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SCSL-03-01-T
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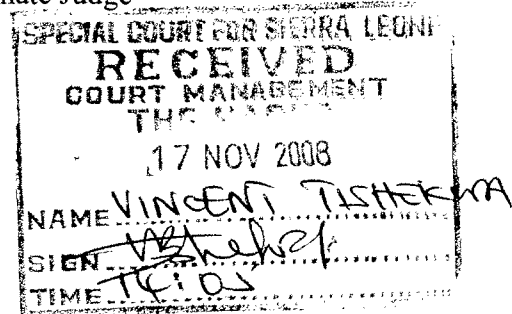
22392

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: 17 November 2008



THE PROSECUTOR

Against

Charles Ghankay Taylor

Case No. SCSL-03-01-T

PUBLIC

PROSECUTION REPLY TO DEFENCE RESPONSE TO PROSECUTION MOTION FOR ADMISSION OF DOCUMENTS OF THE UNITED NATIONS AND UNITED NATIONS BODIES

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. The Prosecution files this reply to the “Public Defence Response to Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies”.¹

II. APPLICABLE LEGAL PRINCIPLES

Rule 89(C) may be used to tender documents absent a witness

2. The Defence argument that Rule 89(C) has not been used independent of a witness to admit documentary evidence at the SCSL² ignores the express language of the decisions cited.³ In the *Sesay* 89(C) Decision,⁴ the Defence in the RUF Trial⁵ made the same objection as this Defence in the Response.⁶ However, this objection was overruled. Trial Chamber I found that “there is no requirement in international criminal law to produce documents through a witness”, found that the Bench is “capable of not drawing inferences without proper evidentiary basis or foundation” and ruled that the document is admitted “pursuant to Rule 89(C)”.⁷
3. The Defence’s argument regarding the *Fofana* Bail Appeals Decision⁸ also fails to support their position regarding Rule 89(C)’s use at the SCSL.⁹ Rather, it supports the Prosecution position. The Appeals Chamber in *Fofana* underscored the unavailability of witnesses but made no mention of Rule 92bis and found that the trial Judge “was correct to admit under Rule 89(C) the declaration of the Chief of Investigations, having found it relevant”.¹⁰ The fact that Mr. White could be called for cross-examination by the Defence thereafter was not a factor which determined its admission under Rule 89(C). Rather, cross-examination was highlighted by the Appeals Chamber as a way of

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-664, “Public Defence Response to Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies”, 10 November 2008 (“**Response**”).

² As defined at paragraph 4 of *Prosecutor v. Taylor*, SCSL-03-01-T-650, “Public Prosecution Motion for Admission of Documents of the United Nations & United Nations Bodies”, 29 October 2008 (“**Motion**”).

³ See Response, paras. 4 & 5.

⁴ As defined at footnote 3 of the Motion.

⁵ *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T (“**RUF Trial**”).

⁶ See p. 2 of the *Sesay* 89(C) Decision where the Chamber notes the Defence objection that “the Prosecution should have re-examined the Witness on the Report if it wanted to introduce it as evidence and that the evidence would be prejudice the Defence as 1) it contains untested hearsay evidence, 2) the Prosecution should have sought to introduce the Report through a witness ...”.

⁷ See *Sesay* 89(C) Decision, pp. 3 and 4.

⁸ As defined at footnote 11 of the Motion.

⁹ Response, para. 4.

¹⁰ *Fofana* Bail Appeals Decision, para. 29.

challenging the weight to be accorded the admitted document.¹¹ The Appeals Chamber, therefore, found that a document could be admitted absent a witness under Rule 89(C) alone. Thus, contrary to the Defence's argument, the jurisprudence of the SCSL at trial and appellate level has found that Rule 89(C) can be used to admit evidence absent a witness.

4. The Defence's arguments concerning *Blaskić* also fail to support their position.¹² First, as established above, the SCSL practice of admitting documents under both Rules 89(C) and 92bis has not been exclusive. Second, the Defence argument focusing on the ICTY "safeguards" of establishing probative value and reliability do not withstand scrutiny. While Rule 89 does not impose such safeguards, neither does Rule 92bis at the SCSL. Rather, it is established that such factors need not be proved at the SCSL when seeking to admit evidence,¹³ the safeguards being those identified in paragraph 8 of the Motion.

Admission under Rule 89(C)

5. Contrary to the Defence assertion,¹⁴ the Prosecution Motion accurately articulated the qualifications to the admission of evidence under Rule 89(C) in the Motion.¹⁵ These qualifications sufficiently protect the fair trial rights of the Accused. Further, the Appeals Chamber's dicta in the *Fofana* Bail Appeals Decision demonstrates that admission rather exclusion is favoured, as the qualifications to Rule 89(C) are bolstered by the fact that professional judges can deal with questions such as partiality and reliability in their assessment of the weight to be given admitted evidence.¹⁶
6. The Defence arguments are also fundamentally flawed in that they ignore the fact that two rules are used at the ICTY for the introduction of evidence other than through live testimony – Rule 89 and Rule 92bis¹⁷ - which rules must be considered in tandem. Nonetheless, the Defence seek to impose on the SCSL the ICTY's interpretation and use of Rule 92bis without also extending to the SCSL the ICTY's interpretation and use of

¹¹ *Ibid.*

¹² Response, para. 6.

¹³ *Fofana* Bail Appeals Decision, para. 26.

¹⁴ Response, para. 7.

¹⁵ See Motion, para. 8.

¹⁶ See *Fofana* Bail Appeals Decision, paras. 26, 27 & 29. Para. 27 states: "Relevant evidence is not 'clearly inadmissible'. By virtue of Rule 89(C), it is clearly admissible."

¹⁷ In the context of the current issue, Rules 92ter and 92quater are not relevant and so are not discussed.

Rule 89(C).

7. Contrary to the Defence's submissions, the exclusionary conditions set out in the *Kordić and Čerkez* case are legally and factually irrelevant to the matter at issue and should not be applied to the admission of the UN Documents.¹⁸ The exclusionary conditions from *Kordić and Čerkez* are specific to the facts of that case and have no role to play in the current proceedings. In *Kordić and Čerkez* the conditions were imposed in relation to a request for admission of a considerable amount of documentary evidence disclosed after the conclusion of both the Prosecution and Defence cases.¹⁹ These strict conditions were, therefore, imposed by the ICTY Trial Chamber in view of the exceptional circumstances with which all parties were faced and at a time when such material could not be put to and so challenged by Defence witnesses.²⁰ The Defence attempt to apply the ruling in *Kordić and Čerkez* with the current situation is without merit, particularly when the material at issue relates to publicly available documents which, notwithstanding this fact, have been disclosed to the Defence for at least a year.
8. Notwithstanding the foregoing, the *Kordić and Čerkez* case is instructive in demonstrating the use made of Rule 89 alone at the ICTY including its use to admit evidence going to proof of the acts and conduct of the accused. The *Kordić and Čerkez* Decision was concerned in part with the admission of a "War Diary" "said to reflect events in the immediate region from January to May 1993, including orders given by the accused, Dario Kordić".²¹ The War Diary was admitted, the Chamber finding that is "under a duty to try to ascertain the truth and to deprive itself of this document would put that duty at risk."²²

Rule 92bis and information in lieu of oral testimony

9. The Defence claim that the Prosecution position would render Rule 92bis redundant²³ ignores: (i) the Prosecution's submissions that Rule 92bis is now more suited to the

¹⁸ Response, paras. 9, 26-29 and Annex B.

¹⁹ For a narration of the facts against which the decision was made see paras. 1 – 11 of *Prosecutor v. Kordić and Čerkez*, IT-95-14/2, "Decision on Prosecutor's Submissions concerning "Zagreb Exhibits" and Presidential Transcripts", 1 December 2000 ("**Kordić and Čerkez Decision**").

²⁰ See in particular the comments of Judge May referred to at para. 36 and the arguments of the Defence referred to at para. 23 of the *Kordić and Čerkez* Decision.

²¹ *Kordić and Čerkez* Decision, para. 26.

²² *Ibid*, para. 44.

²³ Response, para. 10.

admission of witness statements and trial transcripts,²⁴ as is the case at the ICTY and the ICTR; and (ii) the Prosecution's recent filings under this Rule.

10. The Defence's arguments²⁵ also fail to appreciate the Prosecution's arguments that, notwithstanding the original intention that the SCSL Rule be different from those at the ICTY and ICTR, it is the jurisprudence of the ICTY and ICTR that has informed the subsequent amendments to the SCSL Rule. However, such amendments have failed to appreciate the narrower scope of the *ad hoc* tribunals' Rules and the stand alone use made of Rule 89(C) at the ICTY and ICTR. The Prosecution position does not circumvent Rule 92*bis* but ensures that relevant evidence is made available to the fact finder.

Acts and conduct of the Accused

11. The Defence's arguments²⁶ again ignore that the application of Rule 92*bis* was originally intended to be much broader in scope than its ICTY and ICTR counterparts. In order for the broad nature of the SCSL Rule 92*bis* to be maintained, then the acts and conduct qualification cannot now be held to apply to "information". To hold otherwise and, in addition, to find that documents cannot be admitted solely under Rule 89(C), means that ultimately admission of evidence under the SCSL Rules of Evidence will be much more limited than such admission at its sister tribunals.
12. It is notable that the Defence arguments at paragraph 19 of the Response cite dicta which concern witness statements and not documents in respect of which no *viva voce* alternative has been proposed.

III. ARGUMENT

Rules 89(C) and 92*bis*

13. The Defence objections to the admission of the UN Documents set out in Annex A of the Response should be dismissed as set out below and as set out in the **Annex** hereto.

²⁴ Motion, para. 9.

²⁵ Response, paras. 10-13.

²⁶ *Ibid*, paras. 14-19.

Irrelevant

14. The Defence arguments regarding relevancy concern, first, evidence falling outside the Indictment period.²⁷ However, none of the evidence objected to relates to the period pre-30 November 1996. Notwithstanding the foregoing, as previously argued and accepted by this Chamber in the context of other submissions,²⁸ the Defence argument ignores that evidence relevant to contextual elements, such as the existence of a widespread or systematic attack against a civilian population, is admissible whether it occurs within or outside the time limits alleged for specific crimes. This is also true for evidence which is, of itself or cumulatively with other evidence in the case, relevant to prove intent, awareness, knowledge, or reasonable foreseeability. Such evidence is admissible whether or not it is considered Rule 93(A) evidence.
15. The Defence arguments concerning relevancy also erroneously focus on whether or not the Accused was President of Liberia at the time the document was prepared.²⁹ As the Accused's alleged liability under the Second Amended Indictment is not contingent on his position as President,³⁰ this ground of objection should be dismissed.
16. The Defence's arguments concerning relevancy and Document 13³¹ are addressed in paragraph 20 below.
17. The objection to the fact that the Prosecution only seeks admission of part of paragraph 45 in Document 15³² is without merit. As that part of paragraph 45 which the Prosecution seeks to admit clearly and unambiguously relates to the condemnation of atrocities, there is no requirement that the remainder of the paragraph be admitted. The objection should be dismissed.

Not susceptible of confirmation

18. The Defence arguments regarding susceptibility of confirmation are without legal merit

²⁷ Response, para. 20 and Annex A, Documents. 2, 3.

²⁸ See for example the objections raised by the Defence in *Prosecutor v. Taylor*, SCSL-01-03-T-456, "Public with Confidential Annex Defence Objection to Prosecution Notice under Rule 92bis for the Admission of Evidence related to *inter alia* Kenema District", 4 April 2008 which were not upheld in *Prosecutor v. Taylor*, SCSL-01-03-T-556, "Decision on Prosecution Notice under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Kenema District And on Prosecution Notice under Rule 92bis for the Admission of the Prior Testimony of TF1-036 into Evidence", 15 July 2008.

²⁹ Response, Annex A, Documents. 3, 5.

³⁰ *Prosecutor v. Taylor*, SCSL-03-01-T-263, "Prosecution's Second Amended Indictment", 29 May 2007. para. 2.

³¹ Response, para. 22.

³² Response, Annex A, Document 15.

and should be dismissed.³³ They ignore the clear jurisprudence that information may be “corroborated by other evidence presented at trial”.³⁴ Therefore, the information may corroborated by evidence led during both the Prosecution and Defence phases of the trial. Further, relevant to this issue is the “nature and source of the information”.³⁵ In this regard, the Defence’s concerns regarding the identity of the various authors and unidentified sources should be viewed in this context. All the documents at issue are public documents and emanate from either the UN or UN bodies.

19. In addition, the Defence’s arguments regarding sources and hearsay³⁶ ignore the well established principle that the SCSL’s Rules are broad and there is no exclusion of hearsay evidence.
20. As regards Document 13, the UNHCR Report, as stated in the Motion, some of the cases included therein were admitted as exhibits in the AFRC Trial. Further, the Defence arguments regarding the language of the medical reports and the quality of the photographs are frivolous as, in line with the approach taken in the AFRC Trial, the Prosecution does not seek their admission.³⁷ The objections concerning Case #17 should also be dismissed since the Prosecution does not seek admission of that case. Finally, in relation to this document, the Prosecution observes that the Defence do not object to the admission of Cases #5 and #16.

Acts /Conduct of Accused, Subordinates

21. The Defence interpretation of the phrase acts and conduct of the accused and proximate subordinates of the accused is overly broad, unsupported by jurisprudence and, on this basis, should be dismissed.³⁸ The Prosecution also notes that the Defence have erroneously objected to documents on this ground as, based on even the broadest interpretation of the phrase, no such information is contained therein.³⁹ The Prosecution refers to its arguments in its Motion concerning the definition of evidence which goes to

³³ Response, para. 21 and Annex A.

³⁴ *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1125, “Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements under Rule 92bis”, 15 May 2009, para. 30.

³⁵ *Ibid*, para. 31.

³⁶ Response, para. 30 and Annex A.

³⁷ The reference pages identified for this document in Motion, Annex A do not include the medical reports or the photographs. Further, no annotations are made in the margin of the copy of the document provided in Annex B of the Motion for these parts of the Report.

³⁸ Response, para. 23 and Annex A.

³⁹ Response, Annex A, Document 3.

- proof of the acts and conduct of the accused and to the acts and conduct of immediate subordinates.
22. Contrary to the Defence's assertions otherwise, the following cannot be equated as being the acts and conduct of the Accused: (i) the acts of nameless RUF, former NPFL and former ULIMO-K fighters;⁴⁰ (ii) references to cross-border arms flows;⁴¹ (iii) allegations made by others concerning the acts and conduct of Liberia, the Accused and/or the Government of Liberia as these are the acts and conduct of those making the allegations;⁴² (iv) the acts and conduct of others such as Obasanjo and Adeniji as regards Liberia, those acts and conduct being properly those of the individuals referred to;⁴³ and (v) the visit of a UN mission to Liberia.⁴⁴ The foregoing examples are not exhaustive and further examples are identified in the **Annex** hereto.
 23. Should, *arguendo*, the Chamber decide that evidence which goes to proof of the acts and conduct of the accused (as defined and limited by the jurisprudence) may not be admitted, then such information may be redacted from the documents.⁴⁵
 24. As regards documents pertaining to acts and conduct of immediately proximate subordinates, this term should be strictly construed in accordance with the jurisprudence and the Defence's overly broad application of the term to information in the documents dismissed. Further, in considering evidence falling within this narrowly defined term, concerns regarding any possible prejudice may be dealt with as a matter of weight and also as part of a more detailed consideration and assessment of the evidence such as whether it has been sufficiently tested through other means in these proceedings.⁴⁶
 25. Notwithstanding the foregoing, should the Chamber decide that evidence which goes to proof of the acts and conduct of immediately proximate subordinates (as such term is

⁴⁰ Response, Annex A, Document 8.

⁴¹ Response, Annex A, Documents 9, 11, 15, 18.

⁴² See for example Response, Annex A, Documents 8, 10, 12 and 16.

⁴³ See for example Response, Annex A, Documents 26 and 27.

⁴⁴ Response, Annex A, Document 27.

⁴⁵ This procedure conforms to the procedure adopted at the ICTR. At the ICTR statements tendered pursuant to Rule 92*bis* are reviewed. Where a statement is tendered that includes information that falls within Rule 92*bis* and information that falls outside the Rule, the statement is admitted but the paragraphs or information that fall outside the Rule are simply not admitted into evidence. See for example *Prosecutor v. Bagosora et al*, ICTR-98-41-T, "Decision on Prosecutor's Motion for the Admission of Written Witness Statements Under Rule 92*bis*," 9 March 2004. This procedure has now been adopted at the SCSL – see *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1049, "Decision on Defence Application for the Admission of the Witness Statement of DIS-192 under Rule 92*bis* or, in the alternative, under Rule 92*ter*", 12 March 2008.

⁴⁶ For example, by the cross-examination of witnesses giving similar evidence in these proceedings or by the admission of other documents.

defined and limited by the jurisprudence) may not be admitted, then such information may be redacted from the documents.⁴⁷

Critical element of Prosecution case

26. All elements are critical to the Prosecution's case in the sense that, absent stipulation or judicial notice, the Prosecution must prove all elements beyond a reasonable doubt. However, the critical nature of evidence, in this context, cannot be the measure of admissibility under Rules 89(C) and/or 92bis. A bar to critical evidence in this context will prove a bar to all evidence, thus negating the very purpose or effectiveness of the rules. The objections specified in Annex A of the Response under this ground concern general issues regarding cross-border arms flows, references to diamonds and natural resources and their link to the conflict and the relationship between Sierra Leone and Liberia.⁴⁸

Other issues

27. The Prosecution observes that the Defence do not object to admission of Documents 22 and 25. The Defence request for redaction of non-admitted information should be dismissed as irrelevant. Only those portions (if any) of the documents which the Chamber determines should be admitted can be considered evidence. To suggest that those portions not so admitted must be redacted is to put into question the ability of professional judges.

IV. CONCLUSION

28. For the reasons set out in the Motion and above, the Prosecution requests that the Trial Chamber admit into evidence the identified portions of the UN Documents listed in **Annex A** and provided in **Annex B** of the Motion pursuant to: (i) Rule 89(C); or, in the alternative, (ii) Rules 89(C) and 92bis (Rule 92bis being interpreted as set out in paragraphs 15-16 of the Motion)

⁴⁷ *Supra*, footnote 45.

⁴⁸ See for example Response, Annex A, Documents 10, 11, 15, 16, 18, 23, 27, 28, 32.

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29. The Prosecution further requests that the arguments contained in the Response be dismissed.

Filed in The Hague,

17 November 2008

For the Prosecution,



Brenda J. Hollis

Principal Trial Attorney

LIST OF AUTHORITIES

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

Prosecutor v. Taylor, SCSL-03-01-T-263, “Prosecution’s Second Amended Indictment”, 29 May 2007

Prosecutor v. Taylor, SCSL-01-03-T-456, “Public with Confidential Annex Defence Objection to Prosecution Notice under Rule 92bis for the Admission of Evidence related to *inter alia* Kenema District”, 4 April 2008

Prosecutor v. Taylor, SCSL-03-01-T-556, “Decision on Prosecution Notice under Rule 92bis for the Admission of Evidence Related to *Inter Alia* Kenema District And on Prosecution Notice under Rule 92bis for the Admission of the Prior Testimony of TF1-036 into Evidence”, 15 July 2008

Prosecutor v. Taylor, SCSL-03-01-T-650, “Public Prosecution Motion for Admission of Documents of the United Nations & United Nations Bodies”, 29 October 2008

Prosecutor v. Taylor, SCSL-03-01-T-664, “Public Defence Response to Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies”, 10 November 2008

Prosecutor v. Sesay et al. – Case No. SCSL-04-15

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

Prosecutor v. Sesay et al., SCSL-04-15-T-1125, “Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements under Rule 92bis”, 15 May 2008

ICTY Cases

Prosecutor v. Kordić and Čerkez, IT-95-14/2, “Decision on Prosecutor’s Submissions concerning “Zagreb Exhibits” and Presidential Transcripts”, 1 December 2000
<http://www.un.org/icty/kordic/trialc/decision-e/01211AE514285.htm>

ICTR Cases

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

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ANNEX

ANNEX

REPLY TO OBJECTIONS RE. ADMISSION OF UN DOCUMENTS PURSUANT TO RULE 89(C) OR, IN THE ALTERNATIVE, RULES 89(C) & 92bis

	Title/Description	Objection	Reply
1.	Sierra Leone Humanitarian Situation Report 04 – 05 Jun 1997	<ul style="list-style-type: none"> • Not susceptible of confirmation • Acts/Conduct of Accused, Subordinates • Irrelevant 	<ul style="list-style-type: none"> • See paras. 18 & 19 of Reply. • See paras. 21 to 25 of Reply. • See para. 14 of Reply.
2.	Letter dated 27 June 1997 from the Permanent Representative of Nigeria to the United Nations addressed to the President of the Security Council (S/1997/499)	<ul style="list-style-type: none"> • Irrelevant • Acts/Conduct of Accused, Subordinates 	<ul style="list-style-type: none"> • See paras. 14 & 15 of Reply. • See paras. 21 to 25 of Reply. • <u>No</u> information included in document which refers to Accused or Subordinate. Objection unfounded. • Liability of Accused is not dependent on Accused's position as President. Indictment also refers to Accused's position as leader of the NPFL (see para. 2 of Indictment). • Document notes interconnected nature of peace, security and stability of region and so reference to Liberia is made in that context.
3.	Statement by the President of the Security Council (S/PRST/1997/36)	<ul style="list-style-type: none"> • Irrelevant • Acts/Conduct of Accused, Subordinates 	<ul style="list-style-type: none"> • See paras. 14 & 15 of Reply. • See paras. 21 to 25 of Reply. • <u>No</u> information included in document which refers to Accused or Subordinate. Objection unfounded. • Liability of Accused is not dependent on Accused's position as President. Indictment also refers to Accused's position as leader of the NPFL (see para. 2 of Indictment). • Document notes interconnected nature of peace, security and stability of region and so reference to Liberia is made in that context.
4.	Sierra Leone Humanitarian Situation Report 08-14 July 1997	<ul style="list-style-type: none"> • Not susceptible of confirmation • Acts/Conduct of Accused, Subordinates • Irrelevant 	<ul style="list-style-type: none"> • See paras. 18 & 19 of Reply. • See paras. 21 to 25 of Reply. • See para. 15 of Reply. • Liability of Accused is not dependent on Accused's position as President. Indictment also refers to Accused's position as leader of the NPFL (see
5.	Statement by the President of the Security Council (S/PRST/1997/42)	<ul style="list-style-type: none"> • Irrelevant 	<ul style="list-style-type: none"> • See paras. 18 & 19 of Reply. • See paras. 21 to 25 of Reply. • See para. 15 of Reply. • Liability of Accused is not dependent on Accused's position as President. Indictment also refers to Accused's position as leader of the NPFL (see

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			para. 2 of Indictment).
6.	Security Council Committee on Sierra Leone Releases List of Junta Members Affected by Sanctions - Press Release SC/6472	<ul style="list-style-type: none"> • Acts/Conduct of Accused, Subordinates 	<ul style="list-style-type: none"> • See paras. 21 to 25 of Reply.
7.	Sierra Leone: Humanitarian Situation Report, 21 January – 12 February 1998	<ul style="list-style-type: none"> • Not susceptible of confirmation 	<ul style="list-style-type: none"> • See paras. 18 & 19 of Reply.
8.	Sierra Leone Humanitarian Situation Report, 16-30 April 1998	<ul style="list-style-type: none"> • Not susceptible of confirmation • Acts/Conduct of Accused, Subordinates • Critical element of Prosecution case 	<ul style="list-style-type: none"> • See paras. 18 & 19 of Reply. • See paras. 21 to 25 of Reply. <ul style="list-style-type: none"> ○ Allegations of ECOMOG spokesperson and ECOMOG force commander are the acts and conduct of the spokesperson and commander and cannot be equated with that of the Accused (para. 2). • See para. 26 of Reply.
9.	Security Council Resolution 1181 (1998)	<ul style="list-style-type: none"> • Acts/Conduct of Accused, Subordinates • Critical element of Prosecution case 	<ul style="list-style-type: none"> • See paras. 21 to 25 of Reply. • See para. 26 of Reply. <ul style="list-style-type: none"> ○ In addition, it is to be noted that the existence of cross-border arms flow is noted but without mention of any group or country's involvement. Claims of prejudice by the Defence to be considered against this context.

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10.	Second Progress Report of the Secretary General on the United Nations Observer Mission in Sierra Leone (S/1998/960)	<ul style="list-style-type: none"> • Not susceptible of confirmation • Acts/Conduct of Accused, Subordinates • Critical element of Prosecution case 	<ul style="list-style-type: none"> • See paras. 18 & 19 of Reply. • See paras. 21 to 25 of Reply. • See para. 26 of Reply.
11.	Third Progress Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone (S/1998/1176)	<ul style="list-style-type: none"> • Not susceptible of confirmation • Acts/Conduct of Accused, Subordinates • Critical element of Prosecution case 	<ul style="list-style-type: none"> • See paras. 18 & 19 of Reply. • See paras. 21 to 25 of Reply. • See para. 26 of Reply.
12.	Special Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone (S/1999/20)	<ul style="list-style-type: none"> • Acts/Conduct of Accused, Subordinates • Critical element of Prosecution case 	<ul style="list-style-type: none"> • See paras. 21 to 25 of Reply. • See para. 26 of Reply.
13.	Report on Atrocities Committed Against The Sierra Leone Population, UNHCR Brach Office Conakry, (Rev. 2)	<ul style="list-style-type: none"> • Irrelevant • Not susceptible of confirmation • Acts/Conduct of Accused, Subordinates 	<ul style="list-style-type: none"> • See paras. 16 & 20 of Reply. • See paras. 18 & 19 of Reply. • See paras. 21 to 25 of Reply. • Quality of those parts of the document in respect of which the prosecution seeks admission are legible. • As is evident from the information in the Motion, the Prosecution does not seek admission of those parts of the report which are in French nor does it seek admission of the photographs. The objections on these issues are therefore irrelevant. • Prosecution notes that no objection made by Defence regarding admission of Cases #5, #16

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			<ul style="list-style-type: none"> • Objection to Cases #17, #29 irrelevant as Prosecution not seeking admission of that case (no annotation in margin of document provided in Annex B of Motion nor is it included in Annex A of Motion).
14.	Letter dated 22 February 1999 from the Chargé d'Affaires A.I. of the Permanent Mission of Liberia to the United Nations Addressed to the Secretary-General (S/1999/193)	<ul style="list-style-type: none"> • Acts/Conduct of Accused, Subordinates • Critical element of Prosecution case 	<ul style="list-style-type: none"> • See paras. 21 to 25 of Reply. • See para. 26 of Reply.
15.	Fifth Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone (S/1999/237)	<ul style="list-style-type: none"> • Irrelevant • Not susceptible of confirmation • Acts/Conduct of Accused, Subordinates • Critical element of Prosecution case 	<ul style="list-style-type: none"> • See para. 17 of Reply. • See paras. 18 & 19 of Reply. • See paras. 21 to 25 of Reply. <ul style="list-style-type: none"> ○ Contrary to Defence statements in Annex A of the Response, no reference contained in para. 4 of this document that arms being provided from outside the country including from Liberia. Instead, the document refers at para. 4 to Liberian mercenaries. The acts of such mercenaries cannot be equated with the acts and conduct of the Accused. • See para. 26 of Reply. • In addition, it is clear that the sentence at paragraph 45 in respect of which admission is sought relates to

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		<p>condemnation of atrocities. It is unclear what else is required from the remainder of the paragraph in order to understand further this condemnation.</p> <ul style="list-style-type: none"> • As is plain from the Motion, the Prosecution does not seek admission of the map. Therefore, the objection on this point is irrelevant.
<p>16. Security Council Resolution 1231 (1999)</p>	<ul style="list-style-type: none"> • Acts/Conduct of Accused, Subordinates • Critical element of Prosecution case 	<ul style="list-style-type: none"> • See paras. 21 to 25 of Reply. <ul style="list-style-type: none"> ○ Concern regarding supply of arms and mercenaries expressed at para. 5 is that of the Security Council and cannot be equated with the acts and conduct of the accused. • See para. 26 of Reply.
<p>17. Sierra Leone Humanitarian Situation Report 1-17 May 1999</p>	<ul style="list-style-type: none"> • Not susceptible of confirmation 	<ul style="list-style-type: none"> • See paras. 18 & 19 of Reply.
<p>18. Sixth Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone, (S/1999/645)</p>	<ul style="list-style-type: none"> • Not susceptible of confirmation • Acts/Conduct of Accused, Subordinates • Critical element of Prosecution case 	<ul style="list-style-type: none"> • See paras. 18 & 19 of Reply. • See paras. 21 to 25 of Reply. <ul style="list-style-type: none"> ○ Statements of ECOMOG Force Commander are the acts and conduct of that commander and cannot be equated to the acts and conduct of the Accused (para. 13). • See para. 26 of Reply. • The comment regarding the prejudicial

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			effect of the combined evidence should be dismissed. The purpose of the Prosecution case is to present evidence which will, when combined, prove the guilt of the Accused. The Prosecution cannot be prevented in its task on this basis.
19.	Sierra Leone Humanitarian Situation Report, 18 May - 11 June 1999	<ul style="list-style-type: none"> • Not susceptible of confirmation 	<ul style="list-style-type: none"> • See paras. 18 & 19 of Reply.
20.	Sierra Leone Humanitarian Situation Report 17 Jul - 10 Aug 1999	<ul style="list-style-type: none"> • Not susceptible of confirmation • Acts/Conduct of Accused, Subordinates 	<ul style="list-style-type: none"> • See paras. 18 & 19 of Reply. • See paras. 21 to 25 of Reply. <ul style="list-style-type: none"> ○ Contrary to Defence, no reference in extracts to Sam Bockarie.
21.	Sierra Leone Humanitarian Situation Report 03-09 Oct. 1999	<ul style="list-style-type: none"> • Not susceptible of confirmation • Acts/Conduct of Accused, Subordinates 	<ul style="list-style-type: none"> • See paras. 18 & 19 of Reply. • See paras. 21 to 25 of Reply. <ul style="list-style-type: none"> ○ Contrary to Defence, no reference in extracts to Mike Lamin.
22.	Security Council Resolution 1270 (1999)	<ul style="list-style-type: none"> • No Objection 	<ul style="list-style-type: none"> • No Objection
23.	Security Council Resolution 1289 (2000)	<ul style="list-style-type: none"> • Critical element of Prosecution case 	<ul style="list-style-type: none"> • See para. 26 of Reply.
24.	Sierra Leone: Humanitarian Situation Report 10 to 24 July 2000	<ul style="list-style-type: none"> • No objection highlighted 	<ul style="list-style-type: none"> • Would appear from explanation that Defence object to this document on the basis that it is not susceptible of confirmation. • See paras. 18 & 19 of Reply.
25.	Security Council Resolution 1313	<ul style="list-style-type: none"> • No Objection 	<ul style="list-style-type: none"> • No Objection

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26.	(2000) Sierra Leonean Humanitarian Situation Report 25 Jul - 07 Aug 2000	<ul style="list-style-type: none"> • Not susceptible of confirmation • Acts/Conduct of Accused, Subordinates 	<ul style="list-style-type: none"> • See paras. 18 & 19 of Reply. • See paras. 21 to 25 of Reply. <ul style="list-style-type: none"> ○ Defence objection regarding visit of Adeniji unfounded. Information relates to acts and conduct of Adeniji and not to the Accused.
27.	Report of the Security Council Mission to Sierra Leone (S/2000/992)	<ul style="list-style-type: none"> • Not susceptible of confirmation • Acts/Conduct of Accused, Subordinates • Critical element of Prosecution case 	<ul style="list-style-type: none"> • See paras. 18 & 19 of Reply. • See paras. 21 to 25 of Reply. <ul style="list-style-type: none"> ○ UN Mission visit to Liberia relates to acts and conduct of UN mission not accused (para. 4) ○ Allegations made by others regarding Accused are not acts and conduct of Accused but of those making allegations (paras. 23, 30, 33, 43, 54(d)). ○ Acts of Obasanjo cannot be equated to acts and conduct of Accused. They are, on a common sense basis, the acts and conduct of Obasanjo (paras. 25-26). • See para. 26 of Reply.
28.	Letter and Report of the Security Council Committee established pursuant to resolution 1132 (1997) <i>Prosecutor v Taylor</i> , SCSL-03-01-T	<ul style="list-style-type: none"> • Acts/Conduct of Accused, Subordinates • Critical element of Prosecution case 	<ul style="list-style-type: none"> • See paras. 21 to 25 of Reply. • See para. 26 of Reply.

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<p>concerning Sierra Leone (S/2000/1238)</p>	<p>Security Council Resolution 1346 (2001)</p>	<ul style="list-style-type: none"> • Acts/Conduct of Accused, Subordinates • Critical element of Prosecution case 	<ul style="list-style-type: none"> • Contrary to Defence, no reference in extracts to Mike Lamin. • See paras. 21 to 25 of Reply. <ul style="list-style-type: none"> ○ “Liberia” is used in this document in a geographic sense and not in a political sense. The Defence objections that the terms should be equated to the Accused are, therefore, without merit and should be dismissed. • See para. 26 of Reply.
<p>30.</p>	<p>Security Council Committee Names RUF Members subject to Expulsion from Liberia</p>	<ul style="list-style-type: none"> • Not susceptible of confirmation • Acts/Conduct of Accused, Subordinates • Critical element of Prosecution case 	<ul style="list-style-type: none"> • See paras. 18 & 19 of Reply. • See paras. 22 to 25 of Reply. • See para. 26 of Reply.
<p>31.</p>	<p>First report of the Secretary-General pursuant to Security Council resolution 1343 (2001) regarding Liberia (S/2001/424)</p>	<ul style="list-style-type: none"> • Not susceptible of confirmation • Acts/Conduct of Accused, Subordinates • Critical element of Prosecution case 	<ul style="list-style-type: none"> • See paras. 18 & 19 of Reply. • See paras. 21 to 25 of Reply. <ul style="list-style-type: none"> ○ Act of the Government of Sierra Leone is properly its own act and cannot be equated to the act and conduct of the Accused (para. 15) ○ UNAMSIL’s assessment regarding links between Liberia and RUF is the act of UNAMSIL and not that of the Accused (para. 17). ○ Allegations regarding training camps are the acts of the sources

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			and not of the Accused (paras. 30) <ul style="list-style-type: none"> ○ Allegations made at paras. 39 and 41 cannot be equated with the Accused as they are the acts and conduct of those who made the allegations. ● See para. 26 of Reply. ● See para. 26 of Reply.
32.	Security Council Resolution 1385 (2001)	<ul style="list-style-type: none"> ● Critical element of Prosecution case 	<ul style="list-style-type: none"> ● See paras. 21 to 25 of Reply. ○ “Liberia” is used in geographic sense in para. 5. This cannot be equated with acts and conduct of the Accused. ○ Other references to Liberia are made in a passive sense and relate to actions which others (including international bodies) may take in relation to Liberia (see paras. 15-17). This cannot be equated with acts and conduct of the Accused. ● See para. 26 of Reply.
33.	Letter and Report of the Security Council Committee established pursuant to resolution 1343 (2001) concerning Liberia	<ul style="list-style-type: none"> ● Acts/Conduct of Accused, Subordinates ● Critical element of Prosecution case 	
34.	Security Council Resolution 1408 (2002)	<ul style="list-style-type: none"> ● Acts/Conduct of Accused, Subordinates 	<ul style="list-style-type: none"> ● See paras. 21 to 25 of Reply. ○ Objections relate to findings made by Panel of Experts regarding Liberia. Findings are those of the Panel itself and cannot be equated to acts and

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			<p>conduct of the Accused.</p> <ul style="list-style-type: none">○ Determinations and decisions of the Security Council (SC) regarding Liberia are those of the SC and cannot be considered those of the Accused.○ Further, calls by the SC for the Government of Liberia and others to take certain steps are the acts and conduct of the SC and not of the Accused.
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