438) SCSL-03-01-T (15782-16354) 15782

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 March 2008

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

Case No. SCSL-03-01-T

PUBLIC WITH CONFIDENTIAL ANNEXES A & B

PROSECUTION NOTICE UNDER RULE 92*bis* FOR THE ADMISSION OF THE PRIOR TESTIMONY OF TF1-036 INTO EVIDENCE

Office of the Prosecutor:
Ms. Brenda J. Hollis
Ms. Leigh Lawrie

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

I. INTRODUCTION

1. The Prosecution submits this filing under Rules 73, 89(C) and 92*bis* of the Rules of Procedure and Evidence of the Special Court for Sierra Leone ("**Rules**").

2. The Prosecution gives notice under Rule 92*bis* of its intention to seek admission of the prior trial transcripts and related exhibits of the witness TF1-036. The transcripts and exhibits relate to TF1-036's testimony in other proceedings before the Special Court for Sierra Leone ("**SCSL**").

II. APPLICABLE LAW

3. Rule 89 sets out the basic principles to be applied by the Court in relation to the admission of evidence. Rule 89(B) provides that the Chamber: "... shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law". Further, Rule 89(C) provides the Chamber with the discretion to admit relevant evidence.

4. Rule 92*bis* of the Rules provides that:

> (A) In addition to the provisions of Rule 92*ter*, a Chamber may, in lieu of oral testimony, admit as evidence, in whole or in part, information including written statements and transcripts, that do not go to proof of the acts and conduct of the accused.
>
> (B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.
>
> (C) A party wishing to submit information as evidence shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.

5. Rule 89 constitutes the basic rule regulating the admission of evidence which applies in addition to the more specific provisions contained in Rule 92*bis*.[1] Rule 89(C) only requires that evidence be *relevant* to be admissible. There is no requirement that the evidence be both relevant and probative.[2]

6. The procedural requirements of Rule 92*bis* must be met by the party seeking admission of a transcript or statement *in lieu of oral testimony*, in addition to the

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[1] *Prosecutor v. Slobodan Milošević*, IT-02-54-AR73.4, "Decision on Interlocutory Appeal on the Admissibility of Evidence-In-Chief in the Form of Written Statements", 30 September 2003, paras 9-10.
[2] *Prosecutor v. Brima et al.*, SCSL-04-16-T-280, "Decision on Joint Defence Motion to Exclude all Evidence from Witness TF1-277 Pursuant to Rule 89(C) and/or Rule 95", 24 May 2005, para. 13.

requirements of Rule 89. Accordingly, for evidence to be admitted pursuant to Rules 89(C) and 92*bis*, the evidence must not go to proof of the acts and conduct of the accused, must be relevant and its reliability susceptible of confirmation. Rule 92*bis* does not otherwise limit the evidence which might be admitted under it.

7. The Prosecution, therefore, notifies the Court of its intention to seek the admission of the prior trial transcripts and related exhibits of TF1-036 under Rules 89(C) and 92*bis*.

III. BACKGROUND

8. On 4 April 2007, the Prosecution filed its Rule 73*bis* Pre-Trial Conference Materials.[3] As part of these materials, the Prosecution filed a witness list ("**Witness List**") and, in the introductory pages to the Witness List, advised the Court that it might seek to present the evidence of some witnesses through the admission of prior testimony under Rule 92*bis*. TF1-036 was included on the Witness List and identified as being such a witness.

9. TF1-036 testified in the RUF trial on 27, 28, 29 July, 1 and 3 August 2005. The witness' testimony consisted of two days of examination-in-chief and three days of cross-examination. In the RUF trial, RUF Exhibit Nos. 38, 39, 41 to 44 were admitted through TF1-036.[4] The prior trial transcripts of TF1-036 were disclosed in redacted format to the Defence on 17 May 2006 and in unredacted format on 1 February 2008. For completeness, the Prosecution also seeks to admit RUF Exhibit Nos. 34 and 36 which were referred to during the testimony of TF1-036 but which were not tendered through the witness' testimony.[5]

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[3] *Prosecutor v. Taylor*, SCSL-03-01-PT-218, "Public Rule 73*bis* Pre-Trial Conference Materials", 4 April 2007 ("**Pre-Trial Conference Materials**").

[4] RUF Exhibit No. 40 was also admitted into evidence through TF1-036. However, this exhibit was referred to and admitted during testimony which has been redacted in accordance with paragraph 17 of this notice and so is not included as part of this notice.

[5] It should be noted that RUF Exhibit Nos. 25 and 35 were also referred to during the course of TF1-036's testimony. However, the Prosecution does not seek admission of these documents as both are already exhibits in the current proceedings - Exhibit D.13 and D.09 respectively. Reference should, therefore, be made to D.13 instead of RUF Exhibit No. 25 and to D.09 instead of RUF Exhibit No. 35.

IV. SUBMISSIONS

10. The jurisprudence of the SCSL clearly establishes that the Rules "favour a flexible approach to the issue of admissibility of evidence."[6] The jurisprudence of the SCSL also supports the view that expedient and fair trials are promoted where sworn testimony before the Court is admitted in a subsequent trial in lieu of the Prosecution carrying out a second examination-in-chief over several days.[7] This jurisprudence applies the principles enshrined in Article 17 of the SCSL's Statute regarding the Accused's right to a fair and expeditious trial, and the principles underlining Rule 26*bis* which require that trial proceedings be conducted in a fair and expeditious manner.

The evidence is relevant

11. As required under both Rules 89(C) and 92*bis*, the evidence of witness TF1-036 is relevant to the current proceedings.[8] In particular, the witness gives evidence of the use of child soldiers by the RUF and the treatment of civilians by the RUF throughout the conflict (including killings, abduction and forced labour). In addition to specific crime base evidence, the witness also provides evidence on the contextual elements of the crimes charged in the Second Amended Indictment such as the widespread or systematic nature of the attack, the nexus between the violation or crime and the armed conflict and the civilian status of the victims. Further, the witness provides relevant historical information regarding the Accused's training in Libya, plans to launch the war in Liberia, the role of the Vanguards in the conflict in Sierra Leone, and information concerning the Abidjan Peace Accord (1996) and the Lomé Peace Agreement (1999).

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[6] *Prosecutor v. Sesay et al.*, SCSL-04-15-T-618, "Decision on Prosecution Notice Pursuant to Rule 92*bis* to Admit Information into Evidence", 2 August 2006, p. 3, quoting with approval *Prosecutor v. Sesay et al.*, SCSL-04-15-T-391, "Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker", 23 May 2005, para. 4.

[7] See: *Prosecutor v. Sesay et al.*, SCSL-04-15-T-448, "Decision on the Prosecution Confidential Notice under Rule 92*bis* to Admit the Transcripts of Testimony of TF1-026, TF1-104 and TF1-169", 9 November 2005; *Prosecutor v. Sesay et al.*, SCSL-04-15-T-557, "Decision on the Prosecution Notice under Rule 92*bis* to Admit the Transcripts of Testimony of TF1-256", 23 May 2006; and *Prosecutor v. Sesay et al.*, SCSL-04-15-T-559, "Decision on the Prosecution Notice under Rule 92*bis* to Admit the Transcripts of Testimony of TF1-334", 23 May 2006.

[8] See also the summary of the witness' evidence provided as part of the Pre-Trial Conference Materials.

12. As also required under Rule 92*bis*, the transcripts and exhibits referred to in this notice are susceptible of confirmation. At this stage the Prosecution is not required to prove that the evidence is in fact reliable, only that the reliability of the evidence is susceptible of confirmation.[9] The phrase "susceptible of confirmation" contained in Rule 92*bis*B) has been interpreted by the Appeals Chamber in the CDF trial to mean that the "proof of reliability is not a condition of admission: all that is required is that the information should be capable of corroboration in due course."[10]

13. This Trial Chamber in the AFRC trial reiterated that "evidence may be excluded because it is unreliable, but it is not necessary to demonstrate the reliability of the evidence before it is admitted."[11] The Trial Chamber further considered that "reliability of the evidence is something to be considered by the Trial Chamber at the end of the trial when weighing and evaluating the evidence as a whole, in light of the context and nature of the evidence itself, including the credibility and reliability of the relevant evidence."[12]

The Rule 92bis evidence does not go to proof of the acts and conduct of the accused

14. TF1-036 also provides evidence on the RUF command structure, the AFRC/RUF command structure and the relationship between the RUF and the AFRC during the Indictment period. Such evidence is relevant to the several forms of liability alleged by the Prosecution in this case, including the Accused's participation in a common plan, design or purpose, and his liability based on superior authority for the crimes committed by the AFRC and RUF alliance.

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[9] *Prosecutor v Norman et al,* SCSL-04-14AR73, "Fofana – Decision on Appeal Against 'Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence'", 16 May 2005, para. 27 ("***Fofana* Appeals Decision**").

[10] *Fofana* Appeals Decision, para. 26.

[11] *Prosecutor v. Brima et al.*, SCSL-04-16-T, "Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92*bis*", 18 November 2005 ("***Brima* Rule 92*bis* Decision**"), page 2 (last para), citing *Prosecutor v. Brima et al.*, SCSL-04-16-T, "Decision on Joint Defence Application for Leave to Appeal from Decision on Defence Motion to Exclude All Evidence from Witness TF1-277", 2 August 2005, para. 6.

[12] *Brima* Rule 92*bis* Decision, page. 3 (second full paragraph). *See also Prosecutor v. Norman et al.*, SCSL-04-14-T-447, "Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92*bis* and 89(C)", 14 July 2005, page 3.

15. In relation to this evidence, it is acknowledged that Rule 92*bis* specifically excludes evidence which goes to proof of the acts and conduct of the accused. However, only acts and conduct of an accused which are sufficient of themselves or central to establishing the accused's liability are excluded under Rule 92*bis*(A). The acts and conduct of others are not excluded. A recent decision of Trial Chamber I noted that '"evidence regarding the acts and conduct of others who committed the crimes for which the Accused is alleged to be responsible" is to be distinguished from "evidence of the acts and conduct of the Accused which establish his responsibility for the acts and conduct of those others"'.[13] The Chamber further considered that 'the the phrase "acts and conduct of the accused" ought not to be expanded to include all information that goes to a critical issue in the case or is material to the Prosecution's theories of joint criminal enterprise or command responsibility'.[14] Instead, information "going to a critical element of the Prosecution's case" is proximate enough to the Accused so as to require cross-examination" which a Chamber may, in its discretion, order.[15]

16. The prior trial transcripts and related exhibits which the Prosecution seeks to admit under Rule 92*bis* do not go the acts and conduct of the Accused as that term is defined and limited by the jurisprudence.

V. NOTICE

17. First, the Prosecution gives notice of its intention to submit for admission into evidence the parts of the prior trial transcripts relating to TF1-036 provided in Annex A. As permitted under Rule 92*bis,* the Prosecution seeks to admit *parts* only of the prior testimony into evidence and wishes to exclude those sections

[13] *Prosecutor v. Sesay et al.,* SCSL-04-15-T-1049, "Decision on Defence Application for the Admission of the Witness Statement of DIS-192 under Rule 92*bis* or, in the alternative, under Rule 92*ter*", 12 March 2008, p. 2-3, citing *Prosecutor v. Sesay et al.*, SCSL-04-15-T-557, "Decision on the Prosecution Notice under Rule 92*bis* to Admit the Transcripts of Testimony of TF1-256", 23 May 2006, p. 4.
[14] *Ibid*, p. 3.
[15] *Ibid* citing *Prosecutor v. Sesay et al.*, SCSL-04-15-T, "Decision on the Prosecution Notice under Rule 92*bis* and 89 to Admit the Statement of TF1-150", 20 July 2006, para. 30; *Prosecutor v. Bagosora et al,* ICTR-98-41-T, "Decision on Prosecutor's Motion for the Admission of Written Witness Statements Under Rule 92bis," 9 March 2004, para. 13; *Prosecutor v. Milošević*, IT-02-54-T, "Decision on Prosecution's Request to have Written Statements Admitted under Rule 92*bis*", 21 March 2002, paras. 24-25; and *Prosecutor v. Galić*, IT-98-29-AR73.2, "Decision on Interlocutory Appeal Concerning Rule 92 *bis* (C)", 7 June 2002, para. 13.

which concern: (i) lengthy legal argument; (ii) trial administrative matters; and (iii) evidence of the acts and conduct of the Accused. Accordingly, portions of the transcripts set out in Annex A have been redacted on this basis.[16]

18. Due to the nature of the protective measures applicable to TF1-036, Annex A of this notice is filed on a confidential basis.[17]

19. Should the prior trial transcripts be admitted into evidence, the Prosecution would not seek to examine-in-chief the witness concerned.

20. Secondly, the Prosecution gives notice of its intention to submit for admission into evidence the exhibits related to the testimony of TF1-036 which are set out in Annexes B and C. Due to the poor quality of RUF Exhibit No. 38, a second copy is provided. This copy is the same as the admitted exhibit save that it does not have the CMS page numbers. The Prosecution also notes that in relation to RUF Exhibit No. 42 the quality of the first, fourth and fifth pages[18] is poor and thus is trying to get better quality copies of the exhibits from Freetown which will be distributed to the parties as soon as possible.

21. Due to the pending motion[19] on this matter and as the exhibits set out in Annex B were admitted during the closed session testimony of the witness, they are being filed in these proceedings on a confidential basis. Should it be determined by the Trial Chamber that the party seeking to have the exhibits marked as confidential must request such relief from the Trial Chamber, then for the reasons stated in its pending motion, the Prosecution requests that these exhibits be treated as confidential exhibits and not made public documents.

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[16] This procedure also conforms to the procedure adopted at the ICTR. At the ICTR statements tendered pursuant to Rule 92*bis* are reviewed. Where a statement is tendered that includes information that falls within Rule 92*bis* and information that falls outside the Rule, the statement is admitted but the paragraphs or information that fall outside the Rule are simply not admitted into evidence. See for example *Prosecutor v. Bagosora et al*, ICTR-98-41-T, "Decision on Prosecutor's Motion for the Admission of Written Witness Statements Under Rule 92bis," 9 March 2004. This procedure has now been adopted at the SCSL – see *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1049, "Decision on Defence Application for the Admission of the Witness Statement of DIS-192 under Rule 92*bis* or, in the alternative, under Rule 92*ter*", 12 March 2008.

[17] The nature of the protective measures are set out in more detail in Annex A.

[18] CMS pages 2396, 2399 and 2340.

[19] *Prosecutor v. Taylor*, SCSL-03-01-T-425, "Confidential Urgent Prosecution Motion to Mark as "Confidential" Material introduced through Witness Testifying in Closed Session & in particular Material Introduced through TF1-371", 25 February 2008.

VI. CONCLUSION

22. The Prosecution hereby gives notice under Rule 92*bis* of its intention to seek admission into evidence the material identified in paragraphs 17 and 20.

Filed in The Hague,

14 March 2008

For the Prosecution,

Brenda J. Hollis
Senior Trial Attorney

LIST OF AUTHORITIES

SCSL

***Prosecutor v. Taylor*, SCSL-2003-01-T**

Prosecutor v. Taylor, SCSL-03-01-PT-218, "Public Rule 73*bis* Pre-Trial Conference Materials", 4 April 2007

Prosecutor v. Taylor, SCSL-03-01-T-425, "Confidential Urgent Prosecution Motion to Mark as "Confidential" Material introduced through Witness Testifying in Closed Session & in particular Material Introduced through TF1-371", 25 February 2008

***Prosecutor v. Norman et al.*, SCSL-04-14-T**

Prosecutor v. Norman et al., SCSL-2004-14AR73, "Fofana – Decision on Appeal Against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence", 16 May 2005

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

***Prosecutor v Sesay, Kallon & Gbao*, SCSL-2004-15-T**

Prosecutor v. Sesay et al., SCSL-04-15-T-391, "Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker", 23 May 2005

Prosecutor v. Sesay et al., SCSL-05-15-T-180, "Decision on Prosecution Motion for Modification of Protective Measures for Witnesses", 5 July 2004

Prosecutor v. Sesay et al., SCSL-05-15-T, Trial Transcript, 27 July 2005

Prosecutor v. Sesay et al., SCSL-04-15-T-448, "Decision on the Prosecution Confidential Notice under Rule 92*bis* to Admit the Transcripts of Testimony of TF1-026, TF1-104 and TF1-169", 9 November 2005

Prosecutor v. Sesay et al., SCSL-04-15-T-557, "Decision on the Prosecution Notice under Rule 92*bis* to Admit the Transcripts of Testimony of TF1-256", 23 May 2006

Prosecutor v. Sesay et al., SCSL-04-15-T-559, "Decision on the Prosecution Notice under Rule 92*bis* to Admit the Transcripts of Testimony of TF1-334", 23 May 2006

Prosecutor v. Sesay et al., SCSL-04-15-T, "Decision on the Prosecution Notice under Rule 92*bis* and 89 to Admit the Statement of TF1-150", 20 July 2006

Prosecutor v. Sesay et al., SCSL-04-15-T-618, "Decision on Prosecution Notice Pursuant to Rule 92*bis* to Admit Information into Evidence", 2 August 2006

Prosecutor v. Sesay et al., SCSL-04-15-T-1049, "Decision on Defence Application for the Admission of the Witness Statement of DIS-192 under Rule 92*bis* or, in the alternative, under Rule 92*ter*", 12 March 2008

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

Prosecutor v. Brima et al., SCSL-04-16-T-280, "Decision on Joint Defence Motion to Exclude all Evidence from Witness TF1-277 Pursuant to Rule 89(C) and/or Rule 95", 24 May 2005

Prosecutor v. Brima et al., SCSL-04-16-T, "Decision on Joint Defence Application for Leave to Appeal from Decision on Defence Motion to Exclude All Evidence from Witness TF1-277", 2 August 2005

Prosecutor v. Brima et al., SCSL-04-16-T, "Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92*bis*", 18 November 2005

ICTY Cases

Prosecutor v. Milošević, IT-02-54-T, "Decision on Prosecution's Request to have Written Statements Admitted under Rule 92*bis*", 21 March 2002
http://www.un.org/icty/milosevic/trialc/decision-e/20321AE517364.htm

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

Prosecutor v. Slobodan Milošević, Case No. IT-02-54-AR73.4, "Decision on Interlocutory Appeal on the Admissibility of Evidence-In-Chief in the Form of Written Statements", 30 September 2003
http://www.un.org/icty/milosevic/appeal/decision-e/030930.htm

ICTR Cases

Prosecutor v. Bagosora et al, ICTR-98-41-T, "Decision on Prosecutor's Motion for the Admission of Written Witness Statements Under Rule 92bis," 9 March 2004
http://69.94.11.53/ENGLISH/cases/Bagosora/decisions/040309.htm

AUTHORITIES PROVIDED

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

IT-98-29-AR73.2
A64-A42
07 JUNE 2002

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UNITED
NATIONS

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991

Case: IT-98-29-AR73.2

Date: 7 June 2002

Original: English

IN THE APPEALS CHAMBER

Before: Judge David Hunt
Judge Mehmet Güney
Judge Asoka de Zoysa Gunawardana
Judge Fausto Pocar
Judge Theodor Meron

Registrar: Mr Hans Holthuis

Decision of: 7 June 2002

PROSECUTOR

v

Stanislav GALIĆ

DECISION ON INTERLOCUTORY APPEAL CONCERNING RULE 92*bis*(C)

Counsel for the Prosecutor:

Mr Mark Ierace, Senior Trial Attorney

Counsel for the Defence:

Ms Mara Pilipović & Maître Stephane Piletta-Zanin

The background to the appeal

1. Pursuant to a certificate granted by the Trial Chamber in accordance with Rule 73(C) of the Rules of Procedure and Evidence ("Rules"), as Rule 73 then stood,[1] Stanislav Galić (the "appellant") has appealed against the admission into evidence of two written statements made by prospective witnesses to investigators of the Office of the Prosecutor ("OTP"). Both prospective witnesses have died since making their statements.

2. The appellant, as the Commander over a period of almost two years of the Sarajevo Romanija Corps (part of the Bosnian Serb Army), is charged in relation to an alleged campaign of sniping and shelling against the civilian population of Sarajevo conducted during that time by the forces under his command and control. He is charged with individual responsibility pursuant to Article 7.1 of the Tribunal's Statute and as a superior pursuant to Article 7.3 for crimes against humanity and for violations of the laws and customs of war. The prosecution concedes that it is no part of its case that the appellant personally physically perpetrated any of the crimes charged himself.[2] Its case pursuant to Article 7.1 is that he planned, instigated, ordered or otherwise aided and abetted the commission of those crimes by others.[3] Its case pursuant to Article 7.3 is that the appellant knew, or had reason to know, that his subordinates had committed or were about to commit such crimes and that he failed to take reasonable steps to prevent such acts or to punish those who carried out those acts.[4]

3. The first written statement admitted into evidence was made by Hamdija Čavčić. He was a chemical engineer employed by the Department for Criminal and Technical Investigations in Sarajevo as an expert in investigating the traces in the case of fire or explosions. As such, he investigated a shelling on 12 July 1993 in which twelve people had been killed. He prepared a contemporaneous Criminal and Technical Report in which he deduced the direction from which the particular shell had been fired. His written statement to the OTP investigator, which is dated 16 November 1995, annexes that report and confirms that the findings which he had made in it

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1 Certificate Pursuant to Rule 73(C) in Respect of Decisions of the Trial Chamber on the Admission into Evidence of Written Statements Pursuant to Rule 92*bis*(C), 25 Apr 2002 ("Certificate"). Rule 73, which deals with motions other than preliminary motions, then provided that, unless the Trial Chamber certified pursuant to Rule 73(C) that an interlocutory appeal during the trial was appropriate for the continuation of the trial, decisions rendered during the course of the trial on motions involving evidence and procedure were without interlocutory appeal.

2 Prosecutor's Pre-Trial Brief Pursuant to Rule 65*ter*(E)(i), 23 Oct 2001, par 68.

3 *Ibid*, par 68.

4 Indictment, par 11.

were true. He also explains in greater detail how he had reached those conclusions. In addition, the written statement describes a similar investigation of a shelling on 5 February 1994. These two incidents are identified as incidents 2 and 5 in the schedule to the indictment.

4. The second written statement admitted into evidence was made by Bajram Šopi. He was present on 7 September 1993 collecting firewood when a man was killed by a sniper's shot. His statement to the OTP investigator says that both he and the man who was killed were dressed in civilian clothes. It describes his own wounding by shooting and the damage to his house by shelling in two incidents during 1992. It also describes the injuries to his daughter by shelling at an unspecified time. He further states that there were military units behind his house in a school building which had been "levelled". Only that part of the statement which describes the incident on 7 September 1993, which is identified as incident 11 in the schedule, was tendered.

The relevant Rules

5. The appeal principally concerns two rules in Section 3 of the Rules (headed "Rules of Evidence"), Rules 89 and 92*bis*, and the interaction between them. It is convenient, therefore, to quote each of those two Rules in full:

> **Rule 89**
> **General Provisions**
>
> (A) A Chamber shall apply the rules of evidence set forth in this Section, and shall not be bound by national rules of evidence.
>
> (B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.
>
> (C) A Chamber may admit any relevant evidence which it deems to have probative value.
>
> (D) A Chamber may exclude evidence if its probative value is substantially outweighed by the need to ensure a fair trial.
>
> (E) A Chamber may request verification of the authenticity of evidence obtained out of court.
>
> (F) A Chamber may receive the evidence of a witness orally or, where the interests of justice allow, in written form.

> **Rule 92*bis***
> **Proof of Facts other than by Oral Evidence**
>
> (A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment.
>
> (i) Factors in favour of admitting evidence in the form of a written statement include but are not limited to circumstances in which the evidence in question:

(a) is of a cumulative nature, in that other witnesses will give or have given oral testimony of similar facts;
(b) relates to relevant historical, political or military background;
(c) consists of a general or statistical analysis of the ethnic composition of the population in the places to which the indictment relates;
(d) concerns the impact of crimes upon victims;
(e) relates to issues of the character of the accused; or
(f) relates to factors to be taken into account in determining sentence.

(ii) Factors against admitting evidence in the form of a written statement include whether:

(a) there is an overriding public interest in the evidence in question being presented orally;
(b) a party objecting can demonstrate that its nature and source renders it unreliable, or that its prejudicial effect outweighs its probative value; or
(c) there are any other factors which make it appropriate for the witness to attend for cross-examination.

(B) A written statement under this Rule shall be admissible if it attaches a declaration by the person making the written statement that the contents of the statement are true and correct to the best of that person's knowledge and belief and

(i) the declaration is witnessed by:

(a) a person authorised to witness such a declaration in accordance with the law and procedure of a State; or
(b) a Presiding Officer appointed by the Registrar of the Tribunal for that purpose; and

(ii) the person witnessing the declaration verifies in writing:

(a) that the person making the statement is the person identified in the said statement;
(b) that the person making the statement stated that the contents of the written statement are, to the best of that person's knowledge and belief, true and correct;
(c) that the person making the statement was informed that if the content of the written statement is not true then he or she may be subject to proceedings for giving false testimony; and
(d) the date and place of the declaration.

The declaration shall be attached to the written statement presented to the Trial Chamber.

(C) A written statement not in the form prescribed by paragraph (B) may nevertheless be admissible if made by a person who has subsequently died, or by a person who can no longer with reasonable diligence be traced, or by a person who is by reason of bodily or mental condition unable to testify orally, if the Trial Chamber:

(i) is so satisfied on a balance of probabilities; and
(ii) finds from the circumstances in which the statement was made and recorded that there are satisfactory *indicia* of its reliability.

(D) A Chamber may admit a transcript of evidence given by a witness in proceedings before the Tribunal which goes to proof of a matter other than the acts and conduct of the accused.

(E) Subject to Rule 127 or any order to the contrary, a party seeking to adduce a written statement or transcript shall give fourteen days notice to the opposing party, who may within seven days object. The Trial Chamber shall decide, after hearing the parties, whether to admit the statement or transcript in whole or in part and whether to require the witness to appear for cross-examination.

The issues in the appeal

6. The appellant has raised a number of issues in his Interlocutory Appeal:

(1) The appellant says that both statements did not fall within Rule 92*bis* because they go to proof of "the acts and conduct of the accused as charged in the indictment".[5] The prosecution responds to this issue in three alternative ways. Either (a) the statements do not go to proof of the acts and conduct of the accused charged in the indictment,[6] or (if they do go to such proof) (b) Rule 92*bis*(C) does not exclude proof of the acts and conduct of the accused by a written statement of a deceased person,[7] and (c) the evidence is in any event admissible under Rule 89(C) without the restrictions of Rule 92*bis*.[8]

(2) The appellant says that the Trial Chamber did not evaluate what is said to be the requirement of Rule 92*bis*(C)(i) as to "the probability of the said statements".[9] The prosecution responds that the appellant has misread the requirements of Rule 92*bis*(C)(i).[10]

(3) The appellant says that the Trial Chamber "did not engage in establishing the question of reliability".[11] The prosecution responds that the Trial Chamber correctly determined that there were satisfactory *indicia* of the reliability of each statement in the circumstances in which it was made and recorded.[12]

(4) The appellant says that Rule 92*bis* does not relate to expert witnesses, whose evidence is admissible only under Rule 94*bis*, so that the statement of Hamdija Čavčić (described in par 3, *supra*) was inadmissible upon that basis also.[13] The prosecution responds that Rule 92*bis* is directed to any witness whose statement does not go to proof of the acts or conduct of the accused, including expert witnesses,[14] and that Rule 94*bis* is directed to experts who are not in a position themselves to testify directly about the facts upon which they base their expert opinion.[15]

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5 Appeal of the Decisions on [*sic*] the Trial Chamber of 12 April, and 18 April 2002, 2 May 2002 ("Interlocutory Appeal"), pp 2-3, 4-8.
6 Prosecution's Response to Accused Stanislav Galić's Interlocutory Appeal Pursuant to Rule 73(C) on the Decisions on Trial Chamber I of 12 and 18 April 2002, 13 May 2002 ("Response"), pars 33-49.
7 *Ibid*, pars 7-14.
8 *Ibid*, pars 15-32, 58-62.
9 Interlocutory Appeal, pp 3-4, 11.
10 Response, pars 50-57.
11 Interlocutory Appeal, p 3.
12 Response, pars 63-68.
13 Interlocutory Appeal, p 9.
14 Response, par 72.
15 *Ibid*, par 71.

(5) The appellant says that it is not in the interests of justice to admit into evidence part of a written statement, and that the other party must be given the opportunity to argue that the statement should be admitted in its entirety because he has no possibility of cross-examining the maker of the statement.[16] The appellant also argues that, if the statement includes material which is irrelevant, the whole statement must be rejected.[17] The prosecution responds that it has the prerogative to tender evidence which it deems to be relevant to its case provided that it is *prima facie* credible.[18]

Counsel for the appellant orally informed the Appeals Chamber that his client did not intend to file a reply to the prosecution's Response, but relied upon what is said in his Interlocutory Appeal in answer to the prosecution's arguments.[19]

7. The certificate given by the Trial Chamber pursuant to Rule 73(C) (as it then stood) – that it was appropriate for the continuation of the trial that an interlocutory appeal be determined – related only to the first of these issues, as to the proper interpretation of the exclusion in Rule 92*bis*(A) of statements which go to proof of "the acts and conduct of the accused as charged in the indictment".[20] It is, however, within the discretion of the Appeals Chamber to determine also other, related, issues where it considers it appropriate to do so, at least where they have been raised in the interlocutory appeal and the respondent to the appeal has had the opportunity to put his or its arguments in relation to those related issues. It is clear, from the present case and from other cases presently being tried in the Tribunal, that it will be beneficial to the Trial Chambers and to counsel generally that all of these matters be resolved in the present appeal. The Appeals Chamber proposes therefore to deal with them all.

1(a) The "acts and conduct of the accused as charged in the indictment"

8. The appellant emphasises that Rule 92*bis* excludes from the procedure laid down any written statement which goes to proof of the acts and conduct of the accused *as charged in the indictment*.[21] He says that, as the indictment charges the appellant with individual criminal responsibility –

(i) as having aided and abetted others to commit the crimes charged, and

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[16] Interlocutory Appeal, p 11.
[17] *Ibid*, p 11.
[18] Response, par 69.
[19] Communication, 22 May 2002.
[20] Certificate, p 2.
[21] Interlocutory Appeal, p 5.

(ii) as the superior of his subordinates who committed those crimes,

the acts and conduct of those others and of his subordinates "represent his own acts".[22] The appellant describes those "others" as "co-perpetrators", and he says that the "acts and conduct of the accused as charged in the indictment" encompasses the acts and conduct of the accused's co-perpetrators and/or subordinates.[23] This argument was rejected by the Trial Chamber.[24]

9. The appellant's interpretation of Rule 92*bis* would effectively denude it of any real utility. That interpretation is inconsistent with both the purpose and the terms of the Rule. It confuses the present clear distinction drawn in the jurisprudence of the Tribunal between (a) the 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. It is only a written statement which goes to proof of the latter acts and conduct which Rule 92*bis*(A) excludes from the procedure laid down in that Rule.

10. Thus, Rule 92*bis*(A) excludes any written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish –

(a) that the accused committed (that is, that he personally physically perpetrated) any of the crimes charged himself,[25] or

(b) that he planned, instigated or ordered the crimes charged, or

(c) that he otherwise aided and abetted those who actually did commit the crimes in their planning, preparation or execution of those crimes, or

(d) that he was a superior to those who actually did commit the crimes, or

(e) that he knew or had reason to know that those crimes were about to be or had been committed by his subordinates, or

(f) that he failed to take reasonable steps to prevent such acts or to punish those who carried out those acts.

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[22] *Ibid*, p 6.

[23] *Ibid*, p 2. The present appeal is not the occasion to consider whether the expression "co-perpetrator", rather than "perpetrator" or "principal offender", is an appropriate description of those persons who actually commit the crimes which the indictment charges the accused with responsibility.

[24] Decision on the Prosecutor's Motion for the Admission into Evidence of Written Statement by a Deceased Witness, and Related Report Pursuant to Rule 92*bis*(C), 12 Apr 2002 ("First Decision"), p 4; Decision on the Prosecutor's Second Motion for the Admission into Evidence of Written Statement by Deceased Witness Bajram Šopi, Pursuant to Rule 92*bis*(C), 18 Apr 2002 ("Second Decision"), p 4.

[25] This is not any part of the prosecution case in this present matter.

Where the prosecution case is that the accused participated in a joint criminal enterprise, and is therefore liable for the acts of others in that joint criminal enterprise,[26] Rule 92*bis*(A) excludes also any written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish –

(g) that he had participated in that joint criminal enterprise, or

(h) that he shared with the person who actually did commit the crimes charged the requisite intent for those crimes.[27]

Those are the "acts and conduct of the accused as charged in the indictment", *not* the acts and conduct of others for which the accused is charged in the indictment with responsibility.[28]

11. The "conduct" of an accused person necessarily includes his relevant state of mind, so that a written statement which goes to proof of any act or conduct *of the accused* upon which the prosecution relies to establish that state of mind is not admissible under Rule 92*bis*. In order to establish that state of mind, however, the prosecution may rely upon the acts and conduct of *others* which have been proved by Rule 92*bis* statements. An easy example would be proof, in relation to Article 5 of the Tribunal's Statute, of the knowledge by the accused that his acts fitted into a pattern of widespread or systematic attacks directed against a civilian population.[29] Such knowledge may be inferred from evidence of such a pattern of attacks (proved by Rule 92*bis* statements) that he *must* have known that his own acts (proved by oral evidence) fitted into that pattern. The "conduct" of an accused person may also in the appropriate case include his omission to act.

12. This interpretation gives effect to the intention of Rule 92*bis*, which (together with the concurrent amendments to Rules 89 and 90)[30] was to qualify the previous preference in the Rules

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[26] In *Prosecutor v Tadić*, IT-94-1-A, Judgment, 15 July 1999 ("*Tadić* Judgment"), at par 220, this liability is described as that of an accomplice.

[27] *Tadić* Judgment, par 196; *Prosecutor v Brđanin & Talić*, IT-99-36-PT, Decision on Form of Further Amended Indictment and Prosecution Application to Amend, 26 June 2001, par 31.

[28] See also *Prosecutor v Milošević*, IT-02-54-T, Decision on Prosecution's Request to Have Written Statements Admitted Under Rule 92*bis*, 21 Mar 2002 ("*Milošević* Decision"), par 22: "The phrase 'acts and conduct of the accused' in Rule 92*bis* is a plain expression and should be given its ordinary meaning: deeds and behaviour of the accused. It should not be extended by fanciful interpretation. No mention is made of acts and conduct by alleged co-perpetrators, subordinates or, indeed, of anybody else. Had the rule been intended to extend to acts and conduct of alleged co-perpetrators or subordinates it would have said so."

[29] *Tadić* Judgment, par 248.

[30] At the same time that Rule 92*bis* was introduced, Rule 90 was amended by deleting par (A), which stated: "Subject to Rules 71 and 71*bis*, witnesses shall, in principle, be heard directly by the Chambers", and Rule 89 was amended by adding par (F), which states: "A Chamber may receive the evidence orally or, where the interests of justice allow, in written form".

for "live, in court" testimony,[31] and to permit evidence to be given in written form where the interests of justice allow provided that such evidence is probative and reliable, consistently with the decision of the Appeals Chamber concerning hearsay evidence in *Prosecutor v Aleksovski*.[32] Far from being an "exception" to Rule 89, as the appellant claims,[33] Rule 92*bis* identifies a particular situation in which, once the provisions of Rule 92*bis* are satisfied, and where the material has probative value within the meaning of Rule 89(C), it is in principle in the interests of justice within the meaning of Rule 89(F) to admit the evidence in written form.[34] (The relationship between Rule 92*bis* and Rule 89(C) is discussed in pars 27-31, *infra*.)

13. The fact that the written statement goes to proof of the acts and conduct of a subordinate of the accused or of some other person for whose acts and conduct the accused is charged with responsibility does, however, remain relevant to the Trial Chamber's decision under Rule 92*bis*. That is because such a decision also involves a further determination as to whether the maker of the statement should appear for cross-examination.[35] The proximity to the accused of the acts and conduct which are described in the written statement is relevant to this further determination.[36] Moreover, that proximity would also be relevant to the exercise of the Trial Chamber's discretion in deciding whether the evidence should be admitted in written form at all.

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[31] *Prosecutor v Kordić & Čerkez*, IT-95-14/2-AR73.5, Decision on Appeal Regarding Statement of a Deceased Witness, 21 July 2000 ("*Kordić & Čerkez* Decision"), par 19.

[32] IT-95-14/1-AR73, Decision on Prosecutor's Appeal on Admissibility of Evidence, 16 Feb 1999 ("*Aleksovski* Decision"), par 15. The relevant passage is quoted in a footnote to par 27, *infra*.

[33] Interlocutory Appeal, p 10.

[34] The admission into evidence of written statements made by a witness in lieu of their oral evidence in chief is not inconsistent with Article 21.4(e) of the Tribunal's Statute ("In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality: [...] to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; [...].") or with other human rights norms (for example, Article 6(3)(d) of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides: "Everyone charged with a criminal offence has the following minimum rights: [...] to examine, or have examined, witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; [...]."). But, where the witness who made the statement is not called to give the accused an adequate and proper opportunity to challenge the statement and to question that witness, the evidence which the statement contains may lead to a conviction only if there is other evidence which corroborates the statement: *Unterpertinger v Austria*, Judgment of 24 Nov 1986, Series A no 110, pars 31-33; *Kostovski v The Netherlands*, Judgment of 20 Nov 1989, Series A no 166, par 41; *Vidal v Belgium*, Judgment of 22 Apr 1992, Series A no 235-B, par 33; *Lüdi v Switzerland*, Judgment of 15 June 1992, Series A no 238, par 49; *Artner v Austria*, Judgment of 28 Aug 1992, Series A no 242-A, pars 22, 27; *Saïdi v France*, Judgment of 20 Sept 1993, Series A no 261-C, pars 43-44; *Doorson v The Netherlands*, Judgment of 26 Mar 1996, par 80; *Van Mechelen v The Netherlands*, Judgment of 23 Apr 1997, Reports of Judgments and Decisions, 1997-III, pars 51, 55; *A M v Italy*, Judgment of 14 Dec 1999, 1999-IX Reports of Judgments and Decisions, par 25; *Lucà v Italy*, Judgment of 27 Feb 2001, 2001-II Reports of Judgments and Decisions, pars 39-40; *Solakov v Former Yugoslav Republic of Macedonia*, Judgment of 31 Oct 2001, appl No 47023/99, par 57.)

[35] Rule 92*bis*(E).

[36] *Milošević* Decision, par 22.

Where the evidence is so pivotal to the prosecution case, and where the person whose acts and conduct the written statement describes is so proximate to the accused, the Trial Chamber may decide that it would not be fair to the accused to permit the evidence to be given in written form.[37] An easy example of where the exercise of that discretion would lead to the rejection of a written statement would be where the acts and conduct of a person other than the accused described in the written statement occurred in the presence of the accused.

14. The exercise of the discretion as to whether the evidence should be admitted in written form at all becomes more difficult in the special and sensitive situation posed by a charge of command responsibility under Article 7.3 of the Tribunal's Statute. That is because, as the jurisprudence demonstrates in cases where the crimes charged involve widespread criminal conduct by the subordinates of the accused (or those alleged to be his subordinates), there is often but a short step from a finding that the acts constituting the crimes charged were committed by such subordinates to a finding that the accused knew or had reason to know that those crimes were about to be or had been committed by them.[38] Where the criminal conduct of those subordinates was widespread, the inference is often drawn that, for example, "there is no way that [the accused] could not have known or heard about [it]",[39] or "[the accused] had to have been aware of the genocidal objectives [of his subordinates]".[40]

15. In such cases, it may well be that the subordinates of the accused (or those alleged to be his subordinates) are so proximate to the accused that *either* (a) the evidence of their acts and conduct which the prosecution seeks to prove by a Rule 92*bis* statement becomes sufficiently pivotal to the prosecution case that it would not be fair to the accused to permit the evidence to be given in written form, *or* (b) the absence of the opportunity to cross-examine the maker of the statement would in fairness preclude the use of the statement in any event. It must be emphasised, however, that the rejection of the written statement in any of these situations is not based upon any identification of that person's acts or conduct with the acts or conduct of the accused.

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[37] *Prosecutor v Brđanin & Talić*, IT-99-36-T, *(Confidential)* Decision on the Admission of Rule 92*bis* Statements, 1 May 2002, par 14 [A public version of this Decision was filed on 23 May 2002.]

[38] *Prosecutor v Delalić et al*, IT-96-21-A, Judgment, 20 Feb 2001 ("*Delalić* Judgment"), par 241. There is a helpful list of *indicia* as to whether a superior "must have known" about the acts of his subordinates provided in the Final Report of the UN Commission of Experts (M. Cherif Bassiouni, Chairman), established pursuant to Security Council Resolution 780 (1992), 27 May 1994 (S/1994/674), under the heading "II Applicable Law - D. Command Responsibility".

[39] *Prosecutor v Delalić et al*, IT-96-21-T, Judgment, 16 Nov 1998, par 770.

[40] *Prosecutor v Krstić*, IT-98-33-T, 2 Aug 2001, Judgment, par 648.

16. The Appeals Chamber is very conscious of the fact that, in many cases, the evidence tendered pursuant to Rule 92*bis* will be relevant at the same time both to (i) the prosecution case that the accused has command responsibility under Article 7.3, and (ii) its case that the accused has individual responsibility under Article 7.1 (including participation in a joint criminal enterprise) other than personally perpetrating the crimes himself. However, Rule 92*bis* was primarily intended to be used to establish what has now become known as "crime-base" evidence, rather than the acts and conduct of what may be described as the accused's immediately proximate subordinates – that is, subordinates of the accused of whose conduct it would be easy to infer that he knew or had reason to know. The Appeals Chamber does not believe, therefore, that the concerns which it has expressed as to the use of Rule 92*bis* in Article 7.3 cases where it relates to the acts and conduct of the accused's immediately proximate subordinates will unduly limit the advantages to the expeditious disposal of trials which the Rule was designed to achieve. It may be that, where the evidence which the prosecution wishes to establish by extensive use of Rule 92*bis* in a particular case is specially pivotal to that case because it deals with the acts and conduct of the accused's immediately proximate subordinates, it will have to elect between the alternative formulations of its case which it has pleaded if it wishes to take advantage of the Rule in relation to that evidence.

17. Returning to the present case, the two statements admitted into evidence by the Trial Chamber pursuant to Rule 92*bis*(C) did not go to proof of any acts or conduct of the accused, and the objection by the appellant upon this basis is rejected. The issue then arises as to whether they should nevertheless have been rejected in the exercise of the Trial Chamber's discretion.

18. The written statement by Bajram Šopi, who was present collecting firewood when a man was killed by a sniper's shot, does not indicate the source of the shot and (on its face and taken by itself) it appears to be of no particular importance to proof of the responsibility of the appellant. No question of discretion arises in relation to that statement. However, the statement of the expert (Hadija Čavčić) concerning his conclusions as to the direction from which the particular shell had been fired, could – for the reasons given in pars 15-16, *supra* – be of substantial importance to the prosecution case if it is the vital link in demonstrating that the shell which is alleged to have caused many casualties was fired from a gun emplacement manned by immediately proximate subordinates of the accused. A question of discretion would therefore

appear to arise as to whether it would be unfair to the accused to permit this evidence to be given in written form in any event, particularly as there can be no opportunity to cross-examine him.

19. The Trial Chamber's Decision in relation to the expert's statement deals in careful detail with the arguments raised as to the statement's compliance with the requirements of Rule 92*bis*,[41] but it does not discuss any issue of discretion as might have been expected if that issue *had* been considered by the Trial Chamber. This may well be because counsel for the accused appears to have rested her opposition to the application by the prosecution exclusively upon the argument that the acts and conduct of the accused included those of his subordinates and upon the absence of any opportunity to cross-examine the expert, and she did not address the issue of discretion. In the opinion of the Appeals Chamber, however, it would be preferable that a Trial Chamber should nevertheless always give consideration to the exercise of the discretion given by Rule 92*bis* whenever the prosecution seeks to use that Rule in the special and sensitive situation posed by a charge of command responsibility under Article 7.3 where the evidence goes to proof of the acts and conduct of the accused's immediately proximate subordinates.

20. In the present case, there have been two witnesses who have already given oral evidence concerning the shelling described in the expert's statement (Mirza Sabljica, who conducted the investigation with Hadija Čavčić, and Sead Besić) and a third witness (Muhamed Jusufspahić) has yet to give oral evidence concerning it.[42] The Trial Chamber concluded that the opportunity which the accused had to cross-examine those witnesses made up for the absence of such an opportunity in relation to the now deceased Hadija Čavčić.[43] It may well be – it is not possible to tell on the rather limited material before the Appeals Chamber – that the evidence of those witnesses will reduce or even remove any suggestion that the statement of Hadija Čavčić, despite the absence of the opportunity to cross-examine him, is sufficiently pivotal to the prosecution case that the shell was fired by subordinates of the accused as to render it unfair (because of their immediate proximity to him) to permit the evidence to be given in written form. The Appeals Chamber is, therefore, not in a position in this case to exercise its own discretion in the place of the Trial Chamber as it ordinarily would be.[44] In these circumstances, and in the light of the

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[41] First Decision.
[42] *Ibid*, p 3.
[43] *Ibid*, p 3.
[44] cf *Prosecutor v Milošević*, IT-99-37-AR73, IT-01-50-AR73 & IT-01-51-AR73, Reasons for Decision on Prosecution Interlocutory Appeal from Refusal to Order Joinder, 18 Apr 2002 ("*Milošević* Appeal Decision"), pars 4, 6.

Appeals Chamber's rejection of the other issues argued in the appeal, it will be necessary to uphold the appeal against the order made in the First Decision so that the matter may be returned to the Trial Chamber for it to consider the exercise of its discretion in accordance with this present Decision in relation to the statement of Hadija Čavčić.

21. For these reasons, it remains appropriate to deal also with the two alternative responses put forward by the prosecution in relation to the exclusion of any written statement which goes to proof of the acts and conduct of the accused.

1(b) Does the exclusion apply to Rule 92*bis*(C) written statements?

22. The prosecution tendered the two statements in question under Rule 92*bis*(C), which concerns written statements by persons who have since died or who can no longer with reasonable diligence be traced or who are unable to testify orally by reason of their bodily or mental condition. The prosecution's argument is that Rule 92*bis*(C) does not exclude proof of the acts and conduct of the accused where the person who made the statement tendered under that Rule has since died. This argument is based upon what is described as a "contextual" interpretation of the Rule.[45]

23. The prosecution submits that Rule 92*bis*(A) contemplates written statements made by persons who could still be called to give evidence, and that its purpose is to save the time of the evidence being given orally. On the other hand, the prosecution submits, Rule 92*bis*(C) contemplates statements made by persons who cannot be called to give evidence, and that its purpose is to permit the "best" evidence available to be given.[46] The prosecution claims support for this submission in the fact that, whereas both Rule 92*bis*(A) and Rule 92*bis*(D) (which concerns the admissibility of a transcript of evidence given by the witness in proceedings before the Tribunal) refer expressly to the exclusion of such written statements which go to proof of the acts and conduct of the accused, Rule 92*bis*(C) does not make any reference to that exclusion. The prosecution calls in aid the maxim *expressio unius est exclusio alterius*.[47] Such a maxim must always be applied with great care in statutory interpretation, for it is not of universal application. It is often described as a valuable servant but a dangerous master. Contrary to the

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[45] Response, pars 7-8.
[46] *Ibid*, pars 12-13.
[47] The express mention of one person or thing is the exclusion of another (Co Litt 210a).

prosecution's argument, however, the context which Rule 92*bis* provides for the particular provision in Rule 92*bis*(C) demonstrates that the maxim is irrelevant to its interpretation.

24. Rule 92*bis*(A) makes admissible written statements in lieu of oral testimony, but limits such written statements to those which go to proof of a matter other than the acts and conduct of the accused as charged in the indictment. Rule 92*bis*(B) sets out the form of a declaration which must be attached to the written statement before it becomes admissible under Rule 92*bis*(A) in lieu of oral testimony. Rule 92*bis*(D) provides a separate and self-contained method of producing evidence in a written form in lieu of oral testimony by the tender of the transcript of a witness's evidence in proceedings before the Tribunal. Rule 92*bis*(C), however, does *not* provide a separate and self-contained method of producing evidence in written form in lieu of oral testimony. Both in form and in substance, Rule 92*bis*(C) merely excuses the necessary absence of the declaration required by Rule 92*bis*(B) for written statements to become admissible under Rule 92*bis*(A).

25. The prosecution argument that Rule 92*bis*(C) does not exclude proof of the acts and conduct of the accused by a written statement of a deceased person is rejected.

1(c) Admissibility under Rule 89(C) without Rule 92*bis* restrictions

26. The prosecution's third response to the appellant's arguments that the two statements admitted into evidence go to proof of the acts and conduct of the accused was that they were in any event admissible under Rule 89(C) without the restrictions of Rule 92*bis*.[48]

27. Rule 89(C) – "A Chamber may admit any relevant evidence which it deems to have probative value" – permits the admission of hearsay evidence (that is, evidence of statements made out of court), in order to prove the truth of such statements rather than merely the fact that they were made.[49] Hearsay evidence may be oral, as where a witness relates what someone else

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[48] Response, pars 15-24.

[49] *Aleksovski* Decision, par 15: "It is well settled in the practice of the Tribunal that hearsay evidence is admissible. Thus relevant out of court statements which a Trial Chamber considers probative are admissible under Rule 89(C). This was established in 1996 by the Decision of Trial Chamber II in *Prosecutor v. Tadić* [IT-94-1-T, Decision on the Defence Motion on Hearsay, 5 Aug. 1996 ('*Tadić* Decision')] and followed by Trial Chamber I in *Prosecutor v. Blaškić* [IT-95-14-T, Decision on Standing Objection of the Defence to the Admission of Hearsay with no Inquiry as to its Reliability, 26 Jan. 1998 ('*Blaškić* Decision')]. Neither Decision was the subject of appeal and it is not now submitted that they were wrongly decided. Accordingly, Trial Chambers have a broad discretion under Rule 89(C) to admit relevant hearsay evidence.
[footnote continued on next page]

had told him out of court, or written, as when (for example) an official report written by someone who is not called as a witness is tendered in evidence. Rule 89(C) clearly encompasses both these forms of hearsay evidence. Prior to the addition of Rule 92*bis*, the statement of a witness made to an OTP investigator who had died since making it had been admitted into evidence by a Trial Chamber pursuant to Rule 89(C), in *Prosecutor v Kordić & Čerkez*.[50] The Appeals Chamber overruled that decision on the basis that the discretion to admit hearsay evidence under Rule 89(C) had to be exercised so that it was in harmony with the Statute and the other Rules to the greatest extent possible,[51] and only where the Trial Chamber was satisfied that the evidence was reliable.[52] To some extent, the *Kordić & Čerkez* Decision by the Appeals Chamber was dependent upon the preference in the Rules at the time for "live, in court" testimony,[53] but its insistence upon the reliability of hearsay evidence was maintained in relation to hearsay written statements, despite the qualification of that preference (see par 12, *supra*), when Rule 92*bis* was introduced as a result of that decision.

28. Rules 92*bis*(A) and Rule 92*bis*(C) are directed to written statements prepared for the purposes of legal proceedings. This is clear not only from the fact that Rule *92bis* was introduced as a result of the *Kordić & Čerkez* Decision but also from its description of the written statement as being admitted "in lieu of oral testimony" in Rule 92*bis*(A), as well as the nature of the factors identified in Rule 92*bis*(A) in favour and against "admitting evidence in the form of a written statement". Rule 92*bis*(D), permitting the transcript of a witness's evidence in proceedings before the Tribunal to be admitted as evidence, is similarly directed to material produced for the purposes of legal proceedings. Rule 92*bis* as a whole, therefore, is concerned

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Since such evidence is admitted to prove the truth of its contents [*Tadić* Decision, pars 15-19], a Trial Chamber must be satisfied that it is reliable for that purpose, in the sense of being voluntary, truthful and trustworthy, as appropriate; and for this purpose may consider both the content of the hearsay statement and the circumstances under which the evidence arose [*Tadić* Decision, pars 15-19]; or, as Judge Stephen described it, the probative value of a hearsay statement will depend upon the context and character of the evidence in question [*Tadić* Decision, p 3 of Judge Stephen's concurring opinion]. The absence of the opportunity to cross-examine the person who made the statements, and whether the hearsay is 'first-hand' or more removed, are also relevant to the probative value of the evidence [*Blaškić* Decision, par 12]. The fact that the evidence is hearsay does not necessarily deprive it of probative value, but it is acknowledged that the weight or probative value to be afforded to that evidence will usually be less than that given to the testimony of a witness who has given it under a form of oath and who has been cross-examined, although even this will depend upon the infinitely variable circumstances which surround hearsay evidence [*Tadić* Decision, pp 2-3 of Judge Stephen's concurring opinion]."

[50] IT-95-14/2-T, 21 Feb 2000, Transcript p 14,701.

[51] *Kordić & Čerkez* Decision, par 20.

[52] *Ibid*, pars 22-24.

[53] *Ibid*, par 19.

with hearsay evidence such as would previously have been admissible under Rule 89(C). But it is hearsay material of a very special type, with very serious issues raised as to its reliability.

29. Unlike the civil law, the common law permits hearsay evidence only in exceptional circumstances.[54] When many common law jurisdictions took steps to limit the rule against hearsay by permitting the admission of written records kept by a business as evidence of the truth of what they stated notwithstanding that rule, they invariably excluded from what was to be admissible under that exception any documents made in relation to pending or anticipated legal proceedings involving a dispute as to any fact which the document may tend to establish. This exclusion reflected the fact that such documents are not made in the ordinary course by persons who have no interest other than to record as accurately as possible matters relating to the business with which they are concerned. It also rested upon the recognised potential in relation to such documents for fabrication and misrepresentation by their makers and of such documents being carefully devised by lawyers or others to ensure that they contained only the most favourable version of the facts stated.

30. The decision to encourage the admission of written statements prepared for the purposes of such legal proceedings in lieu of oral evidence from the makers of the statements was nevertheless taken by the Tribunal as an appropriate mixture of the two legal systems, but with the realisation that any evidentiary provision specifically relating to that material required considerable emphasis upon the need to ensure its reliability. This is particularly so in relation to written statements given by prospective witnesses to OTP investigators, as questions concerning the reliability of such statements have unfortunately arisen,[55] from knowledge gained in many trials before the Tribunal as to the manner in which those written statements are compiled.[56] Rule 92*bis* has introduced that emphasis.

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[54] See, generally, *Myers v Director of Public Prosecutions* [1965] AC 1001.

[55] *Kordić & Čerkez* Decision, par 27; *Prosecutor v Naletilić & Martinović*, IT-98-34-T, *Confidential* Decision on the Motion to Admit Statement of Deceased Witnesses Kazin Mežit and Arif Pasalić, 22 Jan 2002, p 4.

[56] In the usual case, the witness gives his or her statement orally in B/C/S, which is translated into English and, after discussion, a written statement is prepared by the investigator in English. The statement as written down is read back to the witness in English and translated orally into B/C/S. The witness then signs the English written statement. Some time later, the English written statement is translated into a B/C/S written document, usually by a different translator, and it is this third stage translation which is provided to the accused pursuant to Rule 66. Neither the interview nor the reading back is tape-recorded to ensure the accuracy of the oral translation given at each stage.

31. A party cannot be permitted to tender a written statement given by a prospective witness to an investigator of the OTP under Rule 89(C) in order to avoid the stringency of Rule 92*bis*. The purpose of Rule 92*bis* is to restrict the admissibility of this very special type of hearsay to that which falls within its terms. By analogy, Rule 92*bis* is the *lex specialis* which takes the admissibility of written statements of prospective witnesses and transcripts of evidence out of the scope of the *lex generalis* of Rule 89(C), although the general propositions which are implicit in Rule 89(C) – that evidence is admissible only if it is relevant and that it is relevant only if it has probative value – remain applicable to Rule 92*bis*. But Rule 92*bis* has no effect upon hearsay material which was not prepared for the purposes of legal proceedings. For example, the report prepared by Hamdija Čavčić (described in par 3, *supra*) could have been admitted pursuant to Rule 89(C) if it was not prepared for the purposes of legal proceedings (as to which the evidence is silent). The prosecution argument that the two statements admitted into evidence were in any event admissible under Rule 89(C) without the restrictions of Rule 92*bis* is rejected.

2 The "probability of the said statements"

32. The appellant submits that neither of the decisions under appeal indicates that the Trial Chamber had "engaged in evaluation of the requirements prescribed under Rule 92*bis*(C)(i)".[57] By admitting the written statement of a deceased witness "without previously attempting to establish its probability", the appellant says, the decision of the Trial Chamber is opposed to the provisions of that Rule.[58] The "failure to engage in establishing the probability of the said statements" is also alleged to have caused the Trial Chamber to fail "in a reliable manner to establish facts on the basis of which these statements will be assessed".[59] The submission is later repeated in these terms: "Trial Chamber in the contested decisions [...] did not proceed in accordance with the Rule 92*bis*(C)(i) and in view of this error, the contested decisions are legally untenable."[60]

33. The appellant has misread Rule 92*bis*(C)(i). For convenience, the terms of Rule 92*bis*(C) are repeated:

> (C) A written statement not in the form prescribed by paragraph (B) may nevertheless be admissible if made by a person who has subsequently died, or by a person who can no longer with reasonable diligence be traced, or by a person who is by reason of bodily or mental condition unable to testify orally, if the Trial Chamber:

[57] Interlocutory Appeal, p 3.
[58] *Ibid*, p 4.
[59] *Ibid*, p 4.
[60] *Ibid*, p 11.

(i) is so satisfied on a balance of probabilities; and
(ii) finds from the circumstances in which the statement was made and recorded that there are satisfactory *indicia* of its reliability.

What Rule 92*bis*(C)(i) requires is that the Trial Chamber be satisfied on a balance of probabilities that the written statement was "made by a person who has subsequently died, or by a person who can no longer with reasonable diligence be traced, or by a person who is by reason of bodily or mental condition unable to testify orally". That is made clear by the use of the words "if the Trial Chamber [...] is *so* satisfied" immediately following those words.[61] The requirements of Rule 92*bis*(C)(i) have nothing to do with the "probability" or any other characteristic of the statement itself. The assessment of the reliability of that statement is the subject of Rule 92*bis*(C)(ii).

34. There was no issue taken by the appellant before the Trial Chamber in relation to the assertion by the prosecution at the trial that the makers of the two statements admitted into evidence were dead, coupled as it was with a death certificate for each of them. This objection by the appellant is rejected.

3 The reliability of the statements

35. The appellant submits that the Trial Chamber "did not engage in establishing the question of reliability".[62] This submission has not been developed in his Interlocutory Appeal in any way. The reliability of the statements had been contested before the Trial Chamber, and the Trial Chamber in each of its decisions made findings not only that it was satisfied that the written statement of each witness and the report of Hamdija Čavčić had satisfactory *indicia* of their reliability within the meaning of Rule 92*bis*(C)(ii),[63] but also that each had "probative value within the meaning of Rule 89(C)".[64] The appellant has criticised the Trial Chamber's reference to Rule 89(C) as "an error on a question of law",[65] saying that there was no need to have recalled the general provisions of Rule 89 as Rule 92*bis* was the special rule applicable. As the Appeals Chamber has already stated, evidence is admissible only if it is relevant and it is relevant only if it has probative value, general propositions which are implicit in Rule 89(C).[66] The Trial Chamber need not have referred to Rule 89(C), but it did have to be satisfied that the evidence in

[61] Emphasis has been added to the word "so".
[62] Interlocutory Appeal, p 3.
[63] First Decision, p 3; Second Decision, p 4.
[64] First Decision, p 3; Second Decision, p 4.
[65] Interlocutory Appeal, p 9.
[66] Paragraph 31, *supra*.

the statements was relevant in that sense before they could be admitted. No error was made by the Trial Chamber.

36. The prosecution is correct in its assertion that the appellant has not in this appeal contested the finding of the Trial Chamber in accordance with Rule 92*bis*(C)(ii) that there were satisfactory *indicia* of the reliability of each statement in the circumstances in which it was made and recorded.[67] Those findings of fact can be interfered with only if the appellant demonstrates that they were ones which no reasonable tribunal of fact could have reached,[68] or that they were invalidated by an error of law.[69] There has been no attempt to do so, and the Appeals Chamber, having considered the material before the Trial Chamber, is not satisfied that those findings are open to appellate review.

37. The appellant's complaint is rejected.

4 Application of Rule 92*bis* to expert witnesses

38. The appellant submits that Rule 92*bis* does not relate to expert witnesses, whose evidence is admissible only under Rule 94*bis*, so that the evidence of Hamdija Čavčić, the chemical engineer, was inadmissible under Rule 92*bis*.[70] Rule 94*bis* provides:

> **Rule 94*bis***
> **Testimony of Expert Witnesses**
>
> (A) The full statement of any expert witness to be called by a party shall be disclosed within the time-limit prescribed by the Trial Chamber or by the pre-trial Judge.
>
> (B) Within thirty days of filing of the statement of the expert witness, or such other time prescribed by the Trial Chamber or pre-trial Judge, the opposing party shall file a notice indicating whether:
>
> (i) it accepts the expert witness statement; or
> (ii) it wishes to cross-examine the expert witness.
>
> (C) If the opposing party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

The appellant says that this Rule makes a formal distinction between witnesses and expert witnesses, so that Rule 92*bis*, in the absence of a clear and formal statement of intention to the

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[67] Response, par 22.
[68] *Tadić* Judgment, par 64; *Prosecutor v Aleksovski* IT-95-14/1-A, Judgment, 24 Mar 2000, par 63; *Prosecutor v Furundžija*, IT-95-17/1-A, Judgment, 21 July 2000, par 37; *Delalić* Judgment, pars 434-435, 459, 491, 595; *Prosecutor v Kupreškić et al*, IT-96-16-A, Judgment, par 30.
[69] *Milošević* Appeal Decision, par 6.
[70] Interlocutory Appeal, p 9.

contrary, must be regarded as being subject to the same formal distinction.[71] The Appeals Chamber does not accept the appellant's submissions.

39. Rule 94*bis* performs two separate functions. Whereas Rule 66(A)(ii) requires the prosecution to disclose the statements of all prosecution witnesses when a decision is made to call those witnesses, and whereas Rule 65*ter* requires the accused to disclose a summary of the facts on which each of his witnesses will testify prior to the commencement of the defence case, Rule 94*bis* provides a separate timetable for the disclosure of the statements of expert witnesses whichever party is calling that expert. Once the statement of an expert witness has been disclosed, Rule 94*bis* requires the other party to react to that statement within a further time limit and, depending upon whether the other party wishes to cross-examine the expert, provides for the admission of that statement without calling the expert witness to testify. No such provision is made in relation to the witnesses whose statements are disclosed by the prosecution pursuant to Rule 66(A)(ii) or the witnesses whose summaries are to be disclosed by the accused pursuant to Rule 65*ter*. In this sense, there is a clear distinction made in Rule 92*bis* between expert witnesses and other witnesses.

40. However, Rule 94*bis* contains nothing which is inconsistent with the application of Rule 92*bis* to an expert witness. Indeed, Rule 92*bis* expressly contemplates that witnesses giving evidence relating to the relevant historical, political or military background of a case (which is usually the subject of expert evidence) will be subject to its provisions. There is nothing in either Rule which would debar the written statement of an expert witness, or the transcript of the expert's evidence in proceedings before the Tribunal, being accepted in lieu of his oral testimony where the interests of justice would allow that course in order to save time, with the rights of the other party to cross-examine the expert being determined in accordance with Rule 92*bis*. Common sense would suggest that there is every reason to suggest that such a course ought to be followed in the appropriate case.

41. There is perhaps less need for reliance upon Rule 92*bis*(C) where an expert witness has died since making his report, as it is usually possible for the party requiring that expert evidence to obtain it from another source. But, again, there is nothing in either Rule which would debar reliance upon Rule 92*bis*(C) in relation to the report of an expert witness in the appropriate case.

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[71] *Ibid*, p 9.

The objection taken in the present case is to a witness whose expert evidence could not be replaced by another witness. Hamdija Čavčić describes the results of the shellings which he investigated at the time of their occurrence. His deductions as to the direction from which the shells were fired is without doubt expert evidence, but that expert evidence is based upon facts to which only he could testify directly.

42. It is unclear whether this particular objection was taken by the appellant before the Trial Chamber, but it is obvious that, if it had been, the only reasonable conclusion which would have been open to the Trial Chamber *in relation to this issue* was to have admitted the statement under Rule 92*bis*. The appellant's objection is rejected.

5 Admissibility of part of a written statement

43. The appellant submits that, in relation to the statement of Bajram Šopi (described in par 4, *supra*), it is not in the interests of justice, and it is to the detriment of his fair trial, not to have admitted that part of that statement which, it is said, states:[72]

> [...] the fact that in the school, which was located in the vicinity of his house, the army was stationed there from where it was going to the first front combat line, that he took part in bringing food for the army, and other facts which prove that he was not a civilian, and that he was present in the zone of legitimate military targets.

The appellant asserts that he should have been given the opportunity to present his stand in relation to this part of the statement, to argue that it should have been admitted because he was unable to cross-examine this witness.[73]

44. The clear suggestion in those submissions that the appellant was not given the opportunity to put these arguments at the trial is entirely without merit. A response to the prosecution's motion to admit the evidence was filed by the appellant on 8 April.[74] Its concerns were directed to what are described as the statement's "many inconsistencies and imprecise information" as to incident 11 in the schedule to the indictment, the absence of detail as to the wounding of the witness's wife (which was recounted in a part of the statement not tendered by the prosecution) and, in very general terms, the "poor and incomplete explanation of the facts from his short written statement". Significantly, the response made no mention of the arguments

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[72] Interlocutory Appeal, p 11.
[73] *Ibid*, p 11.
[74] Reply to the Request of the Prosecutor to Present the Evidence in Accordance to [*sic*] Rule 92*bis*(C), 8 Apr 2002, signed by Ms Pilipović as lead counsel.

now put before the Appeals Chamber. The appeal process is not designed for the purpose of allowing parties to remedy their own failings or oversights at the trial.

45. Moreover, the written statement which was admitted into evidence makes no mention of the witness taking part in bringing food for the army, or any other fact which may prove that he was not a civilian, as the Interlocutory Appeal suggests. Even if the witness could be regarded as a combatant at some earlier time, it is not clear from the statement how he lost his civilian status when he was collecting firewood at the time the other man present was shot. There was no mention in the statement of "legitimate military targets" unless this describes the school building behind the witness's house which (the statement says) had been "levelled" the year before this incident, but which had at that earlier time been used to house military units. If this interpretation was disputed, it was open to the appellant to raise that issue in the cross-examination of another witness to the same incident, one Nura Bajraktarević. No detriment to the fair trial of the appellant has so far been demonstrated by the non-tender of this part of the statement.

46. It must be emphasised that Rule 92*bis*(C) makes specific provision for the admission of part only of a written statement of a witness,[75] and that it is for the Trial Chamber to decide, after hearing the parties, whether to admit the statement in whole or in part.[76] Notwithstanding the argument of the prosecution to the contrary,[77] it is *not* its "prerogative" to determine how much of the statement is to be admitted. Where that part of the written statement not tendered by the prosecution modifies or qualifies what is stated in the part tendered, or where it contains material relevant to the maker's credit, the absence of any opportunity to cross-examine the witness (which must be the case where Rule 92*bis*(C) is concerned) would usually necessitate the admission of those parts of the statement as well. There is no foundation for the appellant's argument that, if the statement includes material which is irrelevant, the whole of the statement must be rejected.[78]

47. The appellant's objection is rejected.

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[75] Rule 92*bis*(A).
[76] Rule 92*bis*(E).
[77] Response, par 69.
[78] Interlocutory Appeal, p 11.

Disposition

48. For the foregoing reasons:

(1) The appeal against the Trial Chamber's First Decision (given on 12 April 2002) is allowed, so that the matter may be returned to the Trial Chamber for it to consider the exercise of its discretion in accordance with this present Decision in relation to the statement of Hamdija Čavčić.

(2) The appeal against the Trial Chamber's Second Decision (given on 18 April 2002) is dismissed.

Done in English and French, the English text being authoritative.

Dated this 7th day of June 2002,
At The Hague,
The Netherlands.

David Hunt

Judge David Hunt
Presiding Judge

[Seal of the Tribunal]

SPECIAL COURT FOR SIERRA LEONE
BINCKHORSTLAAN 400 • 2516 BL DEN HAAG • THE NETHERLANDS
PHONE: +31 70 515 9701 or +31 70 515 (+Ext 9725)

Court Management Section – Court Records

CONFIDENTIAL DOCUMENT CERTIFICATE

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

Case Name: **The Prosecutor – v- Charles Ghankay Taylor**
Case Number: **SCSL-03-01-T**
Document Index Number: **438**
Document Date **14 March 2008**
Filing Date: **14 March 2008**
Document Type: **- Confidential Annexes A & B**

Number of Pages **489** Page Numbers from: **15816-16304**

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

Document Title:

PUBLIC WITH CONFIDENTIAL ANNEXES A & B PROSECUTION NOTICE UNDER RULE 92 BIS FOR THE ADMISSION OF THE PRIOR TESTIMONY OF TF1-036 INTO EVIDENCE

Name of Officer:

Vincent Tishekwa

Signed: Vtishekwa

ANNEX C – PUBLIC EXHIBITS

Exhibit No.	Description	Length
Exhibits referred to by TF1-036		
RUF Trial Exhibit 34	Radio Log Book Number 4	33 pages
RUF Trial Exhibit 36	Salute Report to the Leader of the Revolution from Brigadier Issa H. Sesay, Battlefield Commander RUF S/L dated 27 September 1999	14 pages

16306

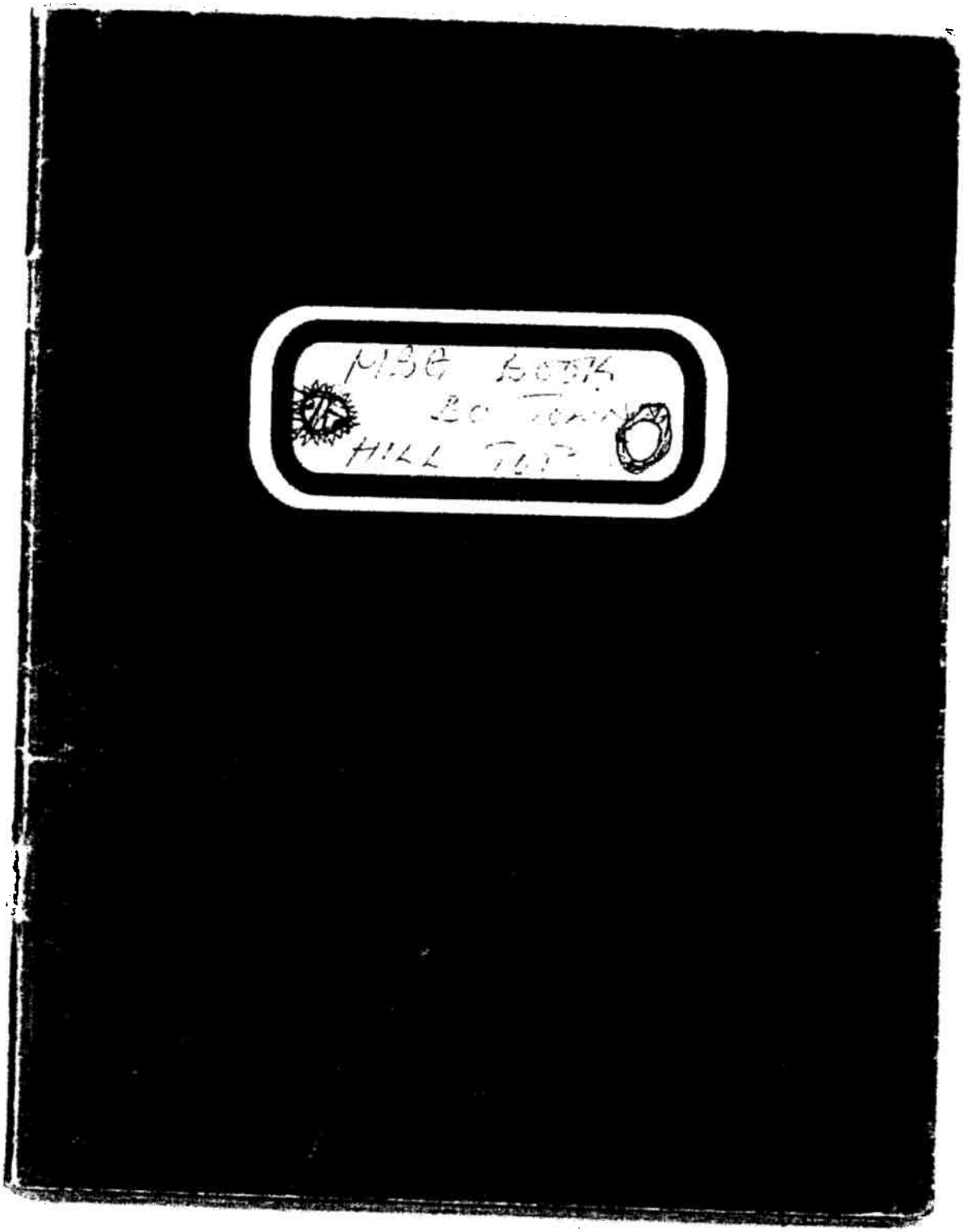
RUF Exhibit No. 34

16307

Radio Log Book #4
OTP Exhibit 20
Filed 26 April 2004
ERN00008078-00008109

SCSL-04-15-T
Exhibit Number
SCSL/ERN/34
13th July 2005.

16308



16309

00008079

Fm - Control Station through the over all Signal Commander.
To - All Stations.
Sub - Instruction.

DATE - 9th-04-2000.

1. It has come to the acknowledgment of the leader that, most Stations retarded in responding, if not, no respond to messages transmitted from Control Station.
In this regard, all stations are warn to give an Immediate respond to any message, not only from Control Station, but even from other Stations. Hence any message received need to be responded, and It should be done in written.

2. Stations should effectively start Submitting their weekly S.I.T.R. report to Control Station or Brig Issah 4 Sesay's Station for onwards transmission to Control Station.
Operators should not only rely

16310

00008080

on Commander to feed him or her station with Information. As an operator, you are not only meant to sit behind the set, but to also find out happening around, as we are serve as one of the security agent in any operational area.

3. All Stations should bear in mind that, S.S.B. unit is still under a well structured body, in the good Interest of those who do not know Capt Mohamed Kabba (Touris) remain the legitimate over all Signal Commander and all are warn to educate this constructive order without fear.

In this capacity, all Stations should give him Chance to up hold the deteriorative Situation that have been creeping slowly creeping in the unit.

All are to govern themselves accordingly.

4. All Stations should resume Morning report directly to Control Station (Freetown), or brig Issah H. Sesay's Station (Makeni). Except if these two Stations are not on, you can do same to the ~~Sub~~ Sub-Control Station in Freetown, or brig Issah Sesay's Sub-control Station (Pumpay) respectively.

Operators should come on with certain amount of discipline on the radio net, for eight years on a course, meant professornalism.

We should now be mature enough to handle the radio net perfectly.

5. Control Station suggested that the ~~SSB~~ motto to be Loyal Dedicated

16312

1060000 00008082

and gratefulness, but awaite approval from all stations, May God bless us all. Signed Recd operator [illegible] Morphy Acknowledge the leader.

Fm - Maj Sheku Coomber,
To - J.M.C. & C.M.C. representatives
Sub - Observation & Warning
DATE - 10th - 04 - 2000.

It has been observe that, C.M.C. members are in the habit of deserting their area of responsibility, especially when they receive their allowances.

All C.M.C. members who are guilty of the above behaviour, should desist forthwith.

Our rules as cease fire monitors is to foster peace and sentitise our ex-Combatants on their ways, post war reconstruction

16313

00008083

Any C.M.C. who absent himself from this duty without legal excuse, shall be queried or made to forfiet his ~~allow~~ allowance for current period. You are warn to your own Interest.

Signed
10-4-
J.M.C. representatives

Recd [signature] 10th - 04.2000.
operator.

10TH - 04 - 00

TO - MR. SHEKU CONTEH - J.M.C
FR. - SAMUEL MASSAQUOI - C.M.C. I BO
SUB - INQUIRY

SIR, I HEARD OF YOUR CALL, BUT I WILL BE ATTENDING MEETINGS TOMORROW. SIR YOU ARE TO CLEARIFY IF I SHOULD COME OR IF THERE IS ANY INSTRUCTION FOR ME.

AWAITING YOUR RESPONSE

SADDAM

MSG passed.
Time 10:25 AM.

16314

00008084

11TH OCT - 2000

TO: EMMANUEL JACKSON

FR: SADDAM.

SUBJ: INQUIRY

IN RESPECT OF OUR DISCUSSION LAST, THE BODY (VEHICLE TRUCK) ISSUE FOR THE ENGINES WE TALK OF IS NOW AVAILABLE. I MAY LIKE TO KNOW IF THE ENGINES ARE STILL AVAILABLE SO AS TO WORK FAST MEDALITY RESPONSE NEEDED.

SIGN Saddam

FM - THE LEADER,

TO - MAKENI, KONO AND KAILAHUN AXIS.

SUB - INSTRUCTION,

DATE - 12TH - 04 - 2000.

YOU ARE TO SUBMIT THREE (3) NAMES FROM LUNSAR AXIS (3) THREE FROM MAKENI AXIS, (3) THREE FROM KONO AND (3) THREE FROM KAILAHUN AXIS AND ONE (1) FROM PORTLOKO AXIS, AND THESE MEN SHOULD STANDBY AT HALLEY THE BELOW MENTIONED AREAS ~~TO BE~~ PICK-UP NEXT TOMORROW.

16315

00008085

THOSE FROM PORT HO MAGBURAKA SHOULD ASSEMBLE AT PORT LOKO WHILE THOSE FROM MAKENI AT MAKENI, AS WELL AS THOSE FROM KAILAHUN AXIS, AT MOIBATI. DARU.

THESE MEN SHOULD AT LEAST BE ABLE TO READ AND WRITE AS THEY ARE COMING TO PART TAKE ON THE CONSOLIDATION MEETING FOR PEACE. THIS MEETING WILL AT LEAST LAST FOR FIVE DAYS

AWAITING THESE NAMES, AS IT IS URGENT.

MONITORED MSG

OPERATOR

16316

EDUCOM

00008086

FM - THE LEADER,
TO - MR. RASHID SANDI,
SUB - RESPONSE,

DATE - 14TH - 4 - 2000.

YOU ARE NOT TO COME. I WILL BE AT YOUR POINT VERY SHORTLY ALSO YOU ARE TO PREPARE AND AND ATTEND A PEACE CONFERENCE IN BO WITH THE OTHER BROTHER FROM THE 19TH - 22ND - 04 - 2000. UPON MY ARRIVAL THE HOUSE ISSUE AND ALL OTHER ISSUES WILL BE SOLVE.

ACCEPT INFOS FOR ACKNOWLEDGEMENT.

Signed

RECD / TIME RECD

Operator. 11:49 AM. Mr Rashid Sandi
14TH 04 2000.

16317

00008087

15-4-2000

To - The Leader
From - Rasta Hero
Sub - Life.

Sir,

Be informed that we have finally Succeded in getting a newly build house along the Bo Kenema Highway. The price for the house is ~~8,000~~ 3,000 US dollars with four bed rooms and one carpark. It is modern house with Self Contained. ~~The Stated amount is for a period of one year.~~

Sir, the owner of the house has made me to understand that the deadline for the payment is monday 17th April 2000 as the demand for the house is too great

Sir I am therefore seeking your advise.

Best regard to you Sir

Signed

15/4/2000

16318

00008088

TO - BRIG ISSAH H. SESAY
FM - COL MARTIN BABOON
SUB - INFOS,

DATE - 17TH 04 2000.

SIR,

FOR YOUR INFOS, A LETTER WAS RECEIVED FROM THE DISTRICT OFFICER KOINADUGU DISTRICT, KABALA. ADDRESSED TO THE KANSONGO C/DOM SPEAKER, CALLING ON THE KANSONGO C/DOM - SPEAKER TO SEE THE D.O. KOINADUGU DISTRICT ON MONDAY 1ST MAY 2000, IN THE MINISTRY OF RURAL DEVELOPMENT AND LOCAL GOVERNMENT, GOVT WHARF FREETOWN, FOR THE DISCUSSION PERTAINING C/DOM MATTERS. BUT ACCORDING TO INFOS RECEIVED HERE, THE KANSONGO C/DOM SPEAKER WILL BE ARRESTED IMMEDIATELY WHEN HE ARRIVES IN F/TOWN

16319

00008089

BECAUSE, THE KANSONGO C/DOM COMMITTEE, FADUGU HAS WRITTEN A LETTER OF PROTEST TO PRESIDENT A.T. KARBA FOR THE APPOINTMENT OF A REGENT CHIEF IN FITONA FOR KANSONGO C/DOM, WITHOUT PRIOR CONSULTATION OF THE C/DOM AUTHORITIES.

AS RUMOURS ARE CIRCULATING ~~THAT~~ IN AND OUT OF THE C/DOM THAT A MANDINGO MAN NAMED ALHAJI ABU BAKARR HAVE BEEN APPOINTED AS REGENT CHIEF, WITHOUT GOING THROUGH THE CUSTOMARILY LAW AND USAGE, AS ESTABLISHED IN SECTION 72. ONE (1) OF ~~THE~~ THE 1991 CONSTITUTION AND TOTALLY DISREGARD THE VOICE OF THE C/DOM AUTHORITIES IN KANSONGO C/DOM INTENDED TO

1B20

00008090

GREAT DISUNITY AMONG THE CHIEFDOM PEOPLE WHO HAVE STARTED ENJOYING RELATIVES AND QUITENESS IN THE CHIEFDOM.

IN VIEW OF THIS, I HAVE DECIDED FOR THE C/Dom SPEAKER NOT TO ATTEND TO YOUR CALL, UNTIL I CONTACT YOU FOR NECESSARY ADVICE.

ACCEPT FOR YOUR INFOS STANDING BY FOR YOUR QUICK RESPOND.

MONITORED MSG FROM C/S LUNTER.

17th 04 Operator 2000.

TO - BRIG ISSAH H. SESAY.
FM - ALIE LAMARIA Y C/Dom Com.
SUB - INFOS
DATE 17TH 04 2000.

SIR,

16321

00008091

AS PER INSTRUCTION, WE ARE READY TO PROCEED TO FREETOWN AS INSTRUCTED BY THE LEADER, ON HIS LAST VISIT TO SEGBWEMA.

SIR, YOUR PRE TO ADVICE ON THE TRANSPORTATION ISSUE.

FIRM REGARD. SIGNED.

MSG

Mama Creator

CCO.

FM - THE LEADER.
TO - COL RASHID SANDI.
SUB - RESPONSE.
DATE - 19TH 04 2 000.

YOUR MESSAGE WAS RECEIVED AND CONTENT WELL UNDERSTOOD. I THANK YOU VERY MUCH INDEED FOR A JOB WELL DONE. I WILL BE ON THE LISTEN OUT TO RECEIVE FURTHER DEVELOPMENT FROM THE MEETING.

16322

TELECOM **00008092**

PLEASE INFORM ME, IF J.R KOROMA ATTENDED TO THIS MEETING. GIVE MY THANKS AND APPRECIATION TO THE CHAIRMAN, THE SECRETARY, AND ALL THE PARTY (MEMBERS. MAY GOD BLESS US ALL. BECD)

TIME RECD 4:39 pm 19th Oct 2000.

SIGNED

COL RASHID SANDI

TO - THE LEADER,
FM - LT COL HARRIS P. MOMOH,
SUB - SITUATION,
DATE - 10TH - 04 - 2000.

SIR,

THE DISARMAMENT FIGURE, AS FROM THE 10TH - 04 2000, IS NOW FOUR HUNDRED AND TWENTY (420), BUT THE DISARMAMENT IS STILL GOING ON.

16323

00008093

SIR, YOU WILL BE FURNISH WITH MORE INFORMATION, AS IT IS STILL CONTINUING. WE HAVE THREE HUNDRED AND EIGHTY UNARMED MEN, PRESENTLY DEPLOYED WITH US.

MY MSG

Received
19th Apr 04 2000

FM - THE LEADER,
TO - COL RASHID SANDI,
SUB - RESPONSE,
DATE - 20TH 04 2000.

REF TO YOUR MSG WHOLLY ACKNOWLEDGED. BUT - CONFIRM HOW YOU WERE RECEIVED BY THE PEOPLE, AS COMPARE TO MY VISIT LAST. I THANK YOU ALL - FOR YOUR HARD WORK.

THE TIME OF THE BARREL IS NOW OVER. WE ARE NOW TO EMBARK TO PO

16324

00008094

LITICS WITHOUT BLOODSHED
FIRM REGARD.
SIGNED

RECD ( )
Operator
28th 04 2000.

FM - THE LEADER.
TO - COL RASHID SANDI.

DATE - 21st 04 2000.
YOUR MESSAGE WAS RECEIVED. BUT I STILL WANT YOU TO CONFIRM TO ME THE RECEPTION FROM THE CIVILIANS, UPON THE ARRIVAL OF J. P. KOROMA, VICE PRESIDENT AND OTHER SIGNATORIES AS COMPARE TO MY LAST VISIT. RESPOND IS HIGHLY NEEDED. REGARD. SIGNED

RECD
Operator
21st 04 2000.

COL RASH.

16325

00008095

FM- MAJ SHEIKH COMMEH.
TO - THE REGIONAL C.M.C.
NORTH.
SUB - INCREASE OF MEMBERSHIP
DATE - 21ST 04 2000.

YOU ARE TO EXPECT THE FOLLOWING PERSONNELS, UPON THE LEAD-ORS DIRECTIVE, FOR REGIONAL C.M.C. OPERATION.

1. LT COL MONICA PEARSON,
2. COL FODAY K. LANSANA,
3. MAJ PATRICK MATTIA,

FROM NUMBER ONE (1) TO THREE (3) ARE TO DEPLOY TO NORTH SOUTH AND EAST RESPECTIVELY. M/MSG

[signature]
COMMANDER.
21ST 04 2000.
TIME 5:45 PM.

16326

00000000 00008096

From: The Chairman & Secretary BO Dist.
To: The Leader Chairman Sankoh.

Sir,

I wish to write and inform you about the present situation on the ground. That since the Bo paddle disence, I and Secretary have been under serious accommodation problem. I have been driven away from my father's house; And I am presently roaming about without any resting place. It is only by the help of friends that I'm still living here.

In this light I am please saying that I have no alternative, but to travel down to Freetown immediately. Even our the brothers who are staying with Col. Bashiru family have all been given an injectment notice as against tomorrow latest.

But all we know is out of political machinations. So please try your best to address this issue. Thanks

Msg passed
Time 4:23 pm.

Yours. Chairman
[signature] 23/[illegible]

16327

88080000 00008097

TO: THE LEADER

FROM: MAKENI

SUB: INFORMATION DATE: 3-05-2000

SIR,

THE MAIN THING THAT SPRANG THE FIGHTING FROM MAKEN DOWN TO MAGBURAKA IS BECAUSE OF THE FOLLOWING REASONS.

WHEN OUR MEN WERE ON PATROL AROUND THE TOWN, THE UNAMSIL ATTACKED THEM AND FORCEFULLY DISARMED THEM WITH A REMARK THAT THEY ARE TO BE IN THE CAMP.

SIR, WHEN THE NEWS REACHED US, COL. GBAO PROCEEDED TO THE SCENE TO KNOW THE CAUSE: AND ON REACHING THE POINT, THEY WANTED TO ARREST HIM. I WENT THERE MYSELF FOR THEM TO HAND OVER THE MEN AND THE WEAPONS, THEY OPENED FIRE ON US WITHOUT REASON.

SIR, WHEN LEFT SATILITE POINT TO MY POINT, THEY BLOCKED THE HIGHWAY.

WHEN COL. BAI-BUREH WENT TO THE SCENE, THEY ALSO USED THE SAME VIOLENCE, EVEN THE YOUTHS AND CIVILIANS CAN TESTIFY TO THAT.

P.T.O

7e080000 00008098

SIR, PRESENTLY, THEIR RE-ENFORCEMENT IS EN-ROUTE TO MY POINT FROM MARSHALL POINT.

TO CONCLUDE, ACCORDING TO THEM THEY WILL USE FORCE TO DISARM US, AND THEIR NUMBER IS INCREASE.

SIR, WE NEED YOUR ADVICE ON THIS ISSUE. REGARD SIGNED,

TO - BRIG ISSAH H. SEBAH
IN/OS THE LEADER.
FM - CO MARTIN GEORGE
SUB - COMPREHENSIVE SITUATION REPORT.
DATE: 05 [illegible]

SIR,

AT AROUND 9:00 HRS YESTERDAY, THE MILOB COMMANDER MET ME AT MY HOUSE AND TOLD ME THAT, WE MUST PREPARE TO DISARM. I RESPONDED TO HIM NO AND HE RETURN

16329

00008099

TO - BRIG ISSAH H. SESAY INFOS THE LEADER,
FM - CO MARTIN GEORGE,
SUB - COMPREHENSIVE SITUATION REPORT.
DATE - 3RD OS 2000.

SIR,

AT AROUND 9.00 HRS YESTERDAY, THE MILOB COMMANDER MET ME AT MY HOUSE, AND TOLD ME THAT, WE MUST PREPARE TO DISARM, ON THE 02 OS 2000. I RESPONDED TO HIM NO AND HE RETURNED TO THE CAMP.

THE FOLLOWING MORNING, ALL COMMANDERS AND SENIOR OFFICERS OF THE (INBATT UNAMSIL) AND MILOB MET US AGAIN AND TOLD US THAT THEY HAVE COME TO START DISARMAMENT.

SIR, DUE TO THE PREVAILING SITUATION IN THE

16330

00008100

NORTH AND TO AVOID CON
FRONTATION ON THIS SIDE
WE DECIDED TO ARREST ALL
OF THEM, INCLUDING THE FOLL
OWING.

1. 15 MILOBS
2. 9 IN BATT UNAMSIL
3. 8 VEHICLES, ONE WITH
RADIO SET
4. 1 VIDEO CAMERA
5. 10 HAND SETS (MOTOR ROLLER)
6. 1 VHF BASE RADIO SET
7. 1 SATELLITE PHONE.

ALSO WE ARRESTED A
HELICOPTER WITH (4) CREWS
AND (2) CIVILIANS. SIR, SITUAT
ION IS RELATIVELY CALM
AS AT NOW.

STANDING BY FOR FURTHER
INSTRUCTION. BEST REGARD.
BECD

SIGNED

3rd
OS
2000.

16331

00008101

TO - THE LEADER,
FM - BRIG ISSAH H. SESAY.
SUB - INFOS
DATE - 3RD 05 2000.

SIR,

I HAVE RECEIVED AN INFOS THAT, THE U.N. PEACE KEEPING FORCE HAVE TAKEN A LONG BYEPASS FROM MILE 91 THROUGH MAGBAS, HEADING FOR MY LOCATION. (MAGBURAKA, WITH (15) FIFTEEN VEHICLES.

I HAVE GONE THERE TO PUT SITUATION UNDER CONTROL, IN THE BEST WAY POSSIBLE.

BEST REGARD. SIGNED.

FM - THE LEADER,
TO - BRIG ISSAH H. SESAY,
SUB - INSTRUCTION,
DATE - 3RD 05 2000.

YOU ARE TO MAKE SURE THAT ALL PROPERTIES BELONGING TO N.G.O.'S

16332

00008102

IN MAICENI, MAGBUHAKA, AND ICAILAHUN SHOULD BE RETURN IMMEDIATELY.

ALL ITEMS IN THEIR PREMISES, VEHICLES AND COMMUNICATION EQUIPMENT SHOULD BE RETURNED TO THEM IMMEDIATELY.

IF ANY OF THEM (N.G.O.'S) WANT TO RETURN TO FREETOWN, SHOULD BE GIVEN FREE PASSAGE. WE ARE DOING THIS BECAUSE OF OUR PEOPLE NOT TO SUFFER IN THE MERE FUTURE.

AM KINDLY ASKING YOU TO TALK TO THE MEN TO RETURN ALL PROPERTIES BELONGING TO THEM.

SIGNED

3rd
MAY
2000.

16333

CONFIDENTIAL 00008103

SIDE.

ACCEPT FOR YOUR INFOS.

RECD SIGNED

OPT 4TH OS 1400.

FM - THE LEADER,

TO - THE COMMANDER IN CHARGE INFOS BRIG ISSAH H. SESAY

SUB - INSTRUCTION.

DATE - 4TH OS 2000.

YOU ARE TO GIVE FREE PASSAGE TO M.S.F. HOLLAND AND H.C.R. PERSONNELS (N.G.O.'s TO TRAVEL TO FREETOWN.

YOU ARE TO PROVIDE ESCORT FOR THE TO LUNSAR OR GBE BAY JUNCTION, WHERE THEIR PEOPLE WILL GO AND RECEIVE THEM FROM EITHER LOCATION.

RECD FILM REGARD.

OPT SIGNED

4TH OS 2000.

TIME: 9 OS (4.2.5 PM.

80120000 00008104

FM- THE LEADER,
TO BRIG ISSAH H. SESAY
INFOS ALL STATIONS,

DATE - 3RD 04 2000.

THE UNAMSIL FIELD COMMANDER HAVE COME UP THE AIR ON RADIO FRANCE INTERNATIONAL, THAT THEY ARE GOING TO USE FORCE TO DISARM US ALL AND THIS WILL BE EFFCTIVE TOMORROW.

MAY GOD BLESS US ALL.
BEST REGARD. SIGNED

RECD
OPT.
[signature]

FM- THE LEADER,
TO - BRIG ISSAH INFOS ALL STATIONS,

4TH - 05 - 2000.

FOR YOUR INFORMATION, I HAVE BEEN CUT OFF FROM INTERNATIONAL LINE, IN TERM OF OUT SIDE CONTACT.

1635

3616000 00008105

I CAN ONLY RECEIVE FROM OUT SIDE.

FIRM REGARD. SIGNED

TO: SP INFOS THE LETTER

FROM: SIGNING STAT

SUB: INFOSE DATE: 05-05-2000

SIR,

As Per instruction, I have arrived at Lusa to talk to the UNAMSIL contigents that are deployed in the township, but unfortunately other contigent (Zambia) have already left. I have found out that many civilians have deported, but I have talked to many of them to return to their home.

We met one UNAMSIL officer (Nigerian). We are now working hand in hand talking to the population and putting situation under control.

1633 6

00008106

To - The Leader
From - Col. Rashid
Sub - Situation Report

5-5-2000

Sir,

Reference to the ongoing situation between UNAMSIL and our brothers, you are to be informed that people are planning to execute all the RUFP members who are on the ground (Bo). But the brother Rogers has taken an oath before them that the people of Bo Town will not get any Confrontation from the RUFP. In the light of the above, I have even decided to go over the Kiss 104 Radio and really give them the clear picture of the whole Schemish and that Situation will Come under Complete Controll.

Best regard and greetings to you Sir.

16337

00008107

TO : Mr. Jackson Swarray
From : Mr. Brima B. Njawhen
Subj : Infos.
Sir,

With the situation between the UNAMSIL and our men to the north has annoid the entire residence in BO and as such, there is a plan to victimise any RUF. P. member living in BO. This is an intelegent source received from our informants.

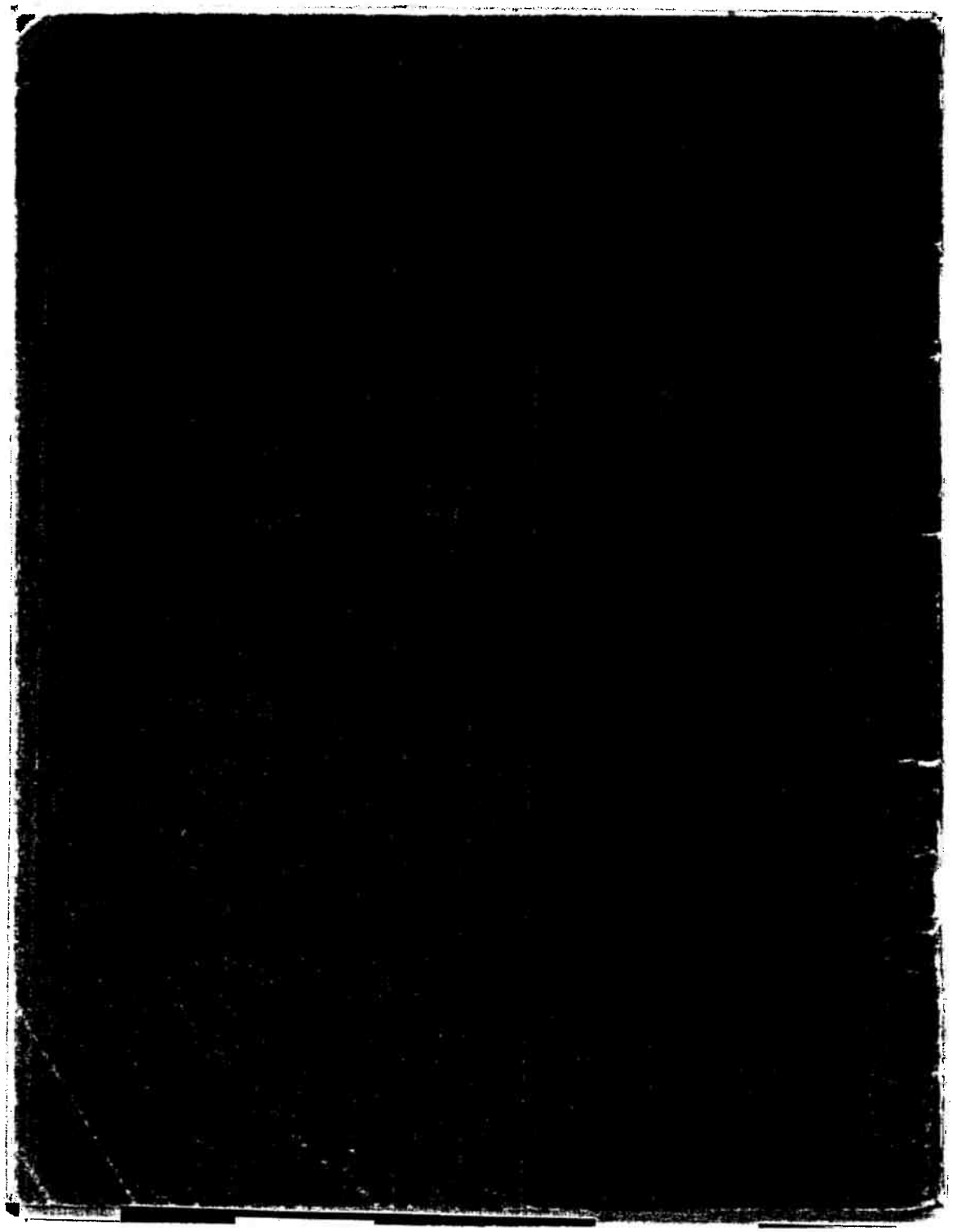
Best Regards
Signed [signature] 15/05/2000

16338

00008108

70 250

16339



16340

RUF Exhibit No. 36

1) Salute Report

Report to the Leader of the Revolution from Brigadier Issa H. Sesay, Battlefield Commander RUF S/L.

21 July 2005
TFI-360
SCSL-04-15-T
SCSL/ERN/36

16342

2345

REVOLUTIONARY UNITED FRONT OF SIERRA LEONE

DEFENCE HEADQUARTERS

27TH SEPTEMBER 1999

TO: THE LEADER OF THE REVOLUTION

FROM: BRIGADIER ISSA H SESAY
BATTLEFIELD COMMANDER RUF S/L

SUBJECT: SALUTE REPORT

Sir,

After working on the Draft document of the Abidjan Peace Accord, you returned behind RUF Lines to consult with the Military High Command and all combatants on the Accord and its implications. While in the Kailahun District, we received reports that Colonel Mohamed Tarawallie had been destabilized by Kamajohs and SLA troops at your former base of Camp ZOGODA.
On hearing this news, I and other senior officers convoyed from Gaima to Buedu with the leader.
The next-day, before returning to Abidjan to conclude documentation and signing of the Accord, you instructed that General Sam Bockarie (Mosquito) take over as Battle Group Commander of the RUF.

From Abidjan, the Leader instructed that men should be sent across the Moa River to receive those of our troops who were fortunate enough to have successfully retreated from ZOGODA [illegible] to actively go in search of Colonel Mohamed Tarawallie. The [illegible] implemented in full and though we were able [illegible] soldiers and civilians that had retreated from ZOGO[illegible] were unable to locate Colonel Tarawallie.

From Abidjan, we received further instruc[illegible] General Mosquito was to take effective command on the ground in your

absence and to assume the assignment of Battle Field Commander, RUF S/L.
I was to assume the duties and responsibilities of Battle Group Commander and together we were to work to maintain the ground, by any means necessary.

General Mosquito was able to make positive contact with ULIMO and make all necessary arrangements to buy materials from them. The money that you had left with us on the ground (70000USD) was utilized to buy materials from ULIMO and with these materials, we were able to resist enemy advances in the Kailahun District.

It became obvious to us on the ground that the Abidjan Accord was nothing but paper, as the Kamajohs were being used against us with vicious attacks on our positions.
It was not long before we heard that the Leader had been arrested in Nigeria, and as we were trying to understand the circumstances of your arrest and implications to the RUF, we learnt that Philip Palmer, Faia Musa and other members of the External Delegation were now claiming leadership of the RUF.

General Mosquito contacted Palmer telling him that since this was the action that they had taken, it was necessary for them to come back behind our Lines and brief the Military High Command and combatants accordingly. Palmer and others eventually agreed to meet us at the Nongowa Crossing Point. There, amidst drumming and dancing to receive them, the General was able to persuade all of the Coup-plotters, including the Sierra Leone Ambassador to Guinea, Lt. Col. Djabi to cross-over into RUF zone. They were promptly arrested and their statements revealed an international conspiracy, to which they were party, aimed at changing the leadership of the RUF. They have since been in custody until your recent instruction to release them.

Soon after, we received information that Superman, who was operating as Battalion Commander for the Western Area Jungle, had arrested the bodyguards of Colonel Tarawallie and had executed two of them, namely Emanuelle and Victor without consulting with and obtaining such instructions from the Military High Command left on the ground by the Leader.
An investigation was launched and before action could be taken against Superman, the SLPP Government was overthrown by the AFRC on the 25th of May 1997.
A few days later General Mosquito was instructed to move and join our SLA brothers in Freetown.

In accordance with the Leaders instructions, General Mosquito postponed action against Superman and instructed him to lead the advance team from Bradford to Freetown, whilst Colonel Isaac and Brigadier Kallon were to move to join the SLA Forces in Makeni. After ensuring that the security of the High Command was paramount, the General and I moved to Freetown.

Once in place in Freetown we assessed the security situation and deployed our troops in all strategic areas of the Capital and indeed the entire country. In accordance with the instructions of the Leader we took all instructions from Chairman J P Koroma and maintained the same sense of discipline and loyalty that we had developed growing within the ranks of the RUF.

Lt. Col. Gibril Massaquoi arrived in Freetown from Nigeria where he had been under detention with the Leader. He briefed us informally that he had been arrested together with the Leader but that he had escaped, all with the knowledge and consent of the Leader. A few days later Gigril would present a document to Chairman J P Koroma that he, Gibril alleges, was given to him by the Leader.
In the document, it was instructed that no member of the RUF was to accept any Ministerial position or participate in politics in any way. It also endorsed the promotion of Gibril to the rank of a full colonel .
These events were reported to General Mosquito as he had not been in Freetown when Gibril arrived.

On the arrival of Steve Bio in Freetown, he became very closely associated with Lt. Col. Gibril and both seamed to be on their own agenda.

I left Freetown for Kenema in-order to distribute rations and morale boosters to the troops, as well as to organize the various deployments. Whilst waiting for my Jeep to be repaired, a vehicle pulled-up with Steve Bio and Lt. Col. Gibril within.
Gibril greeted me and introduced Steve Bio to me. Though I knew Steve from a brief meeting in Abidjan at the signing of the Peace Accord, I had never really talked to him or knew much about him. They then began to discuss the AFRC and complained about the way in which the RUF was being marginalised and treated with disrespect. We were in a public place and I advised that such talk from them was not to be done around civilians. On this advise, we, including Major Eddie Bockarie (who was with me) walked to a point out of the earshot of others. Gibril went on to say that our meeting was not a coincidence and that they had searched the entire town for me as they had an important issue on which they

had to brief me. Mr. Bio then stated that he had come with a special mission and was seeking my support in launching a coup. I listened as both he and Gibril went into details of the numerous grievances held against the AFRC. He said that the AFRC had refused to share power with us and had even marginalised us in the military. I told them that the instructions that we had received from the Leader called on us to join and take all orders from Chairman J P Koroma. Steve Bio responded saying that I should disregard all that as we were all young men and that this was an operation that was necessary for the four of us, Gibril, Steve, General Mosquito and myself to undertake and assume command of the Government and State. I asked them if they had already discussed this with General Mosquito as they had just left him in Freetown. Gibril replied that they had left the General in Freetown but that he was afraid of General Mosquito and could not summon the courage to approach him on such an issue. In fact it was this very reason that had made it necessary for them to search for me in Kenema. Knowing that if I could be convinced, they were close to getting General Mosquito's support.

The two of them left Kenema that night for Bo. At around 0400HRS the following morning General Mosquito arrived in Kenema. I immediately informed him of my previous day's discussions with Gibril and Steve Bio. I told the General that they were asking us to overthrow the very Government that the Leader had instructed us to join and secure. I told General Mosquito that since that dialogue I had been thinking of a secure way of informing him and was very relieved that he was in Kenema. The General was shocked to hear this and in turn informed me that he had been called to the State House in Freetown where he was informed by Chairman J P Koroma that some members of the RUF were planning a coup together with other SLA officers. The General informed me further that he had been given the instructions to investigate the situation and report back to him. That day I moved to Bo and Gibril and Steve joined my convoy to Freetown. On arrival in Freetown I asked them in the presence of Brig. Mike Lamin, Col. Isaac and other security personnel to repeat their statements made to me in Kenema. They repeated the same statements and they were detained and turned over to Army Headquarters at Cockerill.

On new- years- eve, I left home in search of a pharmacy that was still open for business as I was in poor health. I met the Late. Honorable Gborie who informed me that he had chairs for me and had been trying to get a hold of me for two days. I thanked him sincerely and accepted his gift. Despite all the allegations and testimonies against the character of this man, I say with no hesitation that he welcomed the RUF with all his heart. On

numerous occasions he would provide rations and boosters to our troops and every RUF problem was his problem. I accepted his gift in good faith only to be notified on SLBS Radio the following day that I had looted the Iranian Embassy and as a result , I had been removed from the Supreme Council and that my arrest had been ordered.

Knowing that while we the RUF were securing the Government of the AFRC, they were killing our soldiers with no action being taken and that the RUF High Command had been targeted for elimination, and knowing that I was innocent and the measures taken against me, extreme, I refused arrest and maintained the integrity of the High Command of the RUF.

In general, we were not trusted or respected by the AFRC even though they had called on us to join them. Our troops were the only ones committed to their assignments whilst the AFRC High Command rejected our war plans and strategies referring to us as 'blood-thirsty, bush-colonels'.

It became apparent to us in Freetown, that Lt. Col. Gibril had leaked information to the AFRC pertaining to Military Equipment belonging to the RUF that the Leader had kept in a safe place. Before we could confront Gibril and arrest the situation, he and the AFRC had arranged for the equipment to be delivered to them. They took delivery of the equipment without the concern or consent of the RUF High Command and stored the equipment where we had no say or access to it. When we retreated from Freetown a large quantity of the said equipment was left in storage at the residence of Chairman J P Koroma.

Due to the lack of command and control, shortage of issued materials to our front-line troops and the total lack of support of the SLA soldiers, the enemy were able to move us from Freetown and ousted the AFRC Government.
I retreated first to Waterloo and then to Masiaka . By then, the ECOMOG Force had taken Bo and Kenema and it was agreed that I should attack Bo and begin to organize to move to attack Freetown. I was successful in capturing Bo but sustained an injury that forced me to retreat back to Mile 91 and then to Makeni in search of good medical treatment.
Whilst in Makeni, I went to visit J P Koroma who was in hiding in his village. J P Koroma asked me to arrange and supervise the movement of his entire family to Kailahun as ECOMOG were advancing and the Clandestine Radio 98.1 FM, had accounted that he was in hiding in his village.

I contacted General Mosquito and the order was given to escort the Former Head of State to our Kailahun base.
First, we had to open the road to Kono. This was done in conjunction with Superman and Brig. Mike Lamin. Having put Kono under our Control ,we attacked Gandohun with the intention of opening the road from Koidu-Geya to Saudialu but failed in our attempts. We were then ordered by General Mosquito to enter the Jungle and use the cover of the Jungle to secure J P Koroma and his family to the banks of the Moa River. Across the Moa, General Mosquito had sent vehicles ahead of us and we all reported to Buedu.
All hospitalities were extended to J P Koroma and his family and General turned over his bedroom to J P Koroma and his wife.

J P Koroma appointed General Mosquito as Chief of Defence Staff, with overall command over both the RUF and the SLA and promoted him to the rank of Brigadier General. General Mosquito called on me and informed me that since he had been made Chief of Defence Staff for both the RUF and the SLA by J P Koroma he wanted to turn over his assignment of Battle Field Commander to me and asked me to turn my assignment of Battle Group Commander over to Superman. The General said that he was doing this to draw Superman within the High Command structure of the RUF in a bid to encourage him. I accepted and assumed the assignment of Battle Field Commander and Superman assumed the assignment of Battle Group Commander.

One morning, the Chief Security Officer to the former AFRC Chairman J P Koroma informed me that his boss was planing to escape to Ghana along with his entire family. The CSO further told me that J P Koroma had a parcel of diamonds that he was planning on selling once out of the country.
This information came as a surprise to me and found it hard to believe that at a time when we were trying to put the fighting-men under command and control and provide the necessary logistics to halt our retreat and move forward, J P Koroma would keep diamonds for his own use and flee, leaving us with a problem that he had created.
Accompanied by Brig Mike Lamin and the CSO to J P Koroma I asked the latter to present the diamonds for the use of the Revolution. He complied and the matter was settled.

While in Buedu, Captain Michael Comber of the Mining Unit reported with a parcel of diamonds from Kono.
The parcel was placed in my care by General Mosquito with the instructions to move with it to a transit point where I would be met

by General Ibrahim and together we were to travel to a business associate of the Leader for arrangements and procurement of Military Equipment.
I arrived at the transit point and booked into a hotel.
On the evening of my third day at the hotel, Colonel Jungle and I went across the street to a tea-shop. Whilst there, it started to rain and Jungle and I ran from the shop across the street to the hotel. As we climbed the steps to enter, I touched my pockets, as I had gotten accustomed to doing since the parcel was put in my care.
To my shock and dismay, my pockets were empty. I screamed and put my hands on my head and cried. Jungle and I then retraced our steps from the tea-shop to the hotel. We searched in the rain on our hands and knees. Staff from the hotel helped us in our search, all to no avail. For the first time in my life I contemplated suicide. I abqve all knew the importance attached to the materials that the diamonds were to facilitate for the movement. How could I ever look my commander in the eyes and tell him that I Issa, who could be trusted with the security of the Nation, could not secure a small parcel of diamonds. As the days went by, I grew frustrated and could not eat or sleep.
Four days after the loss, Jungle and I were sitting on his bed when we monitored National Radio announcing that diamonds had been discovered on the very same street that I had suffered my loss.
Jungle and I cried knowing that the mentioned diamonds were the property of the RUF. Till this day, people still prospect this area thinking that diamonds are underground.
General Mosquito dispatched Lt. Col. Moriba to meet me and escort me back to DHQ.
On arrival, I was met by an enraged General Mosquito who angrily chastised me for the loss. I was ordered to ' fall-out ' and for over a week, the General would not talk to me or even respond to my curtsies.
Finally one morning, I was summoned by the General and instructed that I should leave Buedu and make my base at Pendembu from where I was to coordinate all Front-Line Operations.
I complied with his order and stepped-up operations against the enemy at Daru. I also launched successful Jungle Missions to Joru and Nimma.

General Mosquito left on a trip to secure materials for the Movement and on his return I was issued a liberal quantity of ammunition and instructed to cross the Moa River and re-capture Kono from the enemy. Prior to this, the same instructions had been given to Superman who misused the materials given to him and failed to capture the target.

On arrival in Kono I called the Brigade Commander, Rambo and other senior officers and together we arranged a forum in which general security issues were discussed and a war-plan was made for the attack of Koindu Town.

I instructed Brig. Kallon to move to Gold Town and cut-off the enemy. I led the troops in the attack of Koidu Town, attacking the enemy at 0600HRS. They put up a strong resistance using their four Mechanized Battalions deployed to defend Kono and its diamonds. Our troops proved too aggressive for them and after fourteen hours of heated combat we captured Koindu Town. The Nigerians retreated to Bumpe. Very early the next morning we attacked their positions at Bumpe and raised them from the town. The enemy were forced to retreat through the road leading to Massingbi where they fell in Kallons ambush. All in all. The enemy lost four war-tanks, armored cars, and a multitude of heavy artillery pieces personal rifles and huge amounts of ammunition. They also suffered heavy casualties the likes of which they have never experienced in the history of ECOMOG. They were forced to retreat on foot with not even a bicycle being able to pass our defenses.

Our Forces moved for Massingbi, Rambo and Kallon moving with the advance team whilst I moved to repel a Kamajoh Attack at Nimikoro. Our forces had by then captured Massingbi and Magboroka and were advancing to attack Makeni.
I joined them, taking with me all needed Military Materials for the attack. We quickly put the Township under our Military Control.
General Mosquito called me 'on set' and instructed that we allow Superman to join in the operations. The General explained that though Superman had earlier refused his orders, he Mosquito was man enough to put it behind him and accept Superman back, referring to him as ' a brother in arms.'
Rambo proceeded to a village beyond Binkolo where Superman had been in hiding and brought him to Makeni.
That morning the two of us met and had polite discussions.
Together we attacked the Barracks and captured it .
At that point, I received information that the enemy were moving to attack Ijiama-Swafe and I moved to put the situation under control.
Upon my return to Makeni, Rambo and Kallon reported that all Military Equipment in their care had been reported to the G-4. They reported that Superman on the other hand had taken the Materials he collected to his house. Accompanied by Kallon, I went to Superman's house and confronted him with the issue. I informed him that it was proper procedure to report all captured Military Materials to the G-4 who would then file a comprehensive report to DHQ and issue the said Materials upon instructions. I asked that

Superman present the Materials so as to ensure proper accountability. Superman led Kallon and I into the house and showed us where he had kept the Materials. I instructed that it be moved and reported to the G-4..

Two days later General Mosquito again asked for understanding and allowed Superman to rejoin the operations.

Rambo was instructed to advance and attack Port Loko which he did, deploying his forward defensive at the Port Loko turn-table, leading to Kambia. Rambo shared the town with the enemy for seven days.
Superman, pleaded that eventhough Rambo had done well, he as Battle Group Commander knew the ground well and should take over the ground . He said that he had received Intelligence that the Leader had been moved to Lungi and wanted to advance as far as Lungi and rescue the Leader.

At this time our forces Freetown were under enemy ' cut-off ' from the rear and were in danger of being boxed-in nud either captured alive or killed.
Rambo was withdrawn from his operation in Port Loko and instructed to open a through- way to connect with our men in Freetown.
Rambo then attacked and captured Masiaka, advanced and captured RDF, and attacked the Guineans at Waterloo, engaging them in combat for four days and four nights.
The Guineans wrote us a letter asking for their safe passage back to Guinea, saying that they were taking their hands out of the war.
I replied, denying their request. I told them that if they wanted ' safe passage ' they should leave behind all their Military Equipment.
A few days later I monitored the sound of heavy bombardment from the direction of Port Loko. On inquiring, I was informed that our troops had dissolved the ground and that the enemy were advancing towards Gberay Junction. I asked for Superman and was informed that he was in Lunsar and not on the ground that he had asked for and been given.
The Guinean convoy bulldozed all the way to Masiaka where my position was also bulldozed. Their mission was to rescue the Guineans at Waterloo. Upon reaching Waterloo they joined forces and made a 'U-turn', bulldozing my ambush for a second time at RDF. The Guinean convoy consisted of over four war-tanks, eight armored vehicles, a Forty Barrel Missile , four Anti-Aircraft Guns and countless other mounted weapons and over eight trucks full of personnel. As they moved they bombarded and assaulted, clearing a path for themselves.

I was extremely annoyed at my position being bulldozed and issued strong orders for an ambush to be set ahead of them. They fell in the ambush and my Bodyguard commander led a team of less than a squad of men in the capture of the Forty Barrel Missile and a large quantity of its bombs.

I moved to Escort the Missile to our rear and on my return, Superman asked to join Rambo at Waterloo. He sighted the fact that as the SLA Commanders had operated with him before he would be able to consolidate them and exercise command and control over them . Taking into consideration his status as Battle Group and the logic behind his explanations, I gave the OK for Superman to join Rambo in Waterloo.
At Waterloo Superman incited SLA Commanders and soldiers against Rambo and generally did his best to cause a break-down in command on the ground.

A few days later' General Mosquito on hearing that Lt. Col. Gibril had been rescued and had joined operations at Waterloo, called me and asked me to inform Gibril that he was welcome back and that no ill-feelings were borne against him. Gibril was to also report to DHQ to brief the High Command and all on the condition of the Leader as they had been in prison together.
Superman , monitoring the dialogue on field-radio responded that He would not allow Gibril to come to the call of the High Command.
A few days later, I received information from the Waterloo Front-Line that Superman and Gibril had retreated to Lunsar and had moved with a good number of men. As a result, the enemy had advanced and were now at Yams Farm.
I informed Rambo who was at my location on a Medical Pass . Rambo asked for ammunition to be given to him so that he could collect the Force from Lunsar and move to stop the enemy advance at Yams Farm. I arrived at Lunsar with only eight bodyguards and met Rambo and Gibril discussing. Gibril greeted me and we exchanged pleasantries. I told him that General Mosquito wanted him to report to DIIQ not to face any charges but to give account of the state and condition of the Leader as they had been in prison together. Gibril complied and entered my vehicle. At that moment, Superman and his men came from the back of the building, opened suppressive fire and launched RPG rockets against my position. Gibril left my vehicle and joined Superman in attacking me. I managed to escape with my life but they had killed two RUF soldiers assigned to me as bodyguards.
I got in a vehicle with Major Kolo Mulba and escaped through Gberay Junction, Masiaka, Mile 91 to Magborokta.

Meanwhile, Superman and Gibril moved to Makeni and attacked my residence. They shot at my house, tied and beat up RUF soldiers and raised my compound. They entered my house, beating up my wife, undressing her and taunting her with rude and abusive remarks before she was able to escape under gun-fire.
Mr. E T Samara and others rescued from prison in Freetown, were staying with me in Makeni and were also molested and raised. RUF Military Materials given to me by the General for a planned re-attack of Freetown were looted along with 9,000 USD also RUF property.
That same day Superman and Gibril attacked the home of Brig. Kallon. The entire house was raised and his wife was stripped off all her clothing and made to sit on the ground. Her suckling- child was snatched from her and repeatedly banged against a wall. This resulted in serious injuries to the child.

I reported the incident to General Mosquito who asked me to exercise restraint and he dispatched a Delegation headed by Col. Isaac to calm the situation down and investigate the incident. The Delegation obtained statements from me and proceeded to Lunsar to get a statement from my attackers. Superman and Gibril refused to co-operate and issued threats against the Delegates.

During this impasse the enemy had advanced to Gberay Junction. General Mosquito instructed that in the interest of the Revolution, we should put our differences aside temporarily and act to repel the enemy. Along with Kallon, Rambo and Brig. Isaac, four trucks of armed men were mobilized and we joined the Force at Lunsar and moved for Gberay Junction. Four of Rambo's men were killed in that attack by ' friendly fire ' from the rear suggesting foul-play.

Again the enemy moved against our positions advancing towards Mile 91. I sent Rambo, equipping him with a Single Barrel BZT. He met and joined Col. Bai Bureh and they were able to push the enemy past Moyamba Junction to Tiama Junction where they deployed our troops.
Rambo proposed an attack of BO and it was arranged that Kallon would hit Yele.
Kallon was dispatched to DIIQ to receive logistics for the said mission. Two days later I made a day's trip to Matotoka as the area was under Kamajoh threat. On returning to Makeni, Rambo visited me to inform me that he had repaired the BZT Weapon and wanted to move to capture Bo the next morning. He left my house at around 2100HRS and I stayed up past mid-night. I stayed awake and at 0110HRS I heard heavy firing from outside. I entered my ' living-room ' and my bodyguards were running from the direction of the firing. Some of them had been shot. I exited the house through a

back entrance and ran for cover. A RPG rocket was launched against me and I was hit in the toe by fragment from the blast. I ran as guns blazed behind me. I got to a safe place and spent the night. The next morning with the aid of civilian's, I escaped to Makali. The hunt was on for me and I had to bye-pass major towns on my way. At Makali I was at the Signal Station monitoring the Network when the Leader called. I responded and reported that I was faced with a serious problem. Not wanting to let the enemy know that there was serious in-fighting going on within the RUF, I could not go into details. At the end of my dialogue with the Leader I was attacked again by Gibril. They took me by surprise as I had been very careful not to disclose my location. The people of Makali, including the Paramount Chief Pa Alimamy Kann, will testify that Gibril led the attack. He raised the town shooting and wounding people on the ground. He swore that he would kill me and take my head to Makeni where he would put it on display.

Away from my ground at Makeni, Superman took the opportunity of calling a meeting at the Town Hall where he informed those assembled that General Mosquito and I had collaborated to hijack the leadership of the RUF and sighted the Generals advise not to respond to the call of the Leader on field-radio as proof. He informed the meeting that he had received instructions from the Leader to take full command of the RUF and to arrest and execute both General Mosquito and I, Brig. Issa.

By then I had maneuvered to Kono, after spending five days in the bush as a result of the attack on me in Makali.
Kallon moved to Magboroka to take command and was able to repel numerous attacks from Superman and Gibril.

Upon receiving instructions from the Leader, through the General, calling for Kallon to take command at Makeni. I mobilized Kallon and the said operation was undertaken. We were allmost in control of the entire Township when the General informed us that that the Leader wanted us to abort the operation and for Kallon to return to Makeni.
A Military Order was passed and we withdrew the force to await the arrival of the Leader on the ground.

Sir, if my Report is centered on the activities of Superman and Gibril it is not so merely because of their attacks on me but rather because of the negative results their ' out-law ' actions have brought to the Movement.

Superman sought the advise of ULIMO General Bopleh and SLA Brig. Mannie. Both strong critics and self-confessed enemies of the RUF. Superman placed Former President J S Momoh in the hands of Mannie who arranged for Momoh to escape to Guinea. Mannie refused to hand Momoh over to me stating that Momoh is SLA property and not RUF.
He incited SLA soldiers to go against RUF Command and together with Gibril sought to sabotage the progress of the movement thus delaying the release of the Leader.
Superman killed Rambo in cold blood and made several attempts on my life in a bid to eliminate the RUF High Command left on the ground by the Leader.

Sir, it has not been easy controlling my emotions and harder still controlling the men who witnessed the cold-blooded killing of Rambo.
General Mosquito, I Brig. Issa and other senior officers have obediently taken all orders from you and at this time we await most anxiously your arrival when we look to have the matter resolved by you.

Lastly Sir, the vast majority of the men are in ' high spirit ' and remain loyal to the Leadership of the RUF. They have fought hard and longed for the return of the Leader.
As Battle Field Commander I pledge my loyalty to the Leader and ask that he moves earliest, to look into the internal-affairs of the RUF.
The High Command, officers, combatants and civilians of the RUF are on the ground and on full-alert awaiting the ' last-order ' of the Commander In Chief of the RUF S/L, Corporal Foday Saybana Sankoh.

Militarily Yours,

Brigadier Issa H Sesay
Battle Field Commander
RUF S/L