stated by the ICTY Appeals Chamber, an expert's views "need not be based upon firsthand knowledge or experience." [30]

Legal Principles: Reliability

36. It is evident that Rule 94 *bis* is the procedure by which expert reports can be accepted into evidence without that expert testifying. It is a rule distinct from Rule 92*bis*, which the Defence referred to.[31] Where the report is opposed, as in the instant case, the admissibility of the report is governed by Rule 89[32], which grants the Chamber a broad

[25] TT. 25 January 2008, pp. 2220-2225
[26] TT. 9 January 2008, pp. 860-861; 10 January 2008, pp. 916-918; 23 January, pp. 2050-2052.
[27] TT. 16 January 2008, p. 1409, lines 7-9; p. 1411, lines 23-27 referring to fact that he could not have studied the history or events of Liberia without also being interested in what was going on in Sierra Leone.
[28] TT. 21 January 2008, p. 1731, lines 8-9;
[29] *Prosecutor v Kovacevic*, IT-97-24-T, TT 6 July 1998, pp.69-71 and 75.
[30] *Supra* Note 5, paras. 27, 29
[31] Application, para. 15
[32] *Prosecutor v Gacumbitsi*, ICTR-2001-64, Appeal Judgement, 7 July 2006, para. 31

discretion in assessing the admissibility of evidence if it is relevant. This provision, as made clear by the Appeals Chamber of this Court, "favours the admission of all relevant evidence, the probative value and weight of which are only to be assessed at the end of the trial and in the context of the entire record."[33]

37. There is no requirement in Rule 89 that there must be definite proof of reliability in order for evidence to be admissible. As the Appeals Chamber of this Court stated:

> "Evidence is admissible once it is shown to be relevant: the question of its reliability is determined thereafter; and is not a condition for its admission."[34] and
> "[...] there is no bar on hearsay evidence. Questions of partiality and reliability go to the assessment of the weight of evidence that has been admitted."[35]

38. Further, as recently held by the ICTY Appeals Chamber, "*Prima facie* proof of reliability on the basis of sufficient indicia is enough at the admissibility stage"[36] while matters of "authenticity and or credibility are assessed by the Trial Chamber at a later stage in the course of determining the weight to be attached to the evidence in question."[37]

39. The Defence have failed to demonstrate that Ms. Dufka's work is unreliable. Their generalisation that they cannot know who was interviewed or the precise number of persons interviewed by Ms Dufka is to misconstrue the evidence. On cross examination, the witness conceded that she did not know how many people were interviewed in order to produce the report marked MFI-2. However Ms. Dufka was not involved in researching or writing this report and clearly stated that she would "have more information about my own report."[38] The Defence then asked questions regarding the number of persons she interviewed in relation reports MFI -7 and MFI-6 only. In each case she was able to provide numbers of interviewees.[39] The Defence did not seek information regarding those interviewed for her other reports.

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[33] *Prosecutor v Brima et al*, SCSL-04-16-T, Judgement, 20 June 2007, para. 99 referring to the Appeals Chamber.
[34] *Prosecutor v Norman et al,* SCSL-04-14-T, "Fofana – Appeal Against Decision Refusing Bail", 11 March 2005, para. 24
[35] *Ibid.* para. 29
[36] *Supra* note 5: Popovic Appeals Chamber Decision, 30 January 2008, para. 22
[37] *Ibid.* para. 22; See too the Separate Opinion of Justice Doherty who considered that if the Defence arguments regarding the restricted nature of the witness' research were merited, that would be a matter for cross-examination and submissions on weight: "It is not a reason for rejecting the report *ab initio*."[37] This Trial Chamber also held that such concerns are matters that go to weight and not the admissibility of the evidence, and that can be adequately tested during cross-examination. "The weight to be attributed to expert evidence will be determined [...] at the end of the trial and in light of all evidence adduced." 5 August 2005, Para. 30
[38] TT. 22 January 2008, pp. 1870-1871
[39] TT. 22 January 2008, pp. 1912, lines 15-17 stating that in regard to MFI-7 something like 150 persons were interviews and p. 1925, lines 1-5 referring to the 60 people she interviewed for MFI-6.

40. The reliability of research undertaken that forms the basis of her reports is further highlighted by the methodology she employed.[40] She testified that the issue of confidentiality is key to HRW and that they received training on bias.[41] It was precisely due to concerns of bias and reliability that the onus is put on her "as the researcher to be able to speak to the credibility of the information contained in these interviews."[42] This she was able to confirm on cross-examination.

41. The reliability of Ms. Dufka's evidence has been tested by thorough cross-examine. It is clear that Ms. Dufka's research that forms the basis of her evidence is reliable and should be admitted. Accordingly, the issue for current determination is not whether the testimony should be admitted but the weight that attaches to her evidence.

VII) Conclusion

42. It is evident that Ms. Dufka qualifies as an expert and that her evidence is relevant, both directly and in terms of providing contextual or corroborative evidence, to the events charged in the Second Amended Indictment.

43. Accordingly, the Prosecution submits that:

    a. The Defence Application should be rejected and Ms. Dufka's evidence as an expert should be admitted in its entirety;

    b. In the alternative, the Prosecution submits that limited portions of Ms. Dufka's material be excluded. The proposed portions for exclusion are set out in **Annex B**.

    c. Should the Trial Chamber find that Ms. Dufka does not qualify as an expert, the Prosecution submits that her evidence should be admitted entirely as overview evidence.

Filed in The Hague,
1 February 2008
For the Prosecution,

for Brenda J. Hollis
Senior Trial Attorney

[40] In her testimony she stated that group interviews were used largely for the purpose of obtaining leads but that, other than for that purpose, she avoided using them as the whole notion of influencing witnesses "is an absolute concern." TT. 22 January 2008, p. 1872, lines 15-30, p.1873, lines 1-10
[41] TT. 22 January 2008, p. 1878, lines 9-10, 18-19.
[42] TT. 22 January 2008, p.1878, lines 102

List of Authorities

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***Prosecutor v. Taylor*, Case No. SCSL-03-01-T**

Prosecutor v Taylor, SCSL-03-01-T-402, "Defence Application to the Exclude the Evidence of Proposed Prosecution Expert Witness Corinne Dufka or, In the Alternative, to Limit Its Scope", 28 January 2008.

Prosecutor v Taylor, SCSL-03-01-T-279, Prosecution Filing of Expert Report pursuant to Rule 94*bis*, 1 June 2007

***Prosecutor v Brima et al*, SCSL-04-16-T**

Prosecutor v Brima et al, SCSL-04-16-T, Judgement, 20 June 2007

Prosecutor v. Brima et al., SCSL-04-16-T-365, Decision on Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E) and Joint Defence Application to Exclude the Expert Evidence of Zainab Hawa Bangura or Alternatively to Cross-Examine Her Pursuant to Rule 94*bis*, 5 August 2005

Prosecutor v. Brima et al., SCSL-04-16-T-420, Separate and Concurring Opinion of Justice Doherty on Prosecution Request for Leave to Call an Additional Witness Pursuant to Rule 73bis(E) and Joint Defence Application to Exclude the Expert Evidence of Zainab Hawa Bangura or Alternatively to Cross-Examine Her Pursuant to Rule 94*bis*"21 June 2005

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

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Prosecutor v Popovic et al, Case No. IT-05-88-AR73.2, Appeals Chamber "Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness", 30 January 2008 at: http://www.un.org/icty/popovic88/appeal/decision-e/080130.pdf

Prosecutor v Strugar, Case No. IT-01-42-T, "Decision on the Defence Objection to the Prosecution's Opening Statement concerning Admissibility of Evidence" 22 January 2004 at: http://www.un.org/icty/strugar/trialc1/decision-e/040122.htm

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Prosecutor v Gacumbitsi, ICTR-2001-64, Appeal Judgement, 7 July 2006 at: http://69.94.11.53/default.htm

Prosecutor v. Semanza, ICTR-97-20-A, Appeals Judgement, 20 May 2005 at: http://69.94.11.53/default.htm

Prosecutor v Simba, ICTR-01-76-AR72.2 "Decision on Interlocutory Appeal Regarding Temporal Jurisdiction", 29 July 2004 at: http://69.94.11.53/default.htm

Prosecutor v Ngeze et al, ICTR-99-52, Separate Opinion of Judge Shahabudeen, 5 September 2000 at: http://trim.unictr.org/webdrawer/rec/59312/view/NAHIMANA%20-%20NGEZE%20-%20SEPARATE%20OPINION%20OF%20JUDGE%20SHAHABUDDEEN.pdf

Prosecutor v Bagosora, ICTR-98-14-T, "Decision on Admissibility of Proposed Testimony of Witness DBY", 18 September 2003 at: http://69.94.11.53/default.htm

Appendix A

Response to objections detailed in Annex 1 of Defence Application

a) Material that goes to Ultimate Issues

1) Dufka Report page 10:

The contested paragraph does not go to the ultimate issues to be determined by this Chamber. The paragraph is a generic statement of findings that refers only to governments and armed groups having constructive knowledge. It does not specify any particular government or armed group.

2) MFI-11 page 2 of 4 second paragraph:

The disputed paragraph does not reach a finding on command responsibility "which must lead back ultimately to the Accused." This is likewise a generic statement based on research conducted. It does not specify which armed forces are involved. The report itself refers in a broader context to acts by the RUF, AFRC, Kamajors and the SLA. However, even with cross-referencing to these groups, the disputed paragraph would not result in a finding on command responsibility "which must lead back the Accused" as it does not mention the Accused or any individual.

b) Material beyond the Scope of the Indictment

All of the contested material in the Application and Annex 1 may be admitted under Rule 89 for the reasons set out in the Response. The following observations are made with respect to some of the specific objections made in Annex 1.

1)Dufka Report MFI-1

Page 17 re. Guniea attacks: This passage is both within the temporal and territorial scope of the Indictment. It refers to attacks between 2000 and 2001 by Guinea military on Sierra Leonean in Sierra Leone.

Page 18: This straddles the temporal scope of the Indictment as it spans the period 1997-2003.

Pages 25& 26: This covers part of the period of the Indictment and some of the events are within the territory of Sierra Leone, specifically the section headed: *Government of Liberia 1997-2001* which covers support to the AFRC and RUF.

MFI-3: Back to the Brink: This report is not entirely out with the time frame of the Indictment. It refers to rebel incursions beginning in July 2000 and to testimonies taken in 2001 and 2002 regarding events in Liberia.

MFI-5: Deteriorating Human Rights Situation in Liberia: As above

MFI-6: Youth Poverty and Blood:

page 3: the period straddles the Indictment time frame

page 37: LURD: contextual – goes to acts committed by armed forces under the command of the Accused in Liberia and inferences can be drawn as to the intent of the Accused.

Annex B

In the alternative, the Prosecution would concede to the following item being excluded from Ms. Dufka's testimony:

MFI -1: Report of Corrine Dufka: *pages 37-38 only* . This section deals with the killing of Sam Bockarie. This evidence is clearly relevant but the Prosecution is not seeking admission of this section of the report as the Chamber has already heard more direct witness testimony on this killing and given these more direct sources there is no need to consider this section of Ms. Dufka's report.