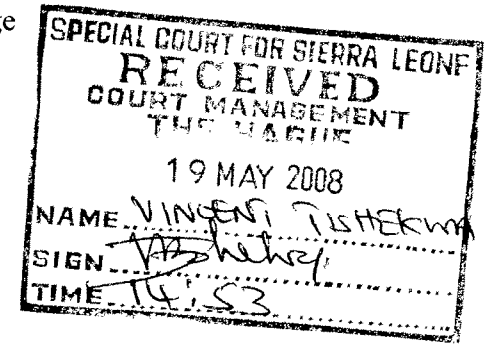
510) SCSL-03-01-T (17127-17205) 17127

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: 19 May 2008



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

Case No. SCSL-03-01-T

PUBLIC

PROSECUTION MOTION FOR ADMISSION OF DOCUMENT PURSUANT TO RULE 89(C)

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

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

I. INTRODUCTION

1. Pursuant to Rules 73 and 89(C) of the Rules of Procedure and Evidence ("**Rules**"), the Prosecution files this motion to request that the Trial Chamber admit into evidence Security Council Resolution 1315 (2000).[1]

II. BACKGROUND

2. The Prosecution first sought admission of Resolution 1315 on 14 May 2008 following the testimony of witness, TF1-571.[2] The Prosecution sought to have Resolution 1315 admitted at that point in proceedings as it was relevant to the evidence which had just been given by TF1-571, in particular to questions put to the witness by the Defence.[3] Despite Counsel for the Prosecution's submission that the Prosecution was *not* seeking to tender the document *through* witness TF1-571 but had decided to tender it at that stage on the basis that it was *relevant* to this witness' testimony,[4] the Chamber ruled that:

> "Whilst we accept the document is relevant, we do not consider this document is admissible through this witness. There are provisions in the rules for alternative proof of facts and we do not consider this tender through this witness is an appropriate procedure in this instance."[5]

3. Therefore, in accordance with the above ruling, the Prosecution requests that that the Trial Chamber admit into evidence Resolution 1315 under Rule 89(C) on the basis of the following submissions.

III. APPLICABLE LAW

Admission under Rule 89(C)

4. As stated above, the Prosecution seeks admission of documentary evidence. Rule 89(C) is the general rule governing the admission of evidence and provides that the Chamber "may admit any relevant evidence." While there is no Rule which specifically governs the admission of documentary evidence at the Special Court for Sierra Leone ("**SCSL**"), Rule

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[1] Security Council Resolution 1315 (S/RES/1315 (2000)) dated 14 August 2000 is provided in the **Annex** to this motion and is referred to in this motion as **Resolution 1315**.
[2] See *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 14 May 2008, page 9781, lines 16-18 ("**14 May Transcript**").
[3] *Ibid*, lines 24-25.
[4] *Ibid*, page 9782, lines 9-11 and page 9783, lines 2-5.
[5] *Ibid*, page 9783, line 28 to page 9784, line 3.

89(C)[6] has been used to admit such evidence. Rule 92*bis* has also been found flexible enough to allow the admission of documentary evidence.[7]

5. However, as Resolution 1315 is not being admitted *in lieu of oral testimony*, the Prosecution seeks admission of the Documents directly under Rule 89(C). This is the applicable Rule which allows experienced professional judges to receive into evidence relevant written material without "compulsory resort to a witness serving only to present documents"[8] while being subject to the necessary safeguards to prevent any undue prejudice to the Defence.[9]

6. The jurisprudence of the SCSL clearly establishes that the Rules "favour a flexible approach to the issue of admissibility of evidence."[10] Therefore, unlike the equivalent provisions of the ICTY and ICTR Rules, the test for admissibility of evidence under Rule 89(C) is relevance only. There is no requirement that the evidence be both relevant and probative.[11]

7. This flexible approach to admissibility has been found by the Appeals Chamber to be the one best suited to trials where the proceedings are conducted by professional judges. In the *Fofana* Bail Appeals Decision, the Appeals Chamber stated that:

> "Rule 89(C) ensures that the administration of justice will not be brought into disrepute by artificial or technical rules, often devised for jury trial, which prevent judges from having access to information which is relevant. Judges sitting alone can be trusted to give second hand evidence appropriate weight, in the context of the evidence as a whole and according to well-understood forensic standards. The Rule is designed to avoid sterile legal debate over admissibility ..."[12]

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[6] *Prosecutor v. Sesay et al.*, SCSL-04-15-T-620, "Decision on Prosecution Motion to Admit into Evidence a Document Referred to in Cross-Examination", 2 August 2006, p. 4 ("***Sesay* 89(C) Decision**").

[7] See for example, *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.5 ("***Sesay* Decision**").

[8] "In this respect, it is appropriate to point out that the Trial Chamber authorised the presentation of evidence without its being submitted by a witness. The Trial Chamber relied on various criteria for this. At the outset, it is appropriate to observe that the proceedings were conducted by professional Judges with the necessary ability for first hearing a given piece of evidence and then evaluating it so as to determine its due weight with regard to the circumstances in which it was obtained, its actual contents and its credibility in light of all the evidence tendered. Secondly, the Trial Chamber could thus obtain much material of which it might otherwise have been deprived. Lastly, the proceedings restricted the compulsory resort to a witness serving only to present documents. In summary, this approach allowed the proceedings to be expedited whilst respecting the fairness of the trial and contributing to the ascertainment of the truth", *Prosecutor v. Blaskić*, IT-95-14, Judgment, 3 March 2000, para. 35.

[9] *Sesay* 89(C) Decision, p.4.

[10] *Sesay* Decision, 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 ("***Gbao* Ruling**"), para. 4.

[11] *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.

[12] *Prosecutor v. Norman et al.*, SCSL 04-14-T-AR65, "Fofana – Appeal against Decision Refusing Bail", 11 March 2005, para. 26 ("***Fofana* Bail Appeals Decision**").

8. Instead, issues regarding reliability and probativity are properly to be considered by the Trial Chamber at the end of the trial as "[e]vidence is admissible once it is shown to be relevant: the question of its reliability is determined thereafter, and is not a condition for its admission."[13]

9. Admissibility of relevant evidence under Rule 89(C) is subject, however, to: (i) the Trial Chamber's "inherent jurisdiction to exclude evidence where its probative value is *manifestly* outweighed by its prejudicial effect";[14] and (ii) Rule 95 which provides that "[n]o evidence shall be admitted if its admission would bring the administration of justice into *serious* disrepute" (emphasis added). The test, therefore, favors admissibility, as it must be shown that the *prejudice manifestly outweighs* the probative value of the evidence and/or that there is a risk of bringing the administration of justice into *serious* disrepute. Regarding the first limb of this test, as noted by Trial Chamber I, "[w]hat is crucial in any such determination, where it is alleged that the probative value of the evidence under scrutiny is outweighed by its prejudicial effect, is whether admitting the evidence will impact adversely and unfairly *upon the integrity of the proceedings* before the Court."[15] It is evident, therefore, that a very high standard must be met before relevant evidence is excluded.

10. As stated above, Resolution 1315 is not being submitted *in lieu of oral testimony*. In this regard, "there is no requirement in international criminal law to produce documents through a witness."[16] This approach conforms to one of the basic principles underlying the admissibility of evidence in large international trials such as the instant case: the applicable rules must "promote a fair and expeditious trial and the Trial Chambers must have the flexibility to achieve this goal."[17]

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[13] *Fofana* Bail Appeals Decision, para. 24.
[14] *Gbao* Ruling, para. 7 (emphasis added).
[15] *Gbao* Ruling, para. 8. Emphasis added. ICTR/ICTY Rule 89(C) provides that evidence may be excluded if its probative value is **substantially** outweighed by the need to ensure a fair trial. (emphasis added).
[16] *Sesay* 89(C) Decision, p. 3. In this decision, Trial Chamber I proceeds to note at p. 4 that the "Chamber is composed of professional judges who are certainly capable of not drawing inferences without proper evidentiary basis or foundation and that the matter of weight to be given to any piece of evidence will be determined at the appropriate time in light of all of the evidence adduced at trial." Indeed, May and Wierda, also note that the "procedure [of producing documents without calling a witness] has the advantage of expediting the trial without being detrimental to fairness" (see Judge Richard May and Marieke Wierda, International Criminal Evidence (Transnational Publishers, Inc., New York: 2002), para. 7.97).
[17] *Prosecutor v. Aleksovski*, IT-95-14/1, "Decision on Prosecutor's Appeal on Admissibility of Evidence", 16 February 1999, para. 19.

*Rule 92*bis *not applicable*

11. The Chamber's ruling on 14 May 2008 regarding the admission of Resolution 1315 indicates that admission of the document should have been sought using "provisions in the rules for alternative proof of facts." Rule 92*bis* is headed "Alternative Proof of Facts". However, as outlined below, the Prosecution seeks admission under Rule 89(C) rather than Rule 92*bis*.

12. As noted above, Rule 92*bis* has also been used at the SCSL to admit documentary evidence. Despite the stated intention that Rule 92*bis* at the SCSL be deliberately different from the corresponding Rules at the ICTY and ICTR,[18] the amendments made to the SCSL Rule in May 2007 appear to have their origin in the jurisprudence and practice of the *ad hoc* tribunals and have had the effect of narrowing the Rule's scope.[19] Prior to these amendments, Rule 92*bis* permitted the reception of "information" into evidence; there was no prohibition on admission of "information" which went to proof of the acts and conduct of the accused.[20]

13. In May 2007, Rule 92*bis* was amended, in terms similar to the *ad hoc* tribunals' rules, to refer to the reception of witness statements and transcripts and to exclude the admission of information including written statements and transcripts that go to proof of the acts and conduct of the accused.[21] However, it is important to note that this limitation is strictly

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[18] As noted by the Appeals Chamber, "SCSL Rule 92*bis* is different to the equivalent Rule in the ICTY and ICTR and deliberately so. The judges of this Court, at one of their first plenary meetings, recognized a need to amend ICTR Rule 92*bis* in order to simplify this provision for a court operating in what was hoped would be a short time-span in the country where the crimes had been committed and where a Truth and Reconciliation Commission and other authoritative bodies were generating testimony and other information about the recently concluded hostilities. The effect of the SCSL Rule is to permit the reception of "information" – assertions of fact (but not opinion) made in documents or electronic communications – if such facts are relevant and their reliability is "susceptible of confirmation." (*Prosecutor v. Norman et al.*, SCSL-04-14-AR73, "Fofana – Decision on Appeal Against 'Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence'", 16 May 2005, para. 26, footnotes omitted).

[19] Prior to May 2007, Rule 92*bis* read as follows:

"(A) A Chamber may admit in evidence, in whole or in part, information in lieu of oral testimony;"

Rule 92bis(A) now provides:

"(A) In addition to the provisions of Rule 92ter, 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 the proof of the acts and conduct of the accused."

[20] Until 14 May 2007, Rule 92*bis* "in contrast to its counterpart in the Rules of the ICTY and ICTR, [did] not limit the type of evidence admissible under [it] to mere background evidence that does not go to proving the acts and conduct of the Accused" (see *Prosecutor v. Sesay et al.*, SCSL-04-15-T-557, "Decision on the Prosecution Notice under 92*bis* to Admit the Transcripts of Testimony of TF1-256", 23 May 2006, p. 4).

[21] The influence of the *ad hoc* tribunals on SCSL's Rule 92*bis* is apparent from the fact that, prior to May 2007, SCSL decisions cite the passage from *May and Wierda* which states that "[...] [A]s a matter of practice the Trial Chambers still prefer to hear evidence on the acts and conduct of the accused from live witnesses who can be cross-examined. [...] The trend which may, therefore, be discerned is for a preference for live testimony on matters

defined and the jurisprudence is clear that the plain and ordinary meaning must be given to the phrase "acts and conduct of the accused". Accordingly, it has been determined that the acts and conduct of alleged subordinates and co-perpetrators cannot "represent [the Accused's] own acts".[22]

14. The assimilation of the SCSL Rule with the equivalent at the *ad hoc* tribunals has had the effect of narrowing its scope, as the *ad hoc tribunal* rules were never intended to deal with the reception of "information" as it is broadly defined. Instead, as the title suggests, Rule 92*bis* at ICTY and ICTR is concerned with "Proof of Facts other than by Oral Evidence", and is thus a rule which deals with the admission of written statements and transcripts of witnesses alone. Furthermore, even as to the evidence of witnesses other than *viva voce*, the Rule "has no effect upon hearsay material which was not prepared for the purposes of legal proceedings."[23] Therefore, where the evidence is not being offered as a substitute for live testimony, the *ad hoc* tribunals receive evidence under the general provision, Rule 89(C), which is drafted in similar terms to its SCSL counter-part.[24]

15. Accordingly, as the amendments to Rule 92*bis* would appear to narrow its focus, the Rule is now more suited to the admission of witness specific material other than by oral evidence. In this case, Resolution 1315 is not being offered in lieu of oral testimony. Instead, the Prosecution seeks admission of the document as relevant evidence directly under Rule 89(C), subject to the conditions for admissibility discussed below.

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pertaining directly to the guilt or innocence of the accused. This practice allows the accused to examine witnesses against him [...]" (see Judge Richard May and Marieke Wierda, International Criminal Evidence (Transnational Publishers, Inc., New York: 2002), para. 10.54). However, May and Wierda were commenting on the practice of the ICTY and ICTR where Rule 92*bis* is limited to the admission of written statements and transcripts of witnesses and where Rule 89(C) deals with the admission of documentary evidence. Therefore, the preference for live testimony is in relation to the situation where the choice is between a witness who will testify *viva voce* and a witness who will provide evidence on paper through prior statements and testimony. Compare May and Wierda on the admission of documentary evidence through witnesses – see footnote 16 above.

[22] *Prosecutor v. Galić*, IT-98-29-AR73.2, Decision on Interlocutory Appeal Concerning Rule 92*bis* (C), 7 June 2002, para. 9 ("***Galić* Decision**").

[23] *Galić* Decision, para. 31.

[24] See, for example, *Prosecutor v. Prlić*, IT-04-74-T, "Public Decision on Motion to Dismiss Certain Prosecution Motions for Admission of Documentary Evidence as an Abuse of Process", 27 September 2007 which rejected the Defence motion requesting that the Chamber dismiss the Prosecution's seven motions for admission of documentary evidence under Rule 89(C). The documentary evidence which the Prosecution sought to admit amounted to 1,667 documents.

IV. SUBMISSIONS ON ADMISSIBILITY OF EVIDENCE

16. In order for evidence to be *admitted* pursuant to Rule 89(C), the evidence must be relevant and its admission must not unfairly prejudice the Accused, i.e., must not impact adversely and unfairly *upon the integrity of the proceedings* before the Court,[25] and/or bring the administration of justice into serious disrepute. Resolution 1315 meets these requirements. The Resolution is relevant to the facts in issue in this case, in particular the testimony of TF1-571 and the issue of the public notice of the atrocities in Sierra Leone, and does not impact adversely and unfairly on the integrity of the proceedings before the Court.

Relevance

17. The ruling given on 14 May 2008 regarding the admission of Resolution 1315 states that the Chamber "accept[s] the document is relevant". However, the Prosecution details below those parts of the cross-examination which make the evidence particularly relevant for admission immediately following the witness's testimony.

18. During cross-examination, TF1-571 was referred back to evidence given in chief in which he recounted details of a conversation he had had with Sam Bockarie:

> Q. [...] What you said yesterday is this - and I am looking at page 9493, line 2 onwards. This is you giving your evidence yesterday about what Mr Bockarie told you: "He said that President Mr Taylor said he had had a lot of pressure from the international community to hand over Sam Bockarie. He said he was there for three days and he said what he told him, if he was going to hand him over, that is Sam Bockarie, he would explain everything, all the deals that were between RUF and Mr Taylor. He, the Sam Bockarie, would explain that to the Special Court and that was what he said and after that day, after two to three - three to four days he was released again and returned to his house." Do you remember telling us that yesterday?
> A. Yes, sir, I said that.
> Q. So Sam Bockarie was telling you in the year 2000 that Mr Taylor was concerned that Sam Bockarie would explain everything to the Special Court.
>
> [...]
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> Q. Mr Kanneh, I am going to ask you just about one part of the evidence you gave us yesterday.
> A. Yes, sir.
> Q. And I am reading it from the transcript. These are your words, "He, the Sam Bockarie, would explain that to the Special Court. "That is a reference to all the deals that were between the RUF and Mr Taylor. Now, that is what you said yesterday.
> A. Yes, sir. Yes, sir.

[25] *Fofana* Bail Appeals Decision, para. 24; *Gbao* Ruling, para. 8. Emphasis added.

> Q. You were telling us yesterday - you were recounting a conversation you had had with Sam Bockarie in the year 2000, August or September 2000.
> A. Yes, sir. Yes, sir.
> Q. The Special Court didn't exist then.
> A. Well, even if the Special Court was not in existence there was pressure on Mr Taylor. They had already said the Special Court was for those men. At that time there was pressure on Mr Taylor for that particular man. It was not in 2000 that the Special Court started, but at that time they had said that that man should face the Court."[26]

19. Later during cross-examination, TF1-571 was asked when he first heard about the existence of the Special Court for Sierra Leone to which he replied that it was "from about 2000".[27] The Defence then went on to ask the witness about his above mentioned conversation with Sam Bockarie in which Bockarie had stated his concern that the Accused was under pressure to hand over Bockarie.[28] As Prosecution Counsel stated in Court, the apparent purpose of this aspect of cross-examination was to discredit the witness' evidence on this point, in that the Defence position seemed to be this could not have happened as the Court was not yet in existence.[29] Therefore, the Resolution is relevant as it provides evidence that the Accused would have been on notice that the SCSL was contemplated at this time. Additionally, the Resolution is open source and so provides evidence of the public notice of the atrocities being committed by the various armed and organized fighting forces in Sierra Leone.

20. The Resolution was not put to the witness by the Prosecution during re-examination. However, as noted above, "there is no requirement in international criminal law to produce documents through a witness."[30]

21. Indeed, this approach was followed in the RUF Trial when the Prosecution requested admission of a UNAMSIL Board of Inquiry Report under Rule 89(C).[31] In its decision, Trial Chamber I noted that: (i) while the Prosecution submitted that the Report "became relevant since the Witness was asked questions about the content of the Report during cross-examination", "when the Witness was cross-examined on the Report ... he did not acknowledge that he was familiar with its contents or the statements put to him by the

[26] *Prosecutor v. Taylor*, SCSL-03-01-T, Trial Transcript, 13 May 2008, page 9655, lines 13-29 and page 9656, line 14 to page 9657, line 3.
[27] 14 May Transcript, page 9757, lines 14-16.
[28] *Ibid*, page 9762, line 27 to page 9763, line 9.
[29] *Ibid*, page 9782, line 6.
[30] *Sesay* 89(C) Decision, p. 3. See also para. 10 and footnote 16 above.
[31] *Prosecutor v. Sesay et al.*, SCSL-04-15-T-594, "Public Prosecution Motion to Admit into Evidence a Document Referred to in Cross-examination", 11 July 2006.

Defence"; and (ii) "the Prosecution did not seek to tender this evidence as an exhibit during the re-examination of the Witness."[32] However, the Chamber admitted the Report under Rule 89(C).[33]

No unfair Prejudice to the Accused

22. Resolution 1315 is an open source document and originates from the UN, and addresses issues raised by the Defence in the cross-examination of TF1-571. Therefore, it cannot be said that the admission of such a document will adversely impact upon the integrity of the proceedings before the Court or that it will bring the administration of justice into serious disrepute.

23. In so far as the document might be considered "hearsay", no rule of evidence precludes the admissibility of hearsay evidence in proceedings before the SCSL. It is well established that such evidence is admissible before international tribunals.

24. It is acknowledged that the SCSL has found that "the international tribunals admit documentary evidence in various forms, when such evidence is: (a) 'crime-base' evidence; (b) whether there was a widespread and systematic attack on a civilian population; (c) issues of command structure (leaving aside, however, whether a particular accused exercised the role of a commander); and (d) whether crimes occurred in the context of an international armed conflict."[34] Nevertheless, as is evident from the word "*may*" in Rule 89(C), the Chamber's discretion to admit any relevant evidence is not restricted to the foregoing. Further, bearing in mind that this public source document is not being presented to a lay jury, it will not "impact adversely and unfairly upon the integrity of the proceedings before the Court." Rather, it is in the interests of justice that this relevant evidence is brought before the Chamber, and that the Chamber be allowed to assess the appropriate weight to be given to it at the conclusion of the case in the context of all the evidence in the case.

[32] *Sesay* 89(C) Decision, p. 3.
[33] *Ibid*, p. 4.
[34] *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, para. 4.

V. CONCLUSION

25. For the reasons stated above, the Prosecution respectfully requests the Trial Chamber, in exercising its discretion, to admit into evidence pursuant to Rule 89(C) Security Council Resolution 1315 (2000) a copy of which is contained in the **Annex** to this motion.

Filed in The Hague,
19 May 2008,
For the Prosecution,

Brenda J. Hollis
Senior Trial Attorney

LIST OF AUTHORITIES

SCSL

***Prosecutor v. Taylor* – Case No. SCSL-03-01**

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcript, 13 May 2008

Prosecutor v. Taylor, SCSL-03-01-T, Trial Transcript, 14 May 2008

***Prosecutor v. Brima et al.* – Case No. SCSL-04-16**

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. Norman et al.* – Case No. SCSL-04-14**

Prosecutor v. Norman et al., SCSL-04-14-AR65, Fofana – Appeal Against Decision Refusing Bail, App. Ch., 11 March 2005

Prosecutor v. Norman et al., SCSL-04-14-AR73, Fofana – Decision on Appeal Against 'Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, 16 May

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 et al.* – Case No. SCSL-04-15**

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-04-15-T-557, "Decision on the Prosecution Notice under 92*bis* to Admit the Transcripts of Testimony of TF1-256", 23 May 2006

Prosecutor v. Sesay et al., SCSL-04-15-T-594, "Public Prosecution Motion to Admit into Evidence a Document Referred to in Cross-examination", 11 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

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Prosecutor v. Aleksovski, IT-95-14/1, "Decision on Prosecutor's Appeal on Admissibility of Evidence", 16 February 1999
http://www.un.org/icty/aleksovski/appeal/decision-e/90216EV36313.htm

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http://www.un.org/icty/blaskic/trialc1/judgement/bla-tj000303e.pdf

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

Prosecutor v. Prlić, IT-04-74-T, "Public Decision on Motion to Dismiss Certain Prosecution Motions for Admission of Documentary Evidence as an Abuse of Process", 27 September 2007
http://www.un.org/icty/prlic/trialc/decision-e/070927.pdf

UN Document

Security Council Resolution 1315 (S/RES/1315 (2000)) dated 14 August 2000
http://daccessdds.un.org/doc/UNDOC/GEN/N00/605/32/PDF/N0060532.pdf?OpenElement
(Copy also provided in Annex)

Academic Text

International Criminal Evidence (Transnational Publishers, Inc., New York: 2002), Judge Richard May and Marieke Wierda
(Copy of Chapters 7 and 10 provided)

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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

[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

[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]

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APPENDIX 1

Statistical Appendix to the Report of the Truth and Reconciliation Commission of Sierra Leone

A Report by the Benetech Human Rights Data Analysis Group to the Truth and Reconciliation Commission

5 October 2004

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Introduction

To fulfill its mandate, the Sierra Leone Truth and Reconciliation Commission (TRC) collected as many statements as possible from the victims, witnesses and perpetrators of human rights violations committed during the 1991–2000 period of conflict in Sierra Leone. The Commission collected 7,706 statements of Sierra Leoneans, living in Sierra Leone and also as refugees in Gambia, Guinea and Nigeria. The statements they gave offer detailed insight into the experience of particular victims or perpetrators, and every statement therefore deserves careful study.

It is also valuable to study what the statements can mean in the aggregate. This means to extract information from the TRC statements about each of the human rights violations they document, enter this information into a database, and develop statistics that describe the nature and extent of the violations experienced and perpetrated by the statement-givers as a whole. The resulting dataset enables an overview of the nature and extent of human rights violations experienced during the conflict.

The analyses presented here reviews the broad dimensions of data available from the the TRC's database. In a general sense, the analysis is guided by the overall research questions the Commission was charged to investigate, as well as specific questions posed by TRC researchers. However, this section does not offer original interpretation of what the graphs and tables mean — that analysis has already been presented in the main body of the report.

Instead, this appendix simply offers the interested reader additional detail about the statistical findings available in the database. It is more like a statistical abstract than it is like an independent report. In a very real sense, this chapter is an invitation to historians, journalists, social scientists and others to pursue further quantitative inquiry by downloading the TRC's statistical dataset. The statistical dataset is available on the Internet at http://www.hrdag.org. All of the personal information about victims and statement-givers has been removed from the published dataset, but the dataset offers a rich resource for continuing analysis of statistical patterns of human rights violations in Sierra Leone documented by the TRC.

In the first two sections of this appendix, we describe the background and methodology for the processing, entry, and storage of the information contained in the TRC statements. We

also explain the concept and scope of special coding studies that were conducted when the standard information coded from the statements was insufficient to answer certain questions, or when a particular aspect of the conflict merited closer study. This section concludes with notes about the nature of the TRC's sample and the limits of the statistical interpretation.

The third section presents a descriptive analysis of the statistical patterns in the statements given to the Commission. The section examines the demographic patterns of the statement-givers, patterns of different types of violations over time and space, patterns in the age and sex of the victims, and the relationship of different perpetrator groups to these dimensions.

The fourth section examines the study of redress and reparations.

Background and Methodology

The conflict in Sierra Leone began in March 1991. The number of warring factions proliferated with the emergence of civil militias, employment of international mercenaries, regional and international interventions, military coups at home, and incursions by foreign soldiers and irregulars. While initially confined to the South and East, the conflict eventually engulfed the entire country, culminating in an attack of the capital Freetown by the Armed Forces Revolutionary Council (AFRC), in January 1999. Where previous attempts to broker peace had failed, the 7 July 1999 Lome Peace Agreement succeeded, and included a clause allowing for the creation of the Truth and Reconciliation Commission[1]. Due to resurgent violence in May 2001, the Commission's work did not begin until the latter half of 2002.

Statements

One of the first phases of the Commission's work was to gather as many victim and perpetrator statements as was possible given the time and funding constraints. While not every victim or perpetrator was interviewed, the statement-takers tried to be as comprehensive as possible, attempting to reach every chiefdom in Sierra Leone in order to record the experiences of the population, including experiences of specific groups such as women, children and amputees. Because of security and accessibility issues, 9 of the 149 districts in Sierra Leone were not reached for interviews.

Figure 4.A1.1a: Count of Statement-givers by District

		Statement Count				Percent		
Region	District	Total	Male	Female	Unknown	Male	Female	Region Total
West	West Area	1357	680	659	18	51	49	1357
North	Bombali	494	354	137	3	72	28	3447
	Koinadagu	484	362	120	2	75	25	
	Tonkolili	463	317	140	6	69	31	
	Kambia	392	299	86	7	78	22	
	Port Loko	257	168	82	7	67	33	
East	Kenema	875	585	281	9	68	32	1802
	Kono	496	274	215	7	56	44	
	Kailahun	431	281	144	6	66	34	
	Pujehun	686	404	272	10	60	40	
South	Bo	679	478	193	8	71	29	2280

[1] For further information. see the "Military and Political History of the Conflict" Chapter of the Final Report of the Sierra Leone Truth and Reconciliation Commission.

	Bonthe	481	310	162	9	66	34	
	Moyamba	434	287	141	6	67	33	
Unknown	Unknown	2	1	1	0	50	50	2
	Nigeria	70	35	33	2	51	49	
	Gambia	58	20	38	0	34	66	
Foreign	Guinea	47	23	24	0	49	51	175
	Total	7706	4878	2728	100	64	36	

Source: Sierra Leone Truth and Reconciliation Commission's Database

From Figure 4.A1.1a, it is clear that there were substantial numbers of statements taken across Sierra Leone and neighboring countries. Women gave approximately one-third of the statements, while men gave approximately two-thirds.

Figure 4.A1.1b: Percent of Statement-givers by Source Type and Sex

	Deponent Sex			
Source Type	Female	Male	Unknown	Total
Direct Victim	78.6	83.9	72	81.85
Familiar Witness	16.0	10.4	8	12.34
Hearsay Witness	3.1	1.9	4	2.36
Other Witness	1.2	1.5	3	1.43
Unspecified	1.1	1.3	12	1.38
Direct Perpetrator	0.0	1.0	1	0.65
Total (count)	**2728**	**4878**	**100**	**7706**
Total (percent)	**100**	**100**	**100**	**100**

Source: Sierra Leone Truth and Reconciliation Commission's Database

Both male and female deponents gave statements with roughly equal proportions of motivations. Males were slightly more frequently direct victims of violations, while females were similarly slightly more likely to be witnesses to violence against family members.

Figure 4.A1.1c: Percent of Statement-givers by Age and Sex

	Deponent Sex			
Age category	Female	Male	Unknown	Total
0-4	0.1	0.0	0.0	0.1
5-9	0.4	0.4	0.0	0.4
10-14	2.4	2.5	0.0	2.4
15-19	8.5	5.8	3.9	6.7
20-24	9.9	5.3	7.7	6.9
25-29	10.7	7.1	3.9	8.3
30-34	11.6	8.6	7.7	9.6
35-39	12.1	10.7	19.2	11.2
40-44	10.3	9.8	11.5	10.0
45-49	7.9	9.8	11.5	9.2
50-54	7.8	9.0	11.5	8.6
55-59	4.7	7.9	15.4	6.8
60-64	5.4	8.0	0.0	7.1
65-69	2.8	5.2	0.0	4.3
70-74	2.3	4.3	3.9	3.6
75-79	1.6	2.6	0.0	2.2
80+	1.5	3.2	3.9	2.7
Total (count)	**2728**	**4878**	**100**	**7706**
Total (percent)	**100**	**100**	**100**	**100**

Source: Sierra Leone Truth and Reconciliation Commission's Database

Male deponents are slightly older than female deponents, as Figure 4.A1.1c shows. A higher proportion of female deponents than male deponents are in each of the age categories up to age 45–49. So, for example, while 8.5% of female deponents were of ages 15-19, 5.8% of male deponents were 15–19 years old. However, 8.0% of male deponents were 60-64, while 5.4% of female deponents were in this category.

Figure 4.A1.1d: Percent of Statement-givers by Spoken Language

Ethnicity	***Count***	***Percent***
Mende	3417	44.3
Temne	1581	20.5
Kono	472	6.1
Unknown	432	5.6
Limba	431	5.6
Koranko / Kurakor	321	4.2
Loko	222	2.9
Madingo / Malinke	158	2.1
Susu	155	2.0
Fula / Fulah / Peul	145	1.9
Sherbro	112	1.5
Krio / Creole	81	1.1
Lalunka / Yalunka	59	0.8
Other	58	0.8
Kissi	53	0.7
Liberian English (pidgin)	7	0.1
English	2	0.0
Total	**7706**	**100.2**

Source: Sierra Leone Truth and Reconciliation Commission's Database

The largest ethnic group among the statement-givers were the Mende, with 44.3% of all deponents coming from this group. A smaller but substantial number — 20.5% — of deponents came from the Temne, while smaller numbers of statements were given by members of other groups.

Statement-taking was completed in March 2003 with 7,706 human rights narratives collected. Subsequently the statements were coded, so that the victims, perpetrators and abuses in each statement were identified and listed on forms in accordance with the selected data model, which is described below. When coding was complete, the coded statements were entered into a database designed specifically to capture this information while preserving the relationships between the perpetrators, victims, and abuses given in the statements.

Database

The model adopted by the Commission was based on the concepts in "Who Did What to Whom".[2] This data model is designed to account for the fact that a data source, such as a collection of statements, can include information about one or many victims and/or perpetrators, and each victim can suffer one or many human rights violations. It is a model that has been used to provide statistical results presented by other truth commissions and human rights documentation projects, including the truth commissions of Guatemala, Haiti, South Africa, Perú, and East Timor.

[2] Who Did What to Whom? Planning and Implementing a Large-Scale Human Rights Data Project, Patrick Ball (1996), AAAS: Washington, DC, USA.

Perpetrators were classified as follows:

RUF	Revolutionary United Front
AFRC	Armed Forces Revolutionary Council including Westside Boys
SLA	Sierra Leone Army
CDF	Civil Defense Force
ECOMOG	Economic Community of West African States Military Observer Group
GAF	Guinean Armed Forces
ULIMO	United Liberation Movement for Democracy
Police	Police officers including SSD division
AFRC/SLA	Abuses committed in 1997 allegedly committed by soldiers but the date information is insufficient to determine if the abuses should be attributed to the SLA or the AFRC
Miscellaneous	Minor perpetrator groups
Rebels	Abuses attributed to rebels where the statement-giver was unable to name a specific faction. Typically the term describes RUF fighters and ex-SLA fighters loyal to the AFRC

The TRC statements were coded into fourteen violation types using a controlled vocabulary set in order to apply standard definitions in a consistent manner. The violation types and the abbreviations used for them in tables in this appendix are as follows:

ABDU	Abduction
AMPU	Amputation
DETN	Arbitrary Detention
ASLT	Assault/Beating
DEST	Destruction of Property
DRUG	Drugging
EXTO	Extortion
CANN	Forced Cannibalism
FODI	Forced Displacement
FOLA	Forced Labour

FREC	Forced Recruitment
KILL	Killing
LOOT	Looting
TORT	Physical Torture
RAPE	Rape
SXAB	Sexual Abuse
SXSL	Sexual Slavery

After all of the coded statements were recorded in the database, the data underwent a matching procedure. Many statements identified people and events that were also identified in other statements. In order to count each violation only once, we identified which people and violations were reported more than once — the process is called "matching" — and we counted them appropriately. To prepare for matching, analysts looked for discrepancies in the data that may have been a result of coding or data entry errors. Changes made to the database were catalogued to determine if the original data was preserved or not in case the corrections themselves were applied incorrectly.

We matched the corrected data by looking at the victim's name, age, ethnicity, and sex. Taking into account the potential for spelling variations and data entry errors, matches were considered where fields were the same or relatively similar. The acceptable tolerance for age differences was ±3 years. Where age or name fields were empty, they were considered acceptable to match the record to another record (if the non-missing fields matched). While this practice may have missed some matches because witnesses' memories of dates was not precise, it avoided overmatching records of individuals with the same name. Location information was also used to make judgments about whether or not records reported the same victim, perpetrator and act. Tolerances for distance were kept to small areas within a district to also prevent overmatching of records.

The final result of these steps — coding, data entry, and matching — is the database from which the Commission's statistics were calculated. The final table from which the Commission's statistics are generated contains 40,242 violations.[3]

Special Coding Exercises

On a number of occasions, TRC researchers asked questions that were beyond the scope of the information quantified via the standard statement coding. Also, the results from the conventional coding occasionally suggested aspects of the conflict that merited further, more detailed research. To deal with these situations, a series of special coding analyses were devised:

- ECOMOG (Economic Community of West Africa Military Observer Group) Abuses Study

[3]For more detail on the creation of the TRC database, see Volume 1, Methodology and Processes Chapter of the Final Report of the Sierra Leone Truth and Reconciliation Commission.

- RUF–NPFL (National Patriotic Front of Liberia) Study
- Assistance and Redress Study

ECOMOG Abuses Study

The ECOMOG intervention force was distinct in that the abuses attributed to it in the statements had a relatively high proportion of killings. The special coding study considered the nature of these killing violations and why the ECOMOG behaviour was distinct.

RUF–NPFL Study

It is widely believed that the initial RUF incursion into Sierra Leone in 1991 included forces from the Liberian NPFL.[4] The special coding looked at the ethnicity of the perpetrators in statements identifying the RUF in the early years of the conflict. This information was used to determine the years in which Liberian forces were committing violations in Sierra Leone and the proportion of RUF abuses that could more properly be attributed to the NPFL.

Assistance and Redress Study

The TRC statements contain a number of questions designed to elicit information on the current circumstances and attitudes of victims and perpetrators, and the forms of assistance from which they, their families, their community, or society as a whole might benefit. This special coding study considered these questions primarily focusing on reparations and reconciliation.

Each of these studies were done with a subset of the TRC statements. The main database was used to select the study statements according to specific criteria. Where possible, all applicable statements were used. If the number of statements was more than could be coded in the time available, the analysis was limited to a random sample of the collected statements.

These studies were done during various stages of the main data entry task. This means that the analyses are representative of the statements entered into the database at that time. Because the statements were entered into the main database in a random order, the special coding study results can be considered as representative of the TRC statement collection as a whole, within the calculated margin of error.

For all studies, the coding aimed to avoid any possibility of bias or exaggeration. Any assumptions made by the coders tended to the more cautious option.

The specific methodology and results of each study are presented in various sections of this report.

Notes about the nature of the sample

Due to the fact that the TRC database represents neither a complete census of human rights violations nor a random sample of these violations, conclusions drawn from this analysis may only apply to the database and not to the general population. Each statistical argument in the report must therefore be understood as "according to statements presented to the Commission, ..."

[4]For further information please see the Military Chapter section on Context, Build-up and Dynamics on Bomaru.

An analysis of the contents of the database indicates the type, and to some degree, the extent of violations. In some cases, the data on certain violations was not sufficient to analyze the patterns (over time, space, perpetrator, or type of victim) for that violation type; forced drugging and forced cannibalism are the violations for which the data are inadequate.

The TRC statement-takers attempted to complete a census of the human rights violations experienced during the conflict, locating and recording the statements of as many victims as possible. According to clause 6 of the Peace Agreement, the principal function of the Commission is to "create an impartial historical record of the events in question." As such, they strove to take statements in areas that they knew were the sites of severe or numerous violations. It was the intention of the statement-takers to visit every chiefdom in Sierra Leone. Although this target was not attained, interviews were taken in 141 of the 149 chiefdoms as well as in Gambia, Guinea, and Nigeria where refugees from Sierra Leone were living.

Due to a combination of factors, the district of Port Loko in the Northern Province was under-sampled, with the staff taking relatively few statements in its chiefdoms, compared to other districts. Statement-taking in the Western Region was concentrated in Freetown. Furthermore, sexual violations were almost certainly under-reported, and violations for which no witnesses remain could not have been captured by the TRC data collection process. These problems notwithstanding, the Commission's sample is so large that it represents the experiences of a substantial pool of people, men and women from all of Sierra Leone's ethnicities, geographically distributed across Sierra Leone.

We do not expect the proportions derived from the database to be precise measurements of the violations suffered by the people of Sierra Leone. There are several limitations on how these data can be interpreted. First, the Commission's database is not a random sample. Percentages calculated from the Commission's database cannot be assumed to represent percentages among the population of Sierra Leone more generally. There is no sampling error associated with these calculations. The imprecision associated with the proportions derived from the database is due first to who chose to respond when Commission interviewers invited them to make statements. Other potential statement-givers chose not to speak with the Commission. Other errors include intentional or unintentional inaccuracies in the testimonies provided by the statement-givers, data recording mistakes, data coding mistakes, and data entry mistakes. Direct measurement of these various errors is not possible and estimation of this error is very difficult. For these reasons, creating a margin of error for these statistics using an assumption of simple or complex sampling error would be misleading. We therefore only include margins of error for statistics created from data collected via the special coding exercises. Our assumption in those cases is that these margins of error represent the accuracy of the statistics as they represent all the statements given to the Commission.

To conclude, the statistical findings in this and the other chapters of the Commissions report should be understood as representing the statements provided to the Commission.

Exploratory Data Analysis

There are several ways to count the number of violations in the TRC database. The highest-level unit is a statement. The statement-giver can describe one or more victims, each of whom may suffer one or more violations. Note that each victim may suffer several violations, including the same violation more than once (except killing). Each victim who suffers a particular violation is counted once in the statistical descriptions that follow.

Figure 4.A1.2: Counts and Proportions of Violations and Victims by Violation Type

Violation Type	*Percent of violations*	*Count of violations*	*Percent of victims*	*Count of victims*	*Ratio violations per victim*
Forced Displacement	19.8	7983	41.6	6241	1.28
Abduction	14.8	5968	36.4	5456	1.09
Arbitrary Detention	12.0	4835	29.3	4401	1.10
Killing	11.2	4514	30.1	4514	1.00
Destruction of Property	8.5	3404	21.5	3231	1.05
Assault / Beating	8.1	3246	19.9	2977	1.09
Looting of Goods	7.6	3044	18.4	2761	1.10
Physical Torture	5.1	2051	12.8	1917	1.07
Forced Labour	4.6	1834	11.2	1675	1.09
Extortion	3.2	1273	7.7	1149	1.11
Rape	1.6	626	3.9	581	1.08
Sexual Abuse	1.2	486	3.2	474	1.03
Amputation	0.9	378	2.2	336	1.12
Forced Recruitment	0.8	331	2.2	324	1.02
Sexual Slavery	0.5	191	1.2	186	1.03
Drugging	0.1	59	0.4	57	1.04
Forced Cannibalism	0	19	0.1	19	1
Total		**40242**		**14995**	

Source: Sierra Leone Truth and Reconciliation Commission's Database

Figure 4.A1.2 shows for each type of violation, the number and proportion of violations, the proportion of victims for that violation type, and a ratio of violations to victims documented in the TRC's Database. Forced displacement and abduction are the most common violations in the Commission's database, at 19.8% (7983/40242) and 14.8% (5968/40242), respectively. Together with the third highest violation type, arbitrary detention at 12% (4835/40242), these three violations make up nearly half of all documented violations. Killing and destruction of property follow at 11.2% (4514/40242) and 8.5% (3404/40242), respectively.

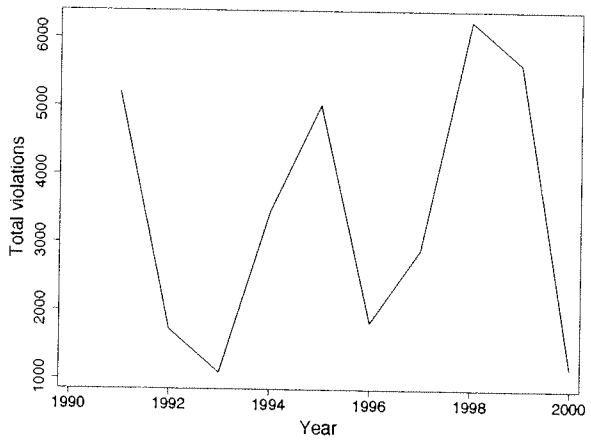
There are 14,995 victims in the TRC database. The proportion of victims who suffer each violation sums to much more than 100% because each victim could suffer more than one kind of violation. They might also suffer the same violation more than once. The ratio column shows that for most violation categories the ratio of violations to victims falls between 1 and 1.12, while the ratio of violations to victims for the forced displacement category is 1.28. This means that victims who suffer forced displacement tend to suffer, on average, a higher number of forced displacements each.

The statements indicated various reasons for forced displacements; some take flight out of fear, anticipating an attack, while others are obliged to leave because an armed faction has destroyed their home.

It is known that the act of abduction was over-coded; more abductions are listed in the database than actually were recorded in the statements received by the Commission. Originally abduction was intended to indicate that the victim was kidnapped and taken to another location under the control of the perpetrators. Misinterpretation by the coders led to abduction being coded for other instances in which the victims are at the mercy of the perpetrators, for example when stopped at a checkpoint or caught in an ambush.

Patterns of documented violence over time and space

Figure 4.A1.3: Graph of Total Violations by Year



Source: Sierra Leone Truth and Reconciliation Commission's Database

Figure 4.A1.3 is a plot of the total number of documented violations over time. The TRC in its Military and Political History of the Conflict Chapter defines the first phase as March 1991 to November 1993, which covers the initial RUF and NPFL assault, primarily in Kailahun, Pujehun, Kenema, Bo, and later Kono. The second phase, from November 1993 to March 1997, reflects the second major RUF assault in which the faction was active in all districts except the Western Area. The third phase, from March 1997 to the end of the conflict, considers the most complex period of activity. It encompasses the formation of the AFRC military government and the rise of the Kamajor militia in the South. The TRC also considers the year 2000 resurgence and demise of the RUF.

Because of the incompleteness of the date information in the TRC database, the phases in this chapter have been rounded to the nearest year. The first phase is 1991 to 1993 inclusive, the second phase is 1994 to 1996 inclusive, and the third phase is 1997 to 2000.

Figure 4.A1.3 shows that the conflict was episodic; the majority of violations occur around three specific periods or episodes of violence. The level of violations was not constant during the conflict. Note that the peak in the first phase occurs in 1991 at the beginning of the conflict. In the second phase the peak is 1995 during a major RUF assault, and the third phase represents the invasion of Freetown in 1999.

Figure 4.A1.4: Violation Type by Year

Year	FODI	ABDU	DETN	KILL	DEST	ASLT	LOOT	TORT	FOLA	EXTO	RAPE	SXAB	AMPU	FREC	SXSL	DRUG	CANN	Total
1991	1089	740	617	713	392	384	472	201	197	165	60	89	10	45	17	1	1	5193
1992	412	282	246	190	89	128	100	97	69	37	29	19	6	11	8	3	1	1727
1993	245	163	116	159	115	76	54	47	49	27	15	14	1	6	3	1	0	1091
1994	809	481	385	532	312	233	256	126	138	63	35	20	13	31	13	4	1	3452
1995	1078	831	631	573	431	332	379	204	231	107	72	29	39	38	29	11	3	5018
1996	310	297	217	281	132	154	99	113	68	50	20	34	30	11	7	3	1	1827
1997	454	460	400	277	205	269	228	199	122	146	41	36	31	15	9	2	4	2898
1998	1201	998	757	528	581	501	459	335	306	170	114	72	129	56	35	8	1	6251
1999	961	795	654	509	559	517	387	335	291	244	120	85	61	43	37	20	5	5623
2000	200	176	144	92	82	99	99	75	93	46	28	16	4	15	5	3	0	1177
Miss.	1224	745	668	660	506	553	511	319	270	218	92	72	54	60	28	3	2	5985
Total	**7983**	**5968**	**4835**	**4514**	**3404**	**3246**	**3044**	**2051**	**1834**	**1273**	**626**	**486**	**378**	**331**	**191**	**59**	**19**	**40242**

Source: Sierra Leone Truth and Reconciliation Commission's Database

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The number of violations, broken down by type and by year is shown in Figure 4.A1.4. The number of violations of every violation type follow the overall peaks in documented violations in 1991, 1995 and 1998 demonstrated in Figure 4.A1.3. The greatest peak occurs in forced displacements in 1998.

Figure 4.A1.4 also shows the overall increase of violations in almost every violation type over time. With each of the episodic increases (in 1991, 1995, and 1998–1999), for most violations, the peaks grow larger. Forced displacement is perhaps most responsive to increases in broad levels of violence, as it both rises and falls at a higher proportional rate than other violation types.

Killing is an exception. Documented killings are at their maximum in 1991 (713), which is much higher than the next highest year for documented killing violations in 1995 at 573. Sexual abuse violations also peak in 1991 with 89 documented violations. This number is closer to the totals documented in other years such as 1998 and 1999 at 72 and 85 respectively.[5]

Violations over space

The Commission's database cannot be used directly to analyze patterns of human rights violations with respect to space. We can look at the different proportions of human rights violations in the database, but as explained in the introduction to this appendix, this information will represent the proportions of these violations in the actual districts only as well as the statements given to the Commission represent the experiences of all the people in these districts. If people in some districts felt especially uncomfortable with the Commission, then fewer people from those districts would have come to the Commission relative to other districts where more people trusted the Commission. There are patterns across districts which seem consistent with hypotheses advanced on the basis of qualitative arguments elsewhere in the report. It is for this purpose that the following tables are presented.

Figure 4.A1.5: Number of Violations by Violation Type and District

Region	Western	North					East			South					
Violation Type	WEST	PORT	KAMB	BOMB	KOIN	TONK	KENE	KAIL	KONO	BO	PUJE	MOYA	BONT	Miss.	Total
FODI	474	234	338	483	327	395	864	484	646	711	775	378	515	1359	7983
ABDU	331	195	193	357	326	305	494	487	480	514	439	315	421	1111	5968
DETN	285	145	144	269	259	232	401	417	348	378	346	243	340	1028	4835
KILL	294	142	113	220	125	227	490	417	270	501	419	254	262	780	4514
DEST	330	111	175	297	222	171	253	168	98	294	366	182	212	525	3404
ASLT	218	123	115	224	163	148	255	307	220	269	223	141	194	646	3246
LOOT	161	90	140	186	196	186	210	158	107	288	421	170	229	502	3044
TORT	140	65	71	120	96	124	182	173	148	169	132	127	112	392	2051
FOLA	69	78	73	103	184	133	133	130	134	137	122	81	92	365	1834
EXTO	128	27	79	77	64	61	84	93	43	104	119	54	100	240	1273
RAPE	51	31	20	49	27	47	22	61	63	44	26	39	20	126	626
SXAS	44	8	10	24	10	26	47	63	36	28	39	37	22	92	486
AMPU	49	24	5	54	29	18	27	11	35	38	9	12	2	65	378
FREC	11	6	19	24	19	18	16	50	27	15	10	15	10	91	331
SXSL	8	13	6	12	11	11	5	26	15	11	10	10	9	44	191
DRUG	5	6	7	2	4	6	4	3	1	2	0	6	0	13	59
CANN	2	0	0	0	1	1	0	2		0	0	5	3	5	19
Total	2600	1298	1508	2501	2063	2109	3487	3050	2671	3503	3456	2069	2543	7384	40242

[5]Sexual abuse was found by the Commission to be a policy of some insurgent factions that deliberately singled out men in the communities they entered to be stripped naked and otherwise humiliated in front of their communities. This policy was found by the TRC to be an element of the insurgents' efforts to take control of "target" towns and villages in the first phase of the conflict.

Total Region	2600					9479			9208				11571		

Source: Sierra Leone Truth and Reconciliation Commission's Database

Figure 4.A1.5 shows the counts of each violation type by district/region. The district with the greatest number of recorded violations is Bo. Kenema and Pujehun have similarly high levels of abuses relative to the other districts. In all three districts, it is forced displacement and abduction that are the main components of the counts. In Bo and Kenema, there are also a relatively large numbers of killings in comparison to other districts.

Figure 4.A1.6: Percent of Violations by Type and by District

	West	Northern					Eastern			Southern					
	WEST	PORT	KAMB	BOMB	KOIN	TONK	KENE	KAIL	KONO	BO	PUJE	MOYA	BONT	Missing	Total
FODI	18	18	22	19	16	19	25	16	24	20	22	18	20	18	8
ABDU	13	15	13	14	16	14	14	16	18	15	13	15	17	15	8
DETN	11	11	10	11	13	11	11	14	13	11	10	12	13	14	8
KILL	11	11	7	9	6	11	14	14	10	14	12	12	10	11	5
DEST	13	9	12	12	11	8	7	6	4	8	11	9	8	7	5
ASLT	8	9	8	9	8	7	7	10	8	8	6	7	8	9	3
LOOT	6	7	9	7	10	9	6	5	4	8	12	8	9	7	2
TORT	5	5	5	5	5	6	5	6	6	5	4	6	4	5	1
FOLA	3	6	5	4	9	6	4	4	5	4	4	4	4	5	1
EXTO	5	2	5	3	3	3	2	3	2	3	3	3	4	3	1
RAPE	2	2	1	2	1	2	1	2	2	1	1	2	1	2	0
SXAB	2	1	1	1	0	1	1	2	1	1	1	2	1	1	0
AMPU	2	2	0	2	1	1	1	0	1	1	0	1	0	1	0
FREC	0	0	1	1	1	1	0	2	1	0	0	1	0	1	1
SXSL	0	1	0	0	1	1	0	1	1	0	0	0	0	0	0
DRUG	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CANN	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**100**	**99**	**100**

Source: Sierra Leone Truth and Reconciliation Commission's Database

Figure 4.A1.6 shows the proportion of each violation type by district, where 100% equals the number of violations documented in Figure 4.A1.7. The proportions of the various violation types are roughly consistent across the various districts.

Figure 4.A1.7: Number of violations, by year and district

Region	District	Missing Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Total
West	Western	280	27	17	5	4	48	24	138	260	1788	9	2600
	Port Loko	149	7	0	4	20	161	57	125	339	405	31	1298
	Kambia	254	17	14	0	22	160	41	61	181	459	299	1508
	Bombali	462	14	25	17	54	75	65	213	940	593	43	2501
	Koinadugu	220	13	3	6	180	4	13	64	1042	347	171	2063
North	Tonkolili	309	2	30	49	437	147	115	91	386	466	77	2109
	Kenema	621	490	260	240	604	336	210	359	274	77	16	3487
	Kailahun	381	1190	404	126	167	130	114	249	212	69	8	3050
East	Kono	295	51	390	66	181	110	94	184	916	199	185	2671
	Bo	511	473	122	176	807	693	280	141	173	91	36	3503
	Pujehun	559	1853	188	215	191	116	52	162	81	30	9	3456
	Moyamba	257	85	27	7	93	836	287	231	82	146	18	2069
South	Bonthe	342	130	6	15	53	1336	108	398	114	34	7	2543
	Unknown	1345	841	241	165	639	866	367	482	1251	919	268	7384
	Total	**5985**	**5193**	**1727**	**1091**	**3452**	**5018**	**1827**	**2898**	**6251**	**5623**	**1177**	**40242**

Source: Sierra Leone Truth and Reconciliation Commission's Database

Violence moves through Sierra Leone in distinct waves. In 1991, violence is concentrated in the East and South. Violations decline in the South but continue in the East through 1994. The mid-decade surge in violations starts in Bo and in the East, but by 1995, the patterns of violence are dominated by districts in the Southern Region. In the later period 1998–1999, violence is at its worst in the West and North. The regional-temporal patterns are interesting for two reasons. First, it is useful to observe that violations were reported in all districts, but information from different districts tended to cover different periods. Second, we note that

every district of Sierra Leone was substantially affected by the war's violence. Freetown, which was largely unaffected until 1999, is the site of the war's most intense attacks in January 1999.

Patterns of documented violations by victim characteristics

Many of the hypotheses considered by the Commission's researchers posited whether there were systematic campaigns against women, children, or people of certain ethnic groups. This section examines statistical patterns over these social dimensions.

This analysis presented here includes only victims for whom the age at time of the violation is known. Of the 40,242 total violations reported to the Commission, 22,041 have the exact age of the victims documented. Although the findings presented here might be weakened by the inclusion of all the ages (if they were known), this effect cannot be assessed with the existing data. Using internationally accepted definitions, the Commission considers a person under the age of 18 to be a child. The majority, 82% (18040/22041) of the documented violations where the victim's age is known to the Commission database are perpetrated against adults. A smaller proportion of violations, 18% (4001/22041) were perpetrated against children age 17 and under. There were 18,201 violations with the age missing.

There are 40,103 documented violations in the Commission's database for which sex of the victim is known. Of these violations 33% (13038/40103) are committed against females and 67% (27065/40103) are committed against males; 139 violations did not have the victim's sex recorded. These violations represent the experiences of 14,995 victims; 33% (4931) of these victims are female and 67% (9993) of these victims are male.

There are 3,995 (out of 4001) documented violations against children where the sex of the victim is known. Of these violations, 48% (1923) are against girls and 52% (2072) are against boys, with 6 child victims whose sex is unknown to the witness. In contrast, of the 18,040 documented violations against adults where the sex of the victim is known, 29.2% (5272) are against women and 70.6% (12737) are against men. The total numbers of documented violations against girls and boys are nearly equal, while in contrast, the number of documented violations against women is less than half the number of documented violations against men. In short, adult victims tend to be men, while children victims are approximately equally likely to be boys or girls. This pattern will be considered in more detail in the sections below.

Victim Sex

Males and females do not suffer the same kinds of violations. In Figure 4.A1.8, it is clear that many violations follow the general 1/3 female : 2/3 male pattern (forced displacement, abduction, assault). Other violations are suffered exclusively by female victims (rape, sexual slavery), and some violations are overwhelmingly perpetrated against male victims (e.g., forced recruitment, forced labour, killing).

Figure 4.A1.8: Violation counts by type and sex of the victim

	Males		Females		
Violation Type	**Count**	**Percent**	**Count**	**Percent**	**Ratio M/F**
Forced Displacement	5020	63.1	2941	36.9	1.71
Abduction	3888	65.4	2058	34.6	1.89
Arbitrary Detention	3235	67.2	1581	32.8	2.05
Killing	3333	74.4	1149	25.6	2.90

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Destruction of Property	2406	70.9	988	29.1	2.44
Assault / Beating	2330	72.0	905	28.0	2.57
Looting of Goods	2126	70.0	911	30.0	2.33
Physical Torture	1517	74.1	529	25.9	2.87
Forced Labour	1347	73.5	485	26.5	2.78
Extortion	931	73.3	339	26.7	2.75
Rape	0	0.0	626	100.0	0.00
Sexual Abuse	299	61.5	187	38.5	1.60
Amputation	276	73.8	98	26.2	2.82
Forced Recruitment	295	89.1	36	10.9	8.19
Sexual Slavery	0	0.0	189	100.0	0.00
Drugging	47	79.7	12	20.3	3.92
Forced Cannibalism	15	78.9	4	21.1	3.75
Total	**27065**		**13038**		

Source: Sierra Leone Truth and Reconciliation Commission's Database

In Figure 4.A1.9, below, we examine the count of documented violations by year and the sex of the victims. On average, there are approximate 2 violations suffered by male victims for each violation suffered by female victims. This pattern is only roughly consistent over time, with some variation, from a high of 2.66 in 2000 to a low of 1.64 in 1992.

Figure 4.A1.9: Violation Counts by Year and Victim Sex

Year	Males	Females	Ratio M/F	Total
1991	3618	1549	2.34	5167
1992	1067	651	1.64	1718
1993	747	344	2.17	1091
1994	2340	1100	2.13	3440
1995	3320	1669	1.99	4989
1996	1195	630	1.90	1825
1997	2003	890	2.25	2893
1998	4268	1969	2.17	6237
1999	3571	2035	1.75	5606
2000	855	321	2.66	1176
Missing	4081	1880	2.17	5961
Total	**27065**	**13038**	**2.08**	**40103**

Source: Sierra Leone Truth and Reconciliation Commission's Database

The number of reported violations against women follow basically the same pattern as violations against men, peaking in 1991, 1995 and 1998-99. The worst year for women, 1999, is the third worst year for men, trailing far after 1998 and more closely after 1991.

Figure 4.A1.10: Number of violations, by district and sex of the victim

Region	District	Males	Females	Ratio M/F	Total
West	Western	1472	1119	1.32	2591
North	Port Loko	844	446	1.89	1290
	Kambia	1099	405	2.71	1504
	Bombali	1839	652	2.82	2491
	Koinadugu	1524	533	2.86	2057
	Tonkolili	1437	671	2.14	2108
East	Kenema	2514	967	2.6	3481
	Kailahun	1996	1031	1.94	3027
	Kono	1590	1077	1.48	2667
South	Bo	2394	1091	2.19	3485
	Pujehun	2317	1127	2.06	3444
	Moyamba	1428	638	2.24	2066
	Bonthe	1726	802	2.15	2528

	Unknown	4885	2479	1.97	7364

Source: Sierra Leone Truth and Reconciliation Commission's Database

As before, a high ratio in Figure 4.A1.10 indicates that relatively more of the victims are males, while a low ratio indicates that relatively more of the victims are females. There is a similar pattern among districts, where the male to female ratio varies from a low of 1.32 in the Western district to a high of 2.82–2.86 in districts in the Northern region. The Western district (containing Freetown) has the relatively highest proportion of female victims of any district. With the existing data, it is impossible to determine whether the relatively larger number of female victims in the Western district is the result of more women recounting their stories in this part of Sierra Leone, or whether this pattern shows that a truly higher proportion of the victims in Freetown were women.

Figure 4.A1.11: Proportion and Ratio of Perpetrator Responsibility by Sex

Perpetrator	Males	Females	Ratio M/F
RUF	16058	8208	1.96
AFRC	2627	1313	2.00
SLA	2092	627	3.34
CDF	1825	588	3.10
ECOMOG	232	73	3.18
GAF	140	42	3.33
ULIMO	92	27	3.41
Police	59	13	4.54
Rebels	2619	1351	1.94
SLA/AFRC	430	166	2.59
Misc.	88	26	3.38
Missing	1254	768	1.63

Source: Sierra Leone Truth and Reconciliation Commission's Database

In Figure 4.A1.11 Shows the number of documented violations by perpetrator and sex, including a ratio of male to female. Especially interesting is the column of ratios and what it tells us about the proclivity of the various perpetrator groups to target abuses against women.

The ratio for the Police of 4.54 means that for every 4.54 documented violations targeted against men by the Police, only one violation is targeted against women. In contrast, for the RUF, for every 1.96 documented committed against male victims, one violation is committed against female victims. In other words, the RUF is more than twice as likely to commit a violation with a female victim than are the Police. The pattern of the AFRC is similar to the RUF, while most of the other perpetrator groups fall in between.

Together, the top four perpetrator groups along with rebels make up over 90% of all of the documented violations against women where the sex of the victim is known. The RUF bears the majority of the responsibility, attributed with 62% (8208/13202) of the total number of violations against females.

Patterns by Victims' Age

The analysis of age will first present summary statistics by type of violation, time, space, and perpetrator. More finely disaggregated analyses of age and sex by type of violation will then be presented in a series of graphs.

Figure 4.A1.12: Counts of Violations of Adults and Children by Type of Violation

Violation	Adult	Child	Missing	Total	Ratio A/C
Forced Displacement	4328	711	2944	7983	6.09

Abduction	2263	828	2877	5968	2.73
Arbitrary Detention	1938	642	2255	4835	3.02
Killing	868	203	3443	4514	4.28
Destruction of Property	1950	107	1347	3404	18.22
Assault / Beating	1564	311	1371	3246	5.03
Looting of Goods	1836	102	1106	3044	18.00
Physical Torture	998	189	864	2051	5.28
Forced Labour	820	334	680	1834	2.46
Extortion	738	56	479	1273	13.18
Rape	194	178	254	626	1.09
Sexual Abuse	254	40	192	486	6.35
Amputation	134	21	223	378	6.38
Forced Recruitment	90	154	87	331	0.58
Sexual Slavery	50	83	58	191	0.60
Drugging	9	38	12	59	0.24
Forced Cannibalism	6	4	9	19	1.50
Total	**18040**	**4001**	**18201**	**40242**	**4.51**

Source: Sierra Leone Truth and Reconciliation Commission's Database

The counts specific violations suffered by adults and children are given in Figure 4.A1.12. Among the victims with ages known to the Commission, the relationships between adult and child victims for some violations are logical. For example, the violations involving property (destruction, extortion, looting) are overwhelmingly adult violations. Other age patterns reflect the particular focus of some violations on children: forced recruitment and sexual slavery are majority child, and rape is nearly equally divided between adult and child victims.

Figure 4.A1.13 offers another way of examining the age distribution for each violation type. Note that "Min" stands for the minimum age, "Q1" stands for the age at which 25% of the cases are that age or younger, "Median" means the age at which 50% of the cases are that age or younger, "Mean" stands for the average age of the victims for that violation type, "Q3" stands for the age at which 75% of the cases are that age or younger, and "Max" stands for the maximum age. The "Missing" column gives the percent of all violations for which the age of the victim is unknown to the Commission.

Figure 4.A1.13: Victims' Age Distribution, by Violation Types

Violation type	Min	Q1	median	Mean	Q3	Max	Total	Missing Age %
Forced Displacement	1	24	36	37	50	97	7983	36.9
Abduction	1	16	29	32	44	100	5968	48.2
Arbitrary Detention	1	18	30	32	45	100	4835	46.6
Killing	1	21	33	37	52	111	4514	76.3
Destruction of Property	2	31	42	43	55	100	3404	39.6
Assault / Beating	1	21	33	35	46	100	3246	42.2
Looting of Goods	2	30	41	42	54	100	3044	36.3
Physical Torture	1	22	33	35	46	100	2051	42.1
Forced Labour	1	16	27	30	42	96	1834	37.1
Extortion	7	27	39	40	51	100	1273	37.6
Rape	6	13	18	21	25	69	626	40.6
Sexual Abuse	4	23	31	35	45	97	486	39.5
Amputation	1	24	35	37	48	80	378	59.0
Forced Recruitment	4	11	14	19	22	73	331	26.3
Sexual Slavery	7	12	15	17	21	44	191	30.4
Drugging	7	10	12	15	16	77	59	20.3
Forced Cannibalism	8	14	22	33	57	83	19	47.4

Source: Sierra Leone Truth and Reconciliation Commission's Database

Looking at individual violation types in Figures 4.A1.12 and 4.A1.13 perpetrated against adults and children we find that for documented amputation, assaults/beating, destruction of property, extortion, forced displacement, killing, looting of goods, physical torture, and sexual abuse violations, the distribution of age of victim is solidly centered on adults.

The results in Figure 4.A1.21 demonstrate that documented victims of forced recruitment, sexual slavery and rape were younger than the other violation types. Specifically, the following conclusions can be drawn:

- 50% of the victims of forced recruitment with age documented were 14 years of age or younger when they were forcibly recruited.
- 25% of rape victims with age documented were 13 years of age or younger.
- 50% of sexual slaves with age documented were children age 15 or under when they were abducted.
- 25% of the victims of forced recruitment with age documented were 11 years of age or younger when they were abducted.

The next analysis considers the patterns of victims' ages over time.

Figure 4.A1.14: Counts of Violations by Age Category and Year

Year	Children	Adults	Missing	Total	Ratio A/C
1991	363	2585	2245	7184	7.12
1992	175	931	621	3719	5.32
1993	106	565	420	3084	5.33
1994	336	1500	1616	5446	4.46
1995	455	1896	2667	7013	4.17
1996	148	821	858	3823	5.55
1997	257	1408	1233	4895	5.48
1998	709	3017	2525	8249	4.26
1999	777	2709	2137	7622	3.49
2000	176	559	442	3177	3.18
Missing	499	2049	3437	5985	4.11
Total	**4001**	**18040**	**18201**	**40242**	

Source: Sierra Leone Truth and Reconciliation Commission's Database

Figure 4.A1.14 shows the counts of violations against adults and children by year. It is striking in this table that the ratio of adults to children tends to decline over time: the highest ratio (indicating the largest number of adults suffering relative to each child) is in 1991, and the lowest is in 2000. This trend briefly reverses in 1996, a year during which the conflict is relatively moderate. However, after the reversal, the trend returns to relatively more child victims per adult victim.

Figure 4.A1.15: Counts of Violations for Districts by Age Category

Region	District	Children	Adults	Unknown	Total	Ratio A/C
West	Western	362	1275	963	2600	3.52
North	Port Loko	160	560	578	1298	3.50
	Kambia	145	710	653	1508	4.90
	Bombali	249	862	1390	2501	3.46
	Koinadugu	214	1130	719	2063	5.28
	Tonkolili	258	881	970	2109	3.41
East	Kenema	263	2033	1191	3487	7.73
	Kailahun	362	1366	1322	3050	3.77

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	Kono	468	1336	867	2671	2.85
South	Bo	228	1197	2078	3503	5.25
	Pujehun	185	1773	1498	3456	9.58
	Moyamba	144	911	1014	2069	6.33
	Bonthe	172	809	1562	2543	4.70
	Unknown	791	3197	3396	7384	4.04
	Total	**4001**	**18040**	**18201**	**40242**	

Source: Sierra Leone Truth and Reconciliation Commission's Database

There are some surprises in the relative numbers of children and adult victims shown in Figure 4.A1.15. The ratio between adults and children varies widely, from 9.58 to 2.85. By substantial margins, Pujehun (9.58) and Kenema (7.73) have relatively fewer violations against children than other districts, while Kono (2.85) has relatively more child victims per adult. The variation is shown in more detail below, in Figure 4.A1.16.

Figure 4.A1.16: Counts and Percents of Violations for Districts by Age and Sex

	Male: Count		**Male: %**		**Female: Count**		**Female: %**		**Missing**	**Total**
District	**Child**	**Adult**	**Child**	**Adult**	**Child**	**Adult**	**Child**	**Adult**	**Age/Sex**	
WEST	177	715	10.8	43.8	182	560	11.1	34.3	966	2600
PORT	94	382	13.1	53.4	66	174	9.2	24.3	582	1298
KAMB	94	548	11	64.2	51	161	6	18.9	654	1508
BOMB	119	689	10.7	62	130	173	11.7	15.6	1390	2501
KOIN	119	896	8.9	66.7	95	234	7.1	17.4	719	2063
TONK	138	667	12.1	58.6	120	214	10.5	18.8	970	2109
KENE	155	1522	6.8	66.4	105	509	4.6	22.2	1196	3487
KAIL	192	885	11.1	51.2	170	480	9.8	27.8	1323	3050
KONO	206	889	11.4	49.3	262	445	14.5	24.7	869	2671
BO	133	819	9.4	57.9	95	367	6.7	26	2089	3503
PUJE	90	1188	4.6	60.7	95	584	4.9	29.8	1499	3456
MOYA	74	659	7	62.5	70	252	6.6	23.9	1014	2069
BONT	77	573	7.8	58.4	95	236	9.7	24.1	1562	2543
UNKN	404	2305	10.2	57.9	387	883	9.7	22.2	3405	7384
Total	**2072**	**12737**			**1923**	**5272**			**18238**	**40242**

Source: Sierra Leone Truth and Reconciliation Commission's Database

Kono stands out as having the highest proportion of documented violations suffered by female children. The Western Area has relatively more adult females suffering violations, and relatively fewer adult males than other districts.

Figure 4.A1.17: Counts of Violations by Perpetrator by Age Category

Perpetrator	**Children**	**Adults**	**Unknown Age or Sex**	**Ratio A/C**
RUF	2736	10640	10977	3.89
AFRC	429	1993	1528	4.65
SLA	117	1384	1223	11.83
CDF	124	1133	1162	9.14
ECOMOG	29	164	116	5.66
GAF	14	71	98	5.07
ULIMO	9	67	43	7.44
Police	0	45	27	0.00
Rebels	346	1639	2002	4.74
SLA/AFRC	62	310	225	5.00
Misc.	15	47	52	3.13
Unknown	168	847	1014	5.04

Source: Sierra Leone Truth and Reconciliation Commission's Database

In In Figure 4.A1.17, it can be seen that relative to other perpetrator groups, the RUF and the AFRC have different victim profiles with respect to age category. While the ratio of adult to child victims is 3.89–4.65 for these two groups, for the SLA and CDF the ratios are more than double at 9.14 and 11.83, respectively. This means, for example, that for every 3.89 violations the RUF allegedly committed against an adult, they committed one against a child. Whereas the SLA committed one violation against a child for every 11.83 violations committed against an adult.

Figure 4.A1.18: Counts and Percents of Violations for Perpetrators by Age and Sex Categories of the Victims

	Male				Female				
	Count		Percentage		Count		Percentage		
Perpetrator	Children	Adults	Children	Adults	Children	Adults	Children	Adults	Unknown Age or Sex
RUF	1432	7382	69.1	58.0	1301	3241	67.7	61.5	10997
AFRC	223	1381	10.8	10.8	206	611	10.7	11.6	1529
SLA	45	1099	2.2	8.6	72	281	3.7	5.3	1227
CDF	66	898	3.2	7.1	58	235	3.0	4.5	1162
ECOMOG	17	131	0.8	1.0	12	33	0.6	0.6	116
GAF	10	66	0.5	0.5	4	5	0.2	0.1	98
ULIMO	7	55	0.3	0.4	2	12	0.1	0.2	43
Police	0	36	0.0	0.3	0	9	0.0	0.2	27
Rebels	172	1103	8.3	8.7	171	528	8.9	10.0	2013
SLA/AFRC	36	254	1.7	2.0	26	55	1.4	1.0	226
Misc	13	35	0.6	0.3	2	12	0.1	0.2	52
Unknown	76	521	3.7	4.1	92	326	4.8	6.2	1014
Total	2072	12737			1923	5272			18238

Source: Sierra Leone Truth and Reconciliation Commission's Database

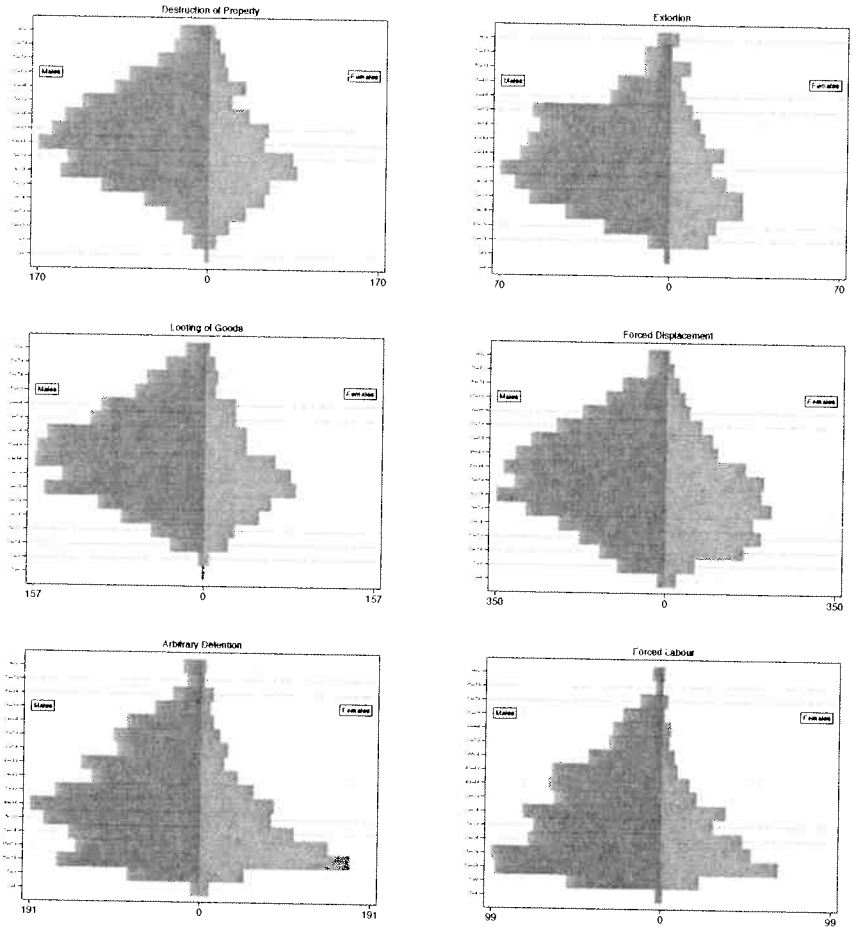
Patterns by Victims' Age and Sex

This section combines the analysis of the previous two sections. By considering the distribution of victims' age and sex simultaneously, this analysis can unpack the broad age categories in the previous section to show the specific ages that suffered each violation. At the same time, the analysis shows how each violation affected males or females at different ages.

All of the analysis here could be considered in terms of the population rates of each violation's occurrence. That is, the counts of each violation for each age and sex category could be divided into the total number of Sierra Leoneans of that age and sex. The resulting figures can then be compared across different age and sex categories, simultaneously considering both the count of the violations and the age and sex distribution of the population. Analysis of this kind was presented in the Children's Chapter in the discussion of rape, sexual slavery, and forced recruitment. For simplicity, the data are presented here as simple counts.

The first group of graphs considers violations against property and the freedom to live in security.

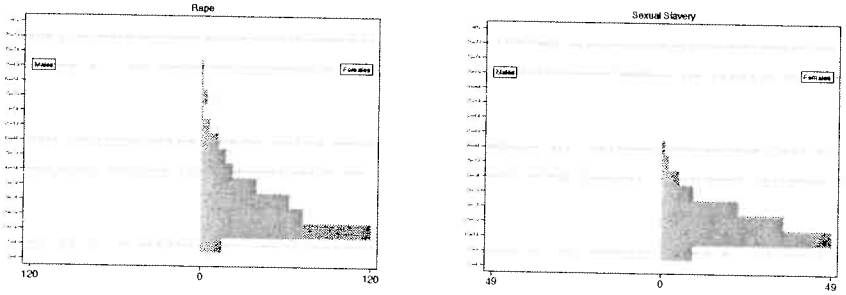
Figures 4.A1.19a–f: Violations by Type, Age, and Sex

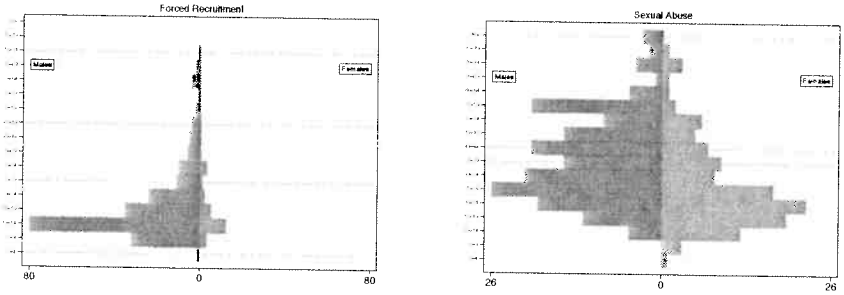


Source: Sierra Leone Truth and Reconciliation Commission's Database

These six graphs encompass destruction of property, extortion, looting of goods, forced displacement, arbitrary detention, and forced labour. Documented violations of the first four types are primarily committed against adults, and mostly against males. Male victims of arbitrary detention and forced labour also tend to be adults, but the female victims are most frequently younger, in the 10–14 age category.

Figures 4.A1.20a–d: Violations by Type, Age, and Sex

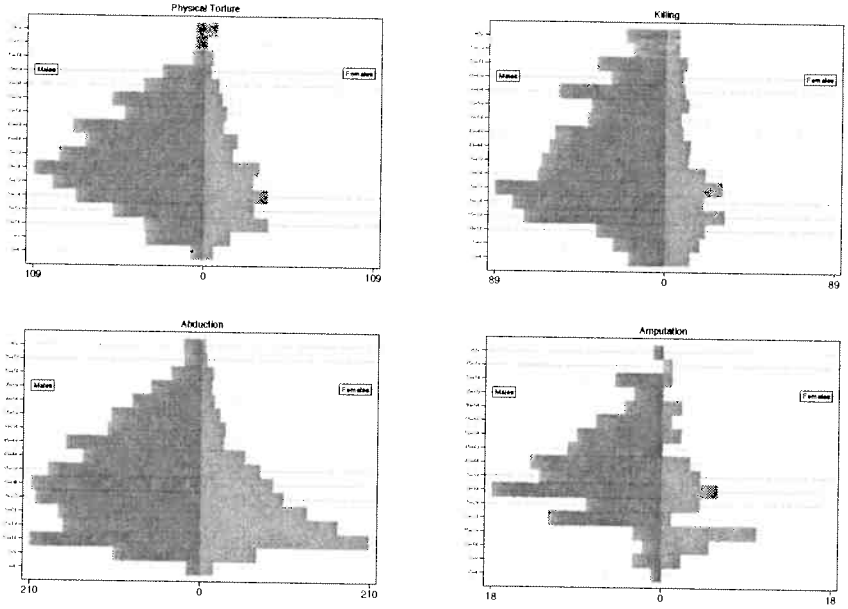




Source: Sierra Leone Truth and Reconciliation Commission's Database

The violations most often against adolescents 10–14 years old are sexual slavery and rape (against girls) and forced recruitment (against boys). These violations should not be confused with sexual abuse, which was interpreted by the Commission primarily as the forced stripping of adult as a means of humiliation. Sexual abuse was most often perpetrated against adult males, while the other two sexual violations were most frequently committed against girls 10-14.[6]

Figures 4.A1.21a–d: Violations by Type, Age, and Sex



Source: Sierra Leone Truth and Reconciliation Commission's Database

Torture, killing, and amputation are directed principally against adult men. Abduction is more complicated with both adult men and adolescent boys subjected to this violation. However, among female victims, girls 10–14 are considerably more frequently subject to abduction than younger girls or older women. Amputation is also directed most frequently at adult men, but among women and girls, the most common age category is 15–19.

[6]For a discussion of "targeting" of girls and boys in these violations, see the Children's Chapter.

Patterns of documented violations by victims' ethnicity

This section addresses the question of systematic targeting of particular ethnicities for human rights abuses by the various perpetrator groups. Southern ethnicities are defined as Mende, Sherbro, Krim, Vai, Kissi. Northern ethnicities are defined as Koranko, Limba, Loko, Temne and Yalunka. First, in Figure 4.A1.22, we present the number of violations by type and by ethnicity of the victims.

Figure 4.A1.22: Number of Violations by Violation Type and Ethnicity

Violation type	South	North	Foreign	Other	Unknown	Total
Forced Displacement	3765	2321	10	986	901	7983
Abduction	2363	1594	8	756	1247	5968
Arbitrary Detention	1976	1289	7	592	971	4835
Killing	1570	886	1	350	1707	4514
Destruction of Property	1418	1184	6	303	493	3404
Assault / Beating	1390	927	2	395	532	3246
Looting of Goods	1418	986		299	341	3044
Physical Torture	872	572	2	271	334	2051
Forced Labour	681	662	4	218	269	1834
Extortion	551	390		150	182	1273
Rape	200	201	2	111	112	626
Sexual Abuse	220	113		61	92	486
Amputation	87	151		46	94	378
Forced Recruitment	117	117	3	49	45	331
Sexual Slavery	81	51		30	29	191
Drugging	13	30		8	8	59
Forced Cannibalism	8	4		1	6	19
Total	**16730**	**11478**	**45**	**4626**	**7363**	**40242**

Source: Sierra Leone Truth and Reconciliation Commission's Database

In Figure 4.A1.23 below, responsibility for the violations against each of the ethnicities is shown across the perpetrator categories.

Figure 4.A1.23: Percent of Violations by Violation Type and Ethnicity

Perpetrator	North	South	Foreigner	Other	Unknown
RUF	52.7	66.2	48.9	60.4	60.1
AFRC	17.3	4.1	13.3	13.9	8.5
SLA	4.0	9.4	8.9	4.8	6.5
CDF	4.3	6.9	2.2	3.3	8.4
ECOMOG	1.3	0.2	2.2	1.2	1.0
GAF	0.9	0.0	0.0	0.8	0.5
ULIMO	0.0	0.5	0.0	0.0	0.5
Police	0.1	0.2	0.0	0.1	0.2
Rebels	11.6	8.9	17.8	10.7	8.8
SLA/AFRC	0.8	2.0	0.0	1.3	1.5
Misc	0.2	0.3	13.3	0.3	0.3
Unknown	8.2	3.0	2.2	4.2	5.3
Total	**11478**	**16730**	**45**	**4626**	**7363**

Source: Sierra Leone Truth and Reconciliation Commission's Database

Other analysis of ethnic patterns is presented in the chapter on the Nature of the Conflict.

Patterns of documented violations by alleged perpetrator

Prior sections have considered perpetrators' patterns over space, and with respect to victims age, sex, and ethnicity. This section considers the patterns of perpetrators with respect to type of violation and time.

Figure 4.A1.24: Table of Proportion of Violations and Victims and the Ratio of Violations to Victims, by Perpetrator Group

Perpetrator group	Percent Violations	Percent Victims	Ratio Violations/Victim
RUF	59.2	61.5	2.58
Rebels	9.9	12.3	2.16
AFRC	9.8	10.3	2.57
SLA	6.8	8.9	2.05
CDF	5.9	6.6	2.40
Unknown	5.0	7.5	1.78
SLA/AFRC	1.5	1.8	2.17
ECOMOG	0.7	1.3	1.50
GAF	0.5	0.7	1.76
ULIMO	0.3	0.4	1.95
Misc	0.3	0.3	2.33
Police	0.1	0.2	2.07
Total	**40242**	**14995**	

Source: Sierra Leone Truth and Reconciliation Commission's Database

Note: The percentages of victims and violations sum to more than 100% because the same violations may be shared by different perpetrators.

The counts of victims, violations, the number of victims per violation, and the proportions of violations attributable to each perpetrator type are given in Figure 4.A1.24. Of the 40,242 violations in the TRC's database, the RUF has by far the most violations 23,823 (59.2%) and the most victims 61.5%, attributed to them. The RUF also has the highest number of documented violations per victim 2.58; followed by the AFRC with 2.57 violations per victim.

There may be a negative bias against the RUF because the database measures the statement-givers' perception of who was committing the abuses that they suffered or witnessed. Given the relatively high proportion of violations attributed to rebels, it is clear that there was some confusion in identifying the factions definitively. In terms of dress and behaviour, the RUF and AFRC fighters were virtually indistinguishable; both had ready access to SLA uniforms but commonly combined military fatigues with civilian clothing. In addition, identifiers such as headbands and sticking plasters were shared among factions. During the second phase, the civilian population developed the expression "sobels" to characterize perpetrators whom they believed to be "soldiers by day, rebels by night". It is possible that many of the violations attributed to the rebels may be more accurately attributed to the RUF, AFRC or even the SLA, but we were not able to clearly quantify this phenomenon in the data. However, it is discussed in detail in the Military and Political History Chapter.

Perpetrator Responsibility for Particular Violations

Figure 4.A1.25: Counts of Violation Types by Perpetrator

Violation type	RUF	AFRC	SLA	CDF	ECOMOG	GAF	ULIMO	Police	Rebels	SLA/AFRC	Misc	Unknown	Total
Forced Displacement	5092	711	477	231	31	30	14	9	994	103	11	442	7983
Abduction	3728	547	361	402	49	25	13	12	572	91	23	205	5968
Arbitrary Detention	2924	465	327	388	55	22	13	19	421	78	15	168	4835
Killing	2618	292	335	246	67	23	27	6	580	60	9	342	4514
Destruction of Property	1883	320	245	328	53	13	9	5	205	46	10	160	3246

Assault / Beating	1920	410	257	110	15	36	8	6	405	46	4	264	3404
Looting of Goods	1843	326	254	175	2	18	11	11	236	49	9	173	3044
Physical Torture	1136	235	141	217	19	7	8	0	168	39	10	84	2051
Forced Labour	1250	208	102	43	4	4	6	1	133	27	8	60	1834
Extortion	666	145	116	182	4	1	8	1	93	31	5	50	1273
Rape	420	60	20	25	0	2	0	0	57	6	2	36	626
Sexual Abuse	285	60	38	46	6	1	1	2	25	5	4	15	486
Amputation	154	105	25	6	4	1	0	0	54	9	0	22	378
Forced Recruitment	249	30	14	9	0	0	1	0	25	3	4	2	331
Sexual Slavery	138	22	8	4	0	0	0	0	14	2	0	6	191
Drugging	41	12	1	1	0	0	0	0	3	1	0	0	59
Forced Cannibalism	6	2	3	6	0	0	0	0	2	1	0	0	19
Total	**24353**	**3950**	**2724**	**2419**	**309**	**183**	**119**	**72**	**3987**	**597**	**114**	**2029**	**40242**

Source: Statements given to the Truth and Reconciliation Commission of Sierra Leone

In terms of volume, the RUF committed the greatest number of violations for every violation type.

The RUF, rebels, AFRC, and SLA, follow roughly similar patterns of proportions of particular types of violations. Documented forced displacement and abduction violations constitute the highest proportion of all of the documented violations attributed to each of these four perpetrators. They also share nearly equal proportions of documented detention violations from 10.6% (421/3987) for the rebels to 11.8% (465/3950) for the AFRC, 12% for the RUF (2924/24353), and 12.3% for the SLA (327/2724).

The CDF follows a different pattern of violation types. The highest proportion, 16.6% (402/2419), of CDF documented violations is abduction, not forced displacement as is the case for the perpetrator groups discussed in the paragraph above. The proportion of documented CDF violations is higher than the other perpetrator groups for several violations types including assault/beating, torture, detention, extortion, and sexual abuse. However, the CDF committed proportionally fewer property destruction violations.

The RUF accounts for 67.1% (420/626) of documented rape violations.

Out of the documented abuses attributed to the AFRC, amputations constitute a proportionally higher (2.7%, 105/3950) number of their violations compared with the other perpetrator groups. However, the proportion of killing violations is lower for the AFRC (7.4%, 292/3950) than for the RUF (10.8%, 2618/24353) or the SLA (12.3%, 335/2724).

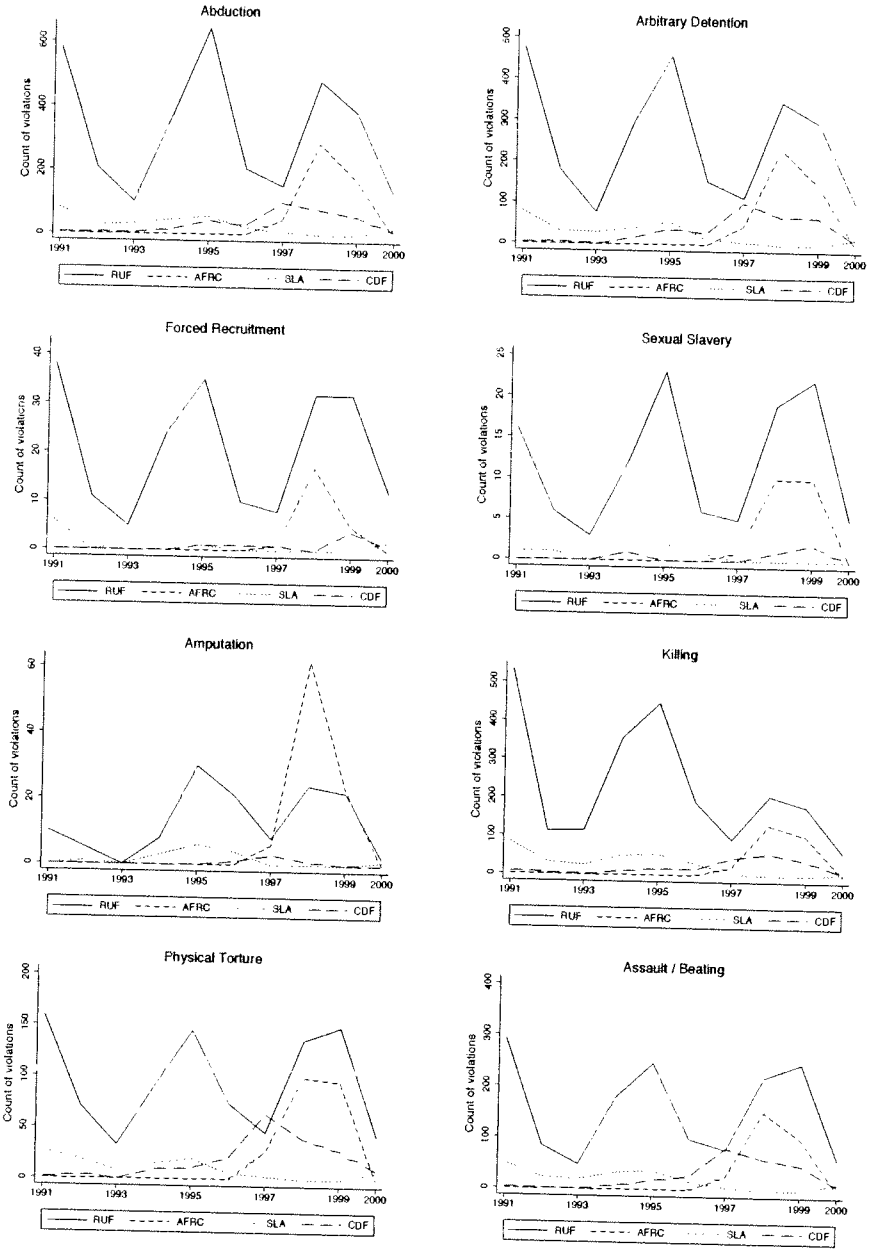
Perpetrator Responsibility for Violations over Time and Space

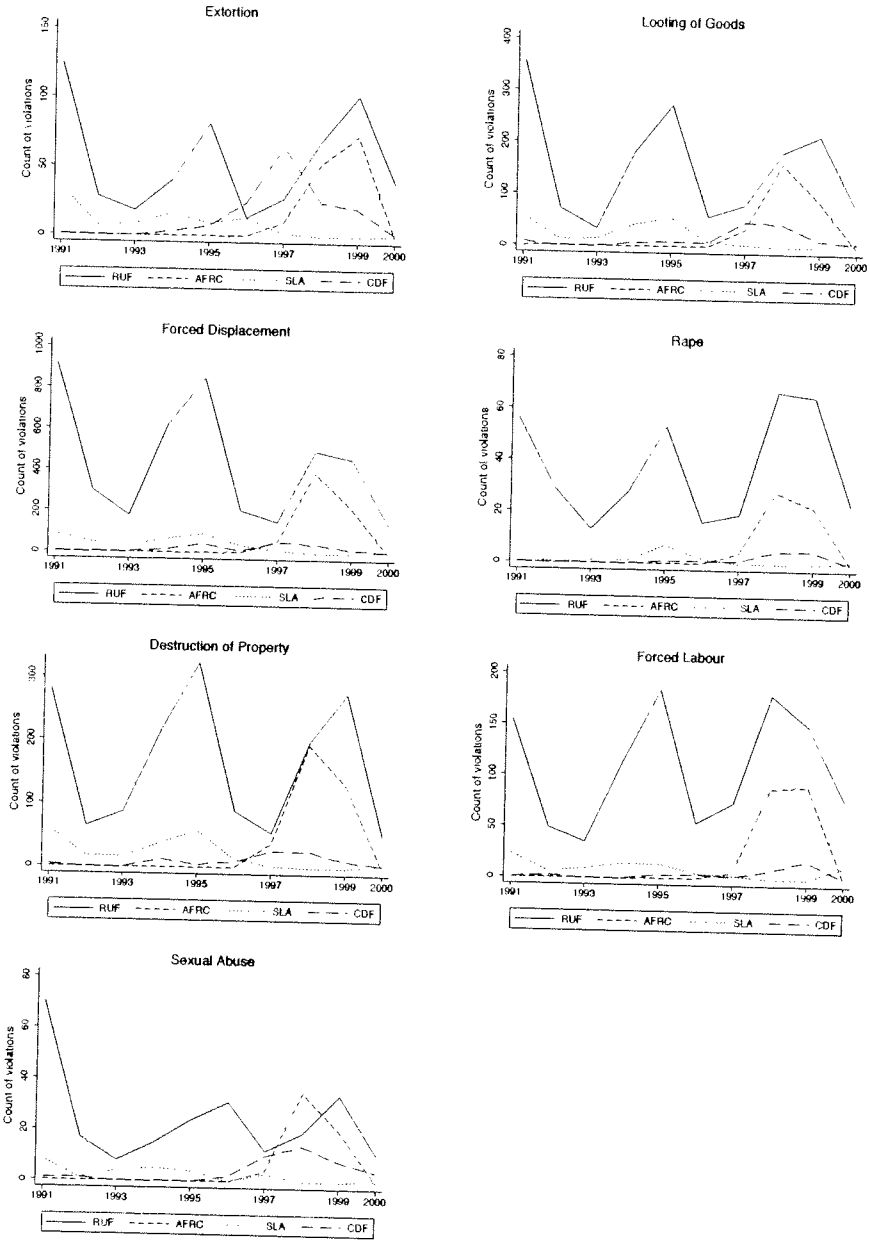
The RUF's dominance over all violation types is not true in every period. In the graph series, Figures 4.A1.26a–o, below, the episodic nature of the conflict is clear for nearly every perpetrator, violation type, and year combination. That is, the violation counts start high in 1991 at the beginning of the war, drop in the early 1990s and then rise to the 1995 peak, after which the intensity drops. Violence increases during the expulsion of the AFRC from Freetown, their tour of the Northern districts and their eventual return to attack the capital in January 1999.

For the following violations, the reported counts for the RUF are higher than any other perpetrator category during every year: sexual slavery, rape, looting, killing, forced recruitment, forced displacement, abduction, forced labour, assault, destruction of property, and arbitrary detention. The exceptions to the RUF's predominance are rare enough that they are noted here. For extortion and torture, the CDF shows peaks in 1997 which exceed the RUF counts of reported violations in that year. The AFRC count of reported acts of sexual

abuse exceed the RUF in 1998, and the AFRC count of acts of amputation is greater than for the RUF in 1998.

Figures 4.A1.26a–o: Number of Violations over Time by Perpetrator





Source: Sierra Leone Truth and Reconciliation Commission's Database

There are clear differences between the perpetrators in terms of the timing of violations. The RUF has the most documented violations attributed to them in all years of the war, though the number of violations in 1998 and 1999 attributed to the AFRC are substantial. Whilst the SLA is involved in the conflict from the start, the AFRC coup in 1997 changes the nature and allegiance of the army. As a result, the AFRC is treated as a separate perpetrator group, active in the third phase. The SLA is responsible for significant numbers of documented violations during the second phase of the war, and the CDF is responsible for a significant number of violations in the third phase.

The RUF, CDF, and SLA play constant and distinct roles throughout the conflict, while the roles of ULIMO, the AFRC, ECOMOG, and GAF are confined to specific phases of the

conflict. Prior to 1996, local militia groups were not coordinated under regional or national structures, but were active in the districts touched by the war. When the Sierra Leone Peoples Party (SLPP) government formed the CDF in 1996, it became common practice to refer to all such militias as CDF groups. The majority of CDF members were so-called Kamajors.[7] The Kamajor force mobilized on a grand scale in the third phase of the war, from 1997 onwards. Seventy-four percent (1505/2031) of the recorded violations, with year documented that are attributed to the Kamajors, occur in 1997 or later.

The relatively minor perpetrator groups are those whose participation in the conflict is limited to specific years and geographical areas. Ninety-five percent (260/275) of the documented violations in the Commission's database (where year is known) attributed to the ECOMOG intervention force, occur between 1997 and 2000. ECOMOG was not deployed by the Economic Community of West African States (ECOWAS) until 1997. The TRC recorded 201 violations attributed to the GAF, of which 155 had known year; of those with known year, 90% (140/155) occurred in 1999 and 2000. 91.8% (89/97) of the violations attributed to ULIMO, where the year is known, occur in 1991. 96% (105/109) of ULIMO violations, where district is known, occur in Bo, Kailahun, Kenema, or Pujehun.

In Figures 4.A1.27–30, we explore the patterns of violations across districts and time for the four factions that are responsible for the highest number of documented violations: the RUF, the AFRC, the SLA, and the CDF.

Figure 4.A1.27: Number of RUF Violations by Year and District

Region	District	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Missing	Total
West	Western	11	5	3	3	25	22	39	57	646	3	119	933
	Port Loko	1	0	4	18	93	35	38	155	141	17	62	564
	Kambia	14	14	0	12	128	30	30	69	291	190	187	965
	Bombali	6	22	8	39	45	28	66	398	307	24	221	1164
	Koinadugu	10	3	2	161	4	12	36	469	180	129	110	1116
North	Tonkolili	1	21	42	318	121	63	65	227	311	62	179	1410
	Kenema	334	171	138	406	222	100	82	69	45	14	372	1953
	Kailahun	1013	354	78	146	100	97	155	75	41	7	289	2355
East	Kono	24	270	54	151	81	67	104	526	146	168	155	1746
	Bo	351	81	144	646	527	201	50	58	48	19	350	2475
	Pujehun	1426	118	146	136	73	27	23	13	19	9	375	2365
	Moyamba	81	14	4	61	581	222	64	17	30	4	142	1220
South	Bonthe	94	5	11	36	1152	50	21	18	18	0	197	1602
	Unknown	689	163	124	417	670	277	153	535	416	185	856	4485
	Total	**4055**	**1241**	**758**	**2550**	**3822**	**1231**	**926**	**2686**	**2639**	**831**	**3614**	**24353**

Source: Sierra Leone Truth and Reconciliation Commission's Database

Figure 4.A1.28: Number of AFRC Violations by Year and District

Region	District	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Missing	Total
West	Western	0	0	0	0	0	0	34	110	543	0	33	720
	Port Loko	0	0	0	0	0	0	13	76	120	0	15	224
	Kambia	0	0	0	0	0	0	4	41	55	0	4	104
	Bombali	0	0	0	0	0	0	32	258	95	0	51	436
	Koinadugu	0	0	0	0	0	0	4	447	145	0	73	669
North	Tonkolili	0	0	0	0	0	0	0	79	45	0	5	129
	Kenema	0	0	0	0	0	0	52	123	12	0	32	219
	Kailahun	0	0	0	0	0	0	34	80	19	0	11	144
East	Kono	0	0	0	0	0	0	8	254	23	0	37	322
	Bo	0	0	0	0	0	0	7	42	6	0	24	79
	Pujehun	0	0	0	0	0	0	19	29	9	0	29	86
	Moyamba	0	0	0	0	0	0	4	30	28	0	9	71
South	Bonthe	0	0	0	0	0	0	44	11	3	0	2	60

[7]For information on the formation of the CDF, refer to Phase II of the "Military and Political History of the Conflict" Chapter of the Final Report of the Sierra Leone Truth Commission.

	Unknown	0	0	0	0	0	0	70	363	209	0	45	687
	Total	**0**	**0**	**0**	**0**	**0**	**0**	**325**	**1943**	**1312**	**0**	**370**	**3950**

Source: Sierra Leone Truth and Reconciliation Commission's Database

Figure 4.A1.29: Number of SLA Violations by Year and District

Region	District	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Missing	Total
West	Western	15	12	2	3	15	3	2	0	0	1	53	106
	Port Loko	1	0	0	1	52	4	4	0	0	14	21	97
	Kambia	7	0	0	4	0	0	0	0	0	8	12	31
	Bombali	6	0	9	2	8	14	1	0	0	1	25	66
	Koinadugu	1	0	0	22	0	1	0	0	0	54	20	98
North	Tonkolili	2	6	4	38	33	7	4	0	0	1	13	108
	Kenema	52	38	37	39	33	15	15	0	0	0	76	305
	Kailahun	88	19	31	16	9	6	1	0	0	0	27	197
East	Kono	2	36	9	17	15	10	0	0	0	0	17	106
	Bo	53	21	23	86	63	39	8	0	0	2	48	343
	Pujehun	195	54	48	25	11	15	0	0	0	0	44	392
	Moyamba	4	0	2	21	105	22	3	0	0	4	31	192
South	Bonthe	33	0	4	1	57	13	8	0	0	1	26	143
	Unknown	138	36	28	93	68	23	5	0	0	24	125	540
	Total	**597**	**222**	**197**	**368**	**469**	**172**	**51**	**0**	**0**	**110**	**538**	**2724**

Source: Sierra Leone Truth and Reconciliation Commission's Database

Figure 4.A1.30: Number of CDF Violations by Year and District

	District	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Missing	Total
West	Western	0	0	0	0	0	0	0	14	75	3	11	103
	Port Loko	0	0	0	8	2	0	0	7	6	2	1	26
	Kambia	0	0	0	3	9	0	1	17	11	5	5	51
	Bombali	0	0	0	8	2	0	19	10	8	4	9	60
	Koinadugu	0	0	0	0	0	0	0	2	1	0	3	6
North	Tonkolili	0	2	0	1	0	0	1	25	70	10	39	148
	Kenema	14	7	5	23	19	56	73	50	9	2	54	312
	Kailahun	0	2	0	2	4	3	8	22	1	1	6	49
East	Kono	0	5	1	1	0	5	6	14	7	10	12	61
	Bo	1	0	1	13	40	18	26	58	28	13	27	225
	Pujehun	9	0	0	1	6	5	53	36	2	0	28	140
	Moyamba	0	0	0	1	18	21	84	27	70	10	33	264
South	Bonthe	3	0	0	8	49	41	230	79	7	6	78	501
	Unknown	2	8	2	24	42	31	101	112	57	12	82	473
	Total	**29**	**24**	**9**	**93**	**191**	**180**	**602**	**473**	**352**	**78**	**388**	**2419**

Source: Sierra Leone Truth and Reconciliation Commission's Database

The Kamajor CDF force (a subset of the violations listed here as CDF) was largely confined to the South of the country: 62.2% (1089/1752) of the violations attributed to the Kamajor CDF militia, where the district in which the violation is known, occurred in the Southern region[8]; 23.1% (405/1752) in the Eastern, 9.2% (161/1752) in the Northern, and 5.5% (97/1752) in the Western. During the third phase of the conflict in the Bonthe district, the CDF are alleged to have committed the majority of the documented violations, 58.2% (322/553) in all.[9]

Patterns of documented violations attributed to the RUF appear similar in the first and second phases of the war. The exceptions are documented cases of sexual slavery and amputations which increase in the second phase when compared to the first phase, and documented cases of sexual abuse (Stripping/Naked Humiliation), which decrease in the second phase compared to the first.

[8]Note that geographically, the Eastern region is in the Southern half of the country.
[9]See Figure 4.A1.7 for the figures for Bonthe.

The rise in documented sexual slavery in 1993 and 1994 coincides with the transition in the RUF to guerrilla tactics. The RUF fighters adopted a mode of fighting revolving around camps and bases within the bush where they abducted women and kept them as so-called "bush wives" in remote locations.[10]

Figure 4.A1.31: Amputations by Perpetrator by Year

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Missing	Total
RUF	10	5	0	8	30	21	8	24	22	2	24	154
AFRC	0	0	0	0	0	0	6	62	23	0	14	105
SLA	0	1	0	3	6	4	0	0	0	1	10	25
CDF	0	0	0	0	0	1	3	1	0	0	1	6
ECOMOG	0	0	0	0	0	1	1	2	0	0	0	4
GAF	0	0	0	0	0	0	0	0	1	0	0	1
ULIMO	0	0	0	0	0	0	0	0	0	0	0	0
Police	0	0	0	0	0	0	0	0	0	0	0	0
Rebels	0	0	1	1	4	2	1	29	12	1	3	54
SLA/ AFRC	0	0	0	0	0	0	9	0	0	0	0	9
Misc	0	0	0	0	0	0	0	0	0	0	0	0
Unknown	0	0	0	1	0	1	3	11	3	0	3	22
Totals	**10**	**6**	**1**	**13**	**40**	**30**	**31**	**129**	**61**	**4**	**55**	**380**

Source: Sierra Leone Truth and Reconciliation Commission's Database

Figure 4.A1.31 shows amputations by Perpetrator by Year. The first substantial rise in documented amputations occurs in 1995 and is attributable to the RUF. "Operation Stop Elections" is widely believed to be the first campaign of amputations by the RUF, occurring in late 1995 and early 1996 in order to coincide with the moves by civil society towards multi-party elections. Although there are a few reported amputations before 1995, in this year the reported count more than triples earlier totals. The rise in 1995 is consistent with the view that the RUF engaged in a limited campaign to warn civilians to "take their hands off the war," in the wake of a failed NPRC peace initiative.[11]

It is interesting to note that while the RUF is responsible for the greatest number of violations reported to the Commission for each year of the conflict, in 1998, the database shows that the AFRC is responsible for the largest proportion — 48% (62/129) — of the recorded amputations.

Figure 4.A1.32: Counts of Violations by Perpetrator by District/Region

Region	West	North					East			South					
	West	PORT	KAMB	BOMB	KOIN	TONK	KENE	KAIL	KONO	BO	PUJE	MOYA	BONT	UNKN	Total
RUF	933	564	965	1164	1116	1410	1953	2355	1746	2475	2365	1220	1602	4485	24353
AFRC	720	224	104	436	669	129	219	144	322	79	86	71	60	687	3950
Rebels	310	154	138	462	114	230	483	178	308	274	310	178	129	719	3987
Unknown	250	213	99	265	64	99	91	80	74	111	126	114	37	406	2029
ECOMOG	177	22	10	22	16	4	2	11	4	9	0	4	0	28	309
SLA	106	97	31	66	98	108	305	197	106	343	392	192	143	540	2724
CDF	103	26	51	60	6	148	312	49	61	225	140	264	501	473	2419
SLA/AFR C	23	31	14	41	11	13	111	31	31	33	62	42	73	81	597
Misc.	16	0	0	2	1	2	1	31	8	12	1	15	3	22	114
Police	15	0	3	1	3	0	1	2	0	8	25	0	4	10	72

[10]For more information on the switch to guerrilla warfare, associated objectives and strategies, see Phase II of the "Military and Political History of the Conflict" Chapter of the Final Report of the Sierra Leone Truth and Reconciliation Commission.

[11]See Phase II of the "Military and Political History of the Conflict" Chapter of the Final Report of the Sierra Leone Truth and Reconciliation Commission.

GAF	0	0	111	7	0	0	0	0	14	0	0	2	1	48	183
ULIMO	0	0	0	0	0	0	54	12	0	14	25	0	4	10	119
Total	**2600**	**1298**	**1508**	**2501**	**2063**	**2109**	**3487**	**3050**	**2671**	**3503**	**3456**	**2069**	**2543**	**7384**	**40242**
Region	**2600**					**9479**			**9208**				**11571**		

Source: Sierra Leone Truth and Reconciliation Commission's Database

Note: the columns do not sum to the total because responsibility for any violation might be shared among several perpetrators.

Figure 4.A1.33: Percent of Violations by Perpetrator by District/Region

	West	North					East			South				
	West	**PORT**	**KAMB**	**BOMB**	**KOIN**	**TONK**	**KENE**	**KAIL**	**KONO**	**BO**	**PUJE**	**MOYA**	**BONT**	**UNKN**
RUF	35.9	43.5	64.0	46.5	54.1	66.9	56.0	77.2	65.4	70.7	68.4	59.0	63.0	60.7
AFRC	27.7	17.3	6.9	17.4	32.4	6.1	6.3	4.7	12.1	2.3	2.5	3.4	2.4	9.3
Rebels	11.9	11.9	9.2	18.5	5.5	10.9	13.9	5.8	11.5	7.8	9.0	8.6	5.1	9.7
Unknown	9.6	16.4	6.6	10.6	3.1	4.7	2.6	2.6	2.8	3.2	3.6	5.5	1.5	5.5
ECOMOG	6.8	1.7	0.7	0.9	0.8	0.2	0.1	0.4	0.1	0.3	0.0	0.2	0.0	0.4
SLA	4.1	7.5	2.1	2.6	4.8	5.1	8.7	6.5	4.0	9.8	11.3	9.3	5.6	7.3
CDF	4.0	2.0	3.4	2.4	0.3	7.0	8.9	1.6	2.3	6.4	4.1	12.8	19.7	6.4
SLA/AFRC	0.9	2.4	0.9	1.6	0.5	0.6	3.2	1.0	1.2	0.9	1.8	2.0	2.9	1.1
Misc	0.6	0.0	0.0	0.1	0.0	0.1	0.0	1.0	0.3	0.3	0.0	0.7	0.1	0.3
Police	0.6	0.0	0.2	0.0	0.1	0.0	0.0	0.1	0.0	0.2	0.7	0.0	0.2	0.1
GAF	0.0	0.0	7.4	0.3	0.0	0.0	0.0	0.0	0.5	0.0	0.0	0.1	0.0	0.7
ULIMO	0.0	0.0	0.0	0.0	0.0	0.0	1.5	0.4	0.0	0.4	0.7	0.0	0.2	0.1
Total	2600	1298	1508	2501	2063	2109	3487	3050	2671	3503	3456	2069	2543	7384

Source: Sierra Leone Truth and Reconciliation Commission's Database

Figures 4.A1.32 and 4.A1.33 highlight the counts and percentages of violations in each region that are attributed to particular perpetrators. The RUF is alleged to have committed the majority of documented violations in all districts. It is noteworthy that the RUF is alleged to have committed a larger proportion of documented violations, 77.2% (2355/3050), in Kailahun, the district in which the war started, than in any other district. The AFRC is alleged to have committed its largest proportion of violations, 32.4% (669/2063), in Koinadugu, and the CDF is alleged to have committed 18.5% (462/2501) of the documented violations in Bonthe. ULIMO only has violations attributed to it that occurred in the Eastern or Southern regions.

Correlations Between Perpetrator Groups

This section examines the correlations between different perpetrators; in other words, how their patterns of documented violations were similar or different by violation type.

Figure 4.A1.34: Correlations Between Perpetrator Groups

	RUF	**SLA**	**AFRC**	**ARMY**	**REBEL**	**CDF**	**POLICE**	**GAF**	**ULIMO**	**ECOMOG**	**UNKNOWN**	**MISC**
RUF	1.00											
SLA	0.97	1.00										
AFRC	0.97	0.97	1.00									
ARMY	0.98	0.98	0.98	1.00								
REBEL	0.97	0.94	0.93	0.93	1.00							
CDF	0.78	0.83	0.79	0.87	0.67	1.00						
POLICE	0.77	0.81	0.79	0.82	0.67	0.79	1.00					
GAF	0.86	0.91	0.90	0.86	0.87	0.67	0.76	1.00				
ULIMO	0.77	0.85	0.71	0.80	0.78	0.75	0.63	0.73	1.00			
ECOMOG	0.72	0.78	0.67	0.76	0.68	0.86	0.67	0.65	0.83	1.00		
UNKNOWN	0.91	0.94	0.89	0.87	0.96	0.63	0.63	0.91	0.83	0.69	1.00	
MISC	0.80	0.79	0.79	0.86	0.67	0.90	0.76	0.63	0.67	0.73	0.57	1.00

Source: Sierra Leone Truth and Reconciliation Commission's Database

Figure 4.A1.34 shows the correlations between counts of documented violations for perpetrator type over violation type. To interpret this information, keep in mind that a value of one means perfect correlation, and values near zero mean no correlation. In the context of

this table, a positive correlation means that as the first category count of violations goes up, the second category count of violations also goes up.

For example, the high correlation between RUF and AFRC in Figure 4.A1.34 (0.97) means that the proportions of RUF documented violations by violation type are highly correlated with the proportions of AFRC documented violations by violation type (e.g., the ratio of amputations to forced recruitments is similar for the two groups). In other words, in terms of the types and relative frequency of the documented violations, the behaviour of RUF and AFRC is broadly similar. In contrast, ECOMOG and GAF show much less correlation (0.65) over violation type.

The patterns of correlations in Figure 4.A1.34 suggest that, within the context of the Commission's database, the AFRC, Sierra Leone Army (SLA), and RUF constitute a group of perpetrators whose documented abuses for most of the violation types, follow roughly similar patterns, although the volume of violations is different. Furthermore, the rebels behave similarly to this cluster of perpetrators. These patterns, however, do not inform us as to whether the violations are correlated by perpetrator group over time or not. The number of documented forced recruitments, acts of cannibalism, incidents of sexual slavery, and druggings in the TRC database are not large enough for correlation analysis. Perpetrator responsibility for particular violations types is discussed further on violations types more frequently reported in the Commission's database.

Patterns of documented violations attributed to Liberian perpetrators

To examine the statements for Liberian responsibility at the beginning of the conflict in documented violations, a special coding study was conducted. The special coding was prepared when 6,740 of the TRC statements had been entered into the database.

The criteria was based on a section of the form used by the TRC for statement-taking that gathered demographic information of the perpetrator group, namely their ethnic origin, place of origin, and the languages they spoke. Some statements contained several incidents involving different groups of perpetrators; therefore it was not possible to determine to which group the perpetrator description applied. Inclusion in the study was limited to statements involving one incident, in which the alleged perpetrator is the RUF, with the events occurring between 1991 and 1994. A total of 1,073 of these statements met the required criteria.

A random sample of these statements was taken and stratified according to the year of the abuse. In total, 357 statements — approximately one-third of those available — were coded. For many statements, there was insufficient information to determine the origin of the perpetrators; these statements were not included in the study. The results of the study can be considered as representative of all statements containing one incident attributed to the RUF in the selected period, within the TRC database.

From each statement, the following fields were used to compile the statistics: Year (the year of the incident in which the RUF violations are alleged); Sierra Leoneans Included, (coded true if the statement indicated that the perpetrator group included persons of Sierra Leonean origin); and Liberians Included, (coded true if the statement indicated that the perpetrator group included persons of Liberian origin).[12]

[12]Statements meeting any of the following criterion were attributed to the NPFL: The statement indicates that the perpetrators were Liberian or Burkinabey, or from a Liberian ethnic group (Mano, Ngio or Pelle), or the

Statements meeting any of the following criteria were attributed to the RUF: The statement indicates that the perpetrators were from an exclusively Sierra Leonean ethnic group, the perpetrators spoke Sierra Leonean languages; or the statement specifically states that the perpetrators were from Sierra Leone or a district within Sierra Leone.

For the purposes of the study, a perpetrator group consisting exclusively of Liberian fighters was assumed to belong to the NPFL. Similarly, a group consisting exclusively of Sierra Leonean fighters was considered to be part of the RUF/SL i.e. Revolutionary United Front of Sierra Leone. Additionally, many groups were mixed, containing both Sierra Leoneans and Liberians.

The majority of RUF incidents, 52%, were attributed to the NPFL, with 29% to the RUF/SL and 19% to mixed groups.[13] Incidents involving both Liberian and Sierra Leonean perpetrators are relatively less common. The statistics are consistent with the view that in the first phase of the war the RUF consisted generally of two factions: the RUF/SL and NPFL.

RUF incidents in which Liberians were documented in the early years of the war showed a declining involvement, from 78% in 1991, to 69% in 1992, to 21% and 13% in 1993 and 1994. This information is consistent with the theory that a substantial proportion of the Liberians had departed from Sierra Leone by 1993.[14]

In summary, these results are consistent with the theory that there were campaigns of human rights violations by Liberians during the first phase of the war, but that the Liberian involvement in the war tapered out after this phase.

ECOMOG Abuses Study

The ECOMOG abuses study was the first special coding analysis, and it began on 7 November 2003. At that time, a total of 72 TRC statements describing killings by the ECOMOG force had been inputted into the database. A sample of 55 statements was studied; 17 other statements were in use by TRC researchers and could not be coded.

The study identified two types of killing: Indiscriminate Killing, defined as deaths due to bombing, shelling or cases where the victims were caught in crossfire; and Summary Executions, defined as deliberate killing of victims, typically by shooting and often accompanied by allegations that the victim was working in collaboration with "rebel" forces.

To make this distinction, the study considered the method of killing, allegations of collaboration against the victims, the origin of any collaboration accusation, the district where the killing occurred, and the circumstances in which the victim died. Accusations of collaboration may have been made by the perpetrators themselves or could come from civilian sources.

Fifty-six percent (50/89) of the documented and sampled killings attributed to ECOMOG were summary executions. Of the 50 summary executions identified in the statements, 76% (38/50) involved some accusation that the victim was involved with the AFRC or RUF factions. Where such an allegation was made, 70% (28/38) of the victims were accused of

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perpetrators spoke Liberian English, or were from an ethnic group common to both Liberia and Sierra Leone (Kissa, Vai), and there was no indication in the statement that any of the perpetrators were from Sierra Leone.

[13]The margins of error are ± 9%, 8%, and 7%, respectively.

[14]By year, the margins of error are ± 9%, 18%, 22%, and 9%, respectively.

being "rebels". The remainder were accused of being either rebel collaborators (6/38), or members of a family containing a rebel (4/38). These results are consistent with the claim that elements within the ECOMOG force targeted and summarily executed suspected rebels and collaborators. ECOMOG is responsible for 0.8% (309/40242) of the total violations reported to the Commission.

Redress and Reparations

This section will also address the results of abuses, the current situation of victims, and, the attitudes of perpetrators and victims. The statistics compiled via the Assistance and Redress Study form the basis of the discussion in this section.

Methodology

The assistance and redress study was unique in that the results were based on four separate samples. All of the samples were selected after the completion of the data entry of all the statements in the TRC database. Taking into account the margins of error (reported in footnotes), the percentages reported here can be interpreted as applying to all the TRC statements.

The first sample was stratified by country where the statement was taken — Sierra Leone, Guinea, Nigeria, or Gambia. A proportional sample of approximately 5% of the statements was taken, resulting in 296 statements being coded. This sample was used to explore the consequences of the abuse(s) the statement-giver experienced or witnessed, and whether or not the victim received medical attention or counseling following the abuse(s). It also examined how he/she currently supports him or herself.

The second sample of statements was comprised of all statements where a perpetrator was the statement-giver.[15] The study examined answers to Section 6, questions 3.4 and 3.5 of the TRC statement form. These questions addressed the willingness of the perpetrator to meet with his/her victim, pay reparations to his/her victim, and what form those reparations would take.

The third sample examined whether or not the statement-giver would be willing to meet the alleged perpetrator of the acts the statement-giver experienced or witnessed.

The final study considered the types of assistance or redress sought by the statement-givers for this sample, and whether the request was intended to benefit themselves, their family, their community, or society as a whole. Some examples of the assistance categories are as follows:

- Homes/Shelter: Provision of homes/shelter; provision of building materials.
- Schools/Education/Training: Building of schools; improvement of schools; access to affordable education and/or skills and vocational training; provision of scholarships, affordable university fees.

[15]Although a conscientious attempt to locate all such statements was made, only 300 of the statements that are given by a perpetrator were part of this special coding. While not all of the perpetrators' statements were included, the results from this analysis can be considered representative of all of the perpetrators who gave statements to the TRC because the number missing is such a small proportion of the whole.

- Hospitals/Medical: Building of hospitals or clinics; improvement of hospitals; access to affordable health care; treatment for physical or mental injuries resulting from the conflict.

Results of Abuses

Statement-givers were asked to describe the results of the abuses they experienced or witnessed as part of their statement to the TRC. Responses to this question were included in the first special coding sample for the Assistance and Redress Study.

Fifty-seven percent[16] (102/178) of the statement-givers who gave a response about the result of the abuse they experienced or witnessed reported a loss of property. Additionally, 31% of statement-givers reported damage to either their mental (10/178) and/or physical health (45/178) as a result of the violations that they experienced or witnessed.[17] Seventeen percent reported being permanently disabled (20/178) and/or unable to work (10/178) as a result of violations.[18]

The special coding study with this sample also investigated how many victims received medical attention or counseling following the abuses they suffered. As of the time the statement was given, a significant majority, 67% (137/204)[19] of statement-givers, had not received medical attention or counseling following the abuses.

Current Situation of Victims

The first sample of statements included in the Assistance and Redress special coding study were also coded to examine the current status of the victim's health.

Responses by the statement-givers that answered this question are nearly equally split between no longer being effected by the abuses they suffered to being effected on a daily basis.[20] Of the statements included in the sample, 50% of the statement-givers reported "fair" (86/196) or "poor" (12/196) health at the time when the statement was given.[21]

The special coding study explored how statement-givers are currently able to support themselves. Of the statement-givers who responded to this question, over half the responses was divided nearly equally between statement-givers who reported supporting themselves by farming/gardening (44%, 90/205),[22] Thirty-one percent (63/205) reported relying on relatives, friends, or children. It is interesting to note that very few statement-givers report supporting themselves through a job/salary (6%, 12/205).[23]

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[16] The margin of error for this statistic ± 7%.

[17] 2%–9% of victims reported damage to their mental health, and 19%–32% reported damage to their physical health.

[18] The confidence intervals are as follows: disabled 7%–16% , unable to work %2–9%.

[19] The confidence interval is 61%–74%.

[20] Victims' responses to this question were coded according to the following definitions: Excellent: No health problems, Good: Minor illness that doesn't affect daily life, Fair: Major illness/Disability that somewhat affects daily life, Poor: Daily life greatly affected (can't work, can't care for family).

[21] For the other categories, 44% reported "fair" health with a confidence interval of 37%–51%, and 6% reported "poor" health with a confidence interval of of 3%–9%

[22] The confidence interval for farming/gardening is 37%–51% and the assistance of relatives/friends/children confidence interval is 24%–37%.

[23] The confidence interval on supporting oneself by a job/salary is 3%–9%.

Attitudes of Victims and Perpetrators

The second sample of the Assistance and Redress special coding study comprised statements where a perpetrator was the statement-giver.[24] The study examined answers to Section 6, questions 3.4 and 3.5 of the TRC statement report. These questions addressed the willingness of the perpetrator to meet with his/her victim, pay reparations to his/her victim, and what form those reparations would take.

Eighty-six percent (242/282)[25] of the statement-givers included in this sample responded that they would be willing to meet with the victim of the human rights violation they committed.

Perpetrator statements were also coded to examine what he or she would be willing to do to make it up to his or her victim. In the TRC statement, statement-givers were asked to choose among four options in response to this question:

- Accept responsibility and offer apology
- Pay reparations
- Participate in rebuilding
- Other

Thirty-five percent (94/268)[26] of the statement-givers responded that they would be willing to both accept responsibility and offer apology and participate in rebuilding.

The third sample of the Assistance and Redress special coding study explored whether or not the victim would be willing to meet with the perpetrator of the violations they suffered. An overwhelming 88% (219/250)[27] of the statement-givers responded positively to the idea of meeting the perpetrator of the abuses committed against them if the meeting were facilitated by the TRC.

Needs Cited by Statement-Givers

Of all the requests for assistance or redress in the fourth special coding sample, 32% are to benefit the individual, 18% are for the statement-giver's family, 26% are for the community and 23% concern changes or benefits for society as a whole.[28] Typically the statement-giver would request several types of help. For example one statement-giver asked for treatment of his war injuries, education for his children, and the building of roads in the village. Given the approximately equal weight of self and community assistance, it is apparent that all of the following are sought:

- Assistance on an individual or family basis according to need
- Community projects to assist a town or village as a whole.

[24] 300 perpetrator statements were part of this special coding.
[25] The confidence interval is 82%–90%
[26] The confidence interval is 29%–41%
[27] The confidence interval is 84%–92%
[28] Note that the figures do not total 100 percent because many statement-givers requested several types of assistance. All of these statistics are significantly different from zero at p=0.05.

- Broad changes and reforms for society at large.

The vast majority of statement-givers indicate that the assistance should be provided by the government rather than a third party such as a nongovernmental organization or international donor.

Housing (49%), education (41%), and health care (27%) are the most frequently cited concerns. Housing, education and health are priorities at all scales of delivery — the statement-givers see it as important for the individual, family, community and society as a whole.

For the other forms of assistance there is some variation of the perception of how the assistance should be delivered:

- Unsurprisingly, infrastructure is seen as something that should be primarily delivered at the community level.
- Religious rites are a requirement for the community or society as a whole, rather than for specific individuals or families.
- Institutional and economic reforms are broad benefits required for society as a whole.
- The provision of cash, materials and credit is supported as a benefit for individuals, families and communities.

There were some differences in the weight given to the different types of assistance depending on whether the statement-giver was male or female. Men placed a slightly greater emphasis on assistance to themselves or the community, while women more often cited the need for assistance for the family unit.

Conclusions

The Sierra Leone Truth and Reconciliation Commission collected nearly 8,000 statements from Sierra Leoneans regarding their experiences over a decade of conflict. The purpose of this appendix has been to outline and interpret the descriptive statistics regarding the nature and extent of violations, behaviour of perpetrators, and characteristics of victims that can be gleaned from these statements. To obtain this information TRC staff and consultants undertook coding, data entry, matching, and statistical analysis. While valuable in its own right, the resulting quantitative information is even more powerful combined with the contextual information compiled by the TRC researchers, investigators, and commissioners. Therefore this information is incorporated in greater depth and detail in each of the chapters of the Final Report.

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