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SCSL-03-01-T
(26797-26812)

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THE SPECIAL COURT FOR SIERRA LEONE

Trial Chamber II

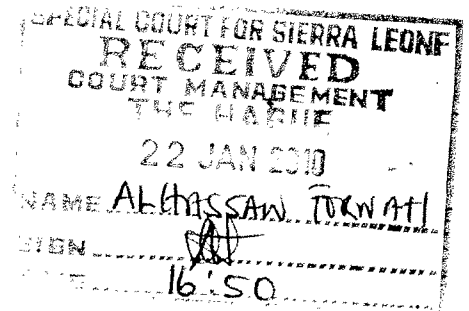
Before: Justice Julia Sebutinde, Presiding
Justice Richard Lussick
Justice Teresa Doherty
Justice El Hadji Malick Sow, Alternate

Acting Registrar: Ms. Binta Mansaray

Date: 22 January 2010

Case No.: SCSL-03-01-T

THE PROSECUTOR
-v-
CHARLES GHANKAY TAYLOR



**DEFENCE RESPONSE TO THE PUBLIC WITH ANNEX A AND
CONFIDENTIAL ANNEX B URGENT APPLICATION FOR LEAVE TO
APPEAL ORAL DECISIONS OF 14 JANUARY 2010 ON USE OF DOCUMENTS
IN CROSS-EXAMINATION**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
Ms. Nina Jørgensen
Ms. Kathryn Howarth

Counsel for the Accused:

Mr. Courtenay Griffiths, Q.C.
Mr. Terry Munyard
Mr. Morris Anyah
Mr. Silas Chekera
Mr. James Supuwood

I. INTRODUCTION

1. The Defence files this Response to the Prosecution's Public with Annex A and Confidential Annex B Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-Examination ("the Application").¹
2. The Prosecution filed the Application following the Trial Chamber's oral decisions of 14 January 2010, on the use by the Prosecution of certain documents in the cross-examination of the Accused. The first of these documents is a declaration by one Mia Farrow dated 9 November 2009, ("Mia Farrow Declaration"). The second document is an excerpt, page 270, of the book: "ECOMOG, A Sub-Regional Experience in Conflict Resolution, Management and Peacekeeping in Liberia", by Lieutenant Colonel F.B. Aboagye ("ECOMOG book").²
3. In its oral decisions of the 14th January 2010 (the "Oral Decision"), the Trial Chamber applied the test it had laid down in a previous decision relating to the use of documents containing fresh evidence during cross-examination ("Documents Decision").³ In the present Application the Prosecution argues that in making those oral decisions, the Trial Chamber erred in its application of the Documents Decision test as it relates to the use of fresh evidence for purposes of cross-examination. Those errors, the Prosecution argues amount to "exceptional circumstances" and could result in "irreparable damage".⁴ Consequently, leave to appeal the oral decisions should be granted.
4. The Defence submits that the Application does not meet the conjunctive "exceptional circumstances" and "irreparable damage" threshold under Rule 73 (B). Therefore, leave to appeal should be denied.

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-875, "Public with Annex A and Confidential Annex B Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-Examination," 18 January 2010 (the "Application").

² The Application, at para 1.

³ *Prosecution v. Taylor*, SCSL-03-01-T, Transcript, 14 January 2010, p. 33348-49 (the "Oral Decision"). see also *Prosecutor v. Taylor*, SCSL-03-01-T-865, "Decision on Prosecution Motion in Relation to the Applicable Legal Standards governing the Use and Admission of Documents by the Prosecution during Cross-Examination", 30 November 2009 ("Documents Decision").

⁴ The Application, at para. 8.

II. APPLICABLE LEGAL STANDARD

5. The legal standard for leave to appeal is set out in Rule 73(B) of the Rules, which provides that:

“[oral] decisions are without interlocutory appeal. However in exceptional circumstances and to avoid irreparable prejudice to a party, the Trial Chamber may give leave to appeal.”

6. Trial Chamber I has ruled that an interlocutory appeal does not lie as of right. The party seeking leave to appeal must meet the conjunctive conditions of “exceptional circumstances” and “irreparable prejudice” before the Trial Chamber can exercise its discretion.⁵ “Exceptional circumstances may exist depending upon particular facts and circumstances, where for instance... the course of justice might be interfered with or it is of fundamental legal importance.”⁶

7. Rule 73(B) is therefore a very restrictive provision.⁷ The main purpose behind this is to ensure that interlocutory appeals only proceed in very limited and exceptional situations. The rationale behind this rule is that criminal trials must not be heavily encumbered and consequently unduly delayed by interlocutory appeals. The Appeals Chamber has however noted that although most decisions will be capable of disposal at final appeal “the underlying rationale for allowing such appeals is that certain matters cannot be cured or resolved by final appeal against judgment.”⁸

III. ARGUMENT

Exceptional Circumstances

8. Under this heading, the Application is primarily founded on the allegation that the Trial Chamber erred in its application of the two-pronged test in the Documents

⁵ *Prosecutor v. Sesay et al.*, SCSL-2004-15-PT, “Decision on the Prosecutor’s Application for Leave to File an Interlocutory Appeal against the Decision on the Prosecution Motion for Joinder,” 13 February 2004, at para. 10.

⁶ *Prosecutor v. Sesay et al.*, SCSL-2004-15-T-357, “Decision on Defence Applications for Leave to Appeal Ruling of 3 February 2005 on the Exclusion of Statements of Witness TF1-141,” 28 April 2005, at para. 26.

⁷ *Prosecutor v. Sesay et al.*, SCSL-2004-15-PT, “Decision on the Prosecutor’s Application for Leave to File an Interlocutory Appeal against the Decision on the Prosecution Motion for Joinder,” 13 February 2004, para. 11.

⁸ *Prosecutor v. Norman et al.*, SCSL-04-14-T-669, “Decision on Prosecution Appeal against Trial Chamber Decision of 2 August 2004 Refusing Leave to File an Interlocutory Appeal,” 17 January 2005, at para 29.

Decision in so far as it relates to the use of fresh evidence for purposes of cross-examining the Accused. This test provides separate legal standards for the *use* and for the *admission into evidence* of fresh evidence probative of the guilt of the Accused. Under this test, for fresh evidence probative of guilt of the Accused to be used in cross-examining the Accused, the Prosecution must show that it is in the *interest of justice* that it should be allowed to use that evidence; and secondly, that the use of such evidence would *not violate the fair trial rights of the accused*. Further, for that same evidence to be admitted into evidence, the Prosecution must establish *exceptional circumstances* justifying admission of the evidence.

9. The Prosecution argues that this test, as applied in the Oral Decision, with respect to the use of fresh evidence for purposes of cross-examining the Accused, imports an unduly high standard that is inconsistent with established jurisprudence. In particular, the Prosecution refers to the *Prlić* ICTY Trial Chamber Decision, which it argues, allows for a rote use any document for purposes of cross-examination with the honourous legal standard only applying at the admission stage.⁹
10. In the present case, the Prosecution argues that the Trial Chamber erroneously applied the conditions for admissibility at the presentation/use stage.¹⁰ In other words, that the Trial Chamber should have blindly allowed the documents in issue to be used in the cross-examination of the Accused regardless of the uncontested fact that they are probative of the guilt of the Accused.
11. The Prosecution's argument is fundamentally flawed on many levels. Firstly, the argument is erroneously premised on the principle of precedent, that is, that the Trial Chamber ought to have followed the ICTY decisions. While it is desirable that there should be uniformity in the jurisprudence of international tribunal and while, indeed, the Trial Chamber could be guided by the decisions of other tribunals, which in fact are opinions of other courts; it is none the less not bound by them and may depart from such decisions.

⁹ The Application, at para. 10. citing *Prosecutor v. Prlic*, IT-04- 74-T, "Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses," 27 November 2008; *Prosecutor v. Prlic*, IT-04-74-AR73.14, "Decision on the Interlocutory Appeal against the Trial Chamber's Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses" , 26 February 2009.; and *Prosecutor v. Prlic*, IT-04- 74-T, "Ordonnance portant clarification de la Decision du 27 Novembre 2008", 12 January 2010.

¹⁰ Paras 9-11 of the Application.

12. This follows from the inherent jurisdiction a Trial Chamber has, to conduct a trial in a manner which will best favour a fair determination of the matter before it, of course, consonant with the spirit of the Statute and other general principles of law.
13. Further, even if Trial Chamber were bound by the ICTY precedents, which it is not, the cases relied on by the Prosecution did not directly address the situation that was before the Trial Chamber; where the new evidence sought to be presented for the cross-examination of the Accused not only sought to impeach his evidence but also inculpated him. Thus, while indeed, documents may be used in cross-examination in order to elicit a response from a witness,¹¹ in the interests of justice, the Trial Chamber bears the responsibility to try to strike a balance between the Prosecution's ability to adequately cross-examine the Accused and the Accused rights to a fair trial where the document concerned contains fresh evidence that goes to impeachment and, at the same time, contains evidence probative of the guilt of the Accused. The two-pronged test devised by the Trial Chamber in the Documents Decision, as applied in the Oral Decision, attempts to strike that delicate balance.
14. The need to strike this delicate balance becomes manifestly clear if bears in mind that, as the Prosecution admits,¹² at the *presentation/use* stage, a party does not have to provide any justification for the intended use of a document in cross-examination. Therefore, at that stage, it is everyone's guess what the document sought to be presented is designed to achieve. It could well be probative of the Accused's guilt. Consequently, the court must always be on guard to ensure that, *inter alia*, the Accused's fair trial rights are protected.
15. Indeed, as the Presiding Judge went on to clarify that, "... in determining objections based on the content of a document and its use in court in cross-examination, the intention or purpose for which the Prosecution intends it is immaterial and irrelevant in our determination of whether the document will or will not be used. What is relevant and what is important is whether potentially the passage contains material that is probative of guilt. It's not the intention for which it is meant but rather the

¹¹ The Application, at para.10.

¹² *Id.*

content.”¹³ In those circumstances, as argued above, the Trial Chamber has the omnipresent duty to lookout for the Accused’s fair trial rights balanced against the interests of justice.

16. It is therefore contested that the Trial Chamber’s decision imports honourous conditions that depart from the established jurisprudence on the use of fresh evidence probative of the guilt of the Accused for purposes of cross-examining the Accused. The approach that was taken by the Trial Chamber is consistent with its duty to conduct a trial in the manner that best serves the interests of justice, while at the same time, paying due regard to the Accused’s fair trial rights. Consequently, no exceptional circumstances arise and leave to appeal must be denied.
17. The Prosecution also raises other ancillary arguments under the rubric of *exceptional circumstances*, which are best dealt with by reference to the specific paragraphs in the Application, as follows:

Ad. paras. 12 - 14

18. In these paragraphs, the Prosecution deals with the Trial Chamber’s Oral Decision in relation to the Mia Farrow Declaration.¹⁴ Notably, while in paragraph 12, the Prosecution appears to challenge the application of the Documents Decision to Mia Farrow Declaration,¹⁵ thus implicitly acknowledging the propriety of the test; in paragraphs 13 and 14, it goes on to challenge substance of the very same test. The Prosecution is expected to know its case and should not be allowed to approbate and reprobate.
19. It is submitted that there was nothing remiss in the Trial Chamber’s refusal to allow fresh evidence in cross-examination of a third generation hearsay nature, which inculcates the Accused to the extent that it, *inter alia*, affected the Accused’s fair trial rights.
20. Indeed, while it is established in the practice of this court that relevant hearsay evidence is admissible, a distinction must be drawn between hearsay evidence that is adduced during the Prosecution’s case by the means through which the Accused has

¹³ *Prosecutor v. Taylor*, SCSL-03-01-T, Transcript, 21 January 2010, at p. 22818, ln. 12-20.

¹⁴ The Application, at para. 5, 12-14. see the Application’s reference to the “First Impugned Decision” in para. 5 of the Application.

¹⁵ *Id.*

the opportunity to challenge its veracity and content, and hearsay evidence of a third generation nature that is not only adduced after the Prosecution's case but is also highly inculpatory. In those circumstances, in the interests of justice and in order to safeguard the Accused's fair trial rights, the Trial Chamber has the discretion to set the parameters for the use of such evidence.¹⁶

Ad. paras. 15 and 16.

21. In these paragraphs, the Prosecution alleges exceptional circumstances in respect of the ECOMOG Document.¹⁷ The respective arguments in paragraph 15 and 16 can be disposed of by reference to the principal arguments in this Response. With respect to paragraph 16, as argued above, the determining factor is not what a document is sought to be presented for, which at law a party is not obliged to disclose, but rather its contents. What is important and material is whether the document contains evidence that is probative of the guilt of the Accused, and where it does, the ensuing inherent duty on the Trial Chamber to ensure that any use of such a document serves the interests of justice and does not prejudice the Accused's fair trial rights.

Ad. para. 17

22. While it is admitted that the issue in dispute has recurred in subsequent court proceedings and is likely to arise again, the proposition by the Prosecution that the recurrence of a legal issue automatically translates it to one of fundamental legal importance, has no basis in law and in logic. The issue in dispute in this case is a simple procedural matter within the discretion of the Trial Chamber. In this regard, it is important to recall that it is well-established that the Trial Chambers exercise broad discretion on evidentiary issues and that the Appeals Chambers generally defer to them in such matters.¹⁸ A mere recurrence of the issue in dispute in this case in itself, therefore, does not translate to exceptional circumstances.

¹⁶ The Statute of the Special Court for Sierra Leone, at Art. 17.

¹⁷ The Application, at para. 6. See the Application's reference to the "Second Impugned Decision" in para. 6 of the Application.

¹⁸ *Prosecutor v. Prlic*, IT-04-74-AR73.14, "Decision on the Interlocutory Appeal against the Trial Chamber's Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses," 26 February 2009.

Ad. paras. 18 - 22

23. In paragraphs 18-22, the Prosecution argues that there is a risk that the course of justice would be interfered with if it is not allowed to use the two documents in issue to cross-examine the Accused. The Prosecution argues that the approach adopted by the Trial Chamber prevents it from fully exercising its right to test the evidence of the Accused in cross-examination. This in turn, the Prosecution further argues, deprives the Trial Chamber of information relevant to determining what weight should be given to the testimony of the Accused, *or, in some instances, of the evidence that is relevant to prove guilt* [emphasis added].¹⁹
24. In paragraphs 19 and 20, Prosecution avers that the documents concerned would have aided its cross-examination of the Accused on his alleged possession of diamonds and his capacity to ship arms to the RUF in Sierra Leone.
25. While in paragraph 18, the Prosecution is expressly clear that one of the reasons for seeking to use the two documents in issue was to avail the Trial Chamber of evidence relevant to the proof of guilt of the Accused, the Prosecution goes on to recant in paragraph 21, where it avers that at all material times, it only sought to use the documents to challenge the Accused's credibility. Again, the Prosecution shows itself to approbate and reprobate.
26. Be that as it may, as highlighted above, it is not the purpose for which a document is sought to be presented that matters. It is the content that matters.
27. In any event, there is no risk of the Trial Chamber's decision interfering with the course of justice for the simple reason that, if the proposed use of the documents in issue were simply to test the Accused's credibility, then this purpose could be achieved through other means that would not necessarily, *inter alia*, interfere with the Accused's fair trial rights. As the Trial Chamber was at pains to explain in relation to the ECOMOG Document, "... the claims [by the Prosecution] that they have no other means to challenge and test the accused's evidence on the points in issue, and whether this document [ECOMOG Document] is allowed to be used or not does not affect the Prosecution's ability to effectively cross-examine." Indeed, the very same

¹⁹ The Application, at para. 18.

information that is in the documents could be put directly to the Accused without recourse to the documents as independent sources of evidence.

IV. CONCLUSION

28. For the same reason given above, the Prosecution's case suffers no irreparable prejudice from the exclusion of the documents in issue.
29. For the all or any one or more of the foregoing reasons, the Prosecution's case fails the conjunctive exceptional circumstances and irreparable prejudice test. Leave to appeal must therefore be denied.

Respectfully Submitted,



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 22nd Day of January 2010
The Hague, The Netherlands

List of Authorities

SCSL

The Statute of the Special Court for Sierra Leone

The Prosecutor v. Taylor

Prosecutor v. Taylor, SCSL-03-01-T-875, “Public with Annex A and Confidential Annex B Urgent Application for Leave to Appeal Oral Decisions of 14 January 2010 on Use of Documents in Cross-Examination”, 18 January 2010.

Prosecutor v. Taylor, SCSL-03-01-T-865, “Decision on Prosecution Motion in Relation to the Applicable Legal Standards governing the Use and Admission of Documents by the Prosecution during Cross-Examination”, 30 November 2009.

Prosecution v. Taylor, SCSL-03-01-T, Transcript, 14 January 2010

Prosecutor v. Taylor, SCSL-03-01-T, Transcript, 21 January 2010

RUF

Prosecutor v. Sesay et al., SCSL-2004-15-PT, “Decision on the Prosecutor’s Application for Leave to File an Interlocutory Appeal against the Decision on the Prosecution Motion for Joinder,” 13 February 2004

Prosecutor v. Sesay et al., SCSL-2004-15-T-357, “Decision on Defence Applications for Leave to Appeal Ruling of 3 February 2005 on the Exclusion of Statements of Witness TF1-141,” 28 April 2005

CDF

Prosecutor v. Norman et al., SCSL-04-14-T-669, “Decision on Prosecution Appeal against Trial Chamber Decision of 2 August 2004 Refusing Leave to File an Interlocutory Appeal,” 17 January 2005

ICTY

Prosecutor v. Prlic, IT-04-74-T, "Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses," 27 November 2008.
<http://www.icty.org/x/cases/prlic/tdec/en/081127b.pdf>

Prosecutor v. Prlic, IT-04-74-AR73.14, "Decision on the Interlocutory Appeal against the Trial Chamber's Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses," 26 February 2009.

<http://www.icty.org/x/cases/prlic/acdec/en/090226.pdf>

Prosecutor v. Prlic, IT-04- 74-T, "Order Clarifying Decision of 27 November 2008" 12
January 2010.

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**UNITED
NATIONS**

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18 January 2010

5/57647 BIS
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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 No.: IT-04-74-T
Date: 12 January 2010
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, presiding
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr John Hocking

Order of: 12 January 2010

THE PROSECUTOR

v.

**Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ**

PUBLIC

ORDER CLARIFYING DECISION OF 27 NOVEMBER 2008

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Douglas Stringer

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Karim A.A. Khan for Bruno Stojčić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašegović-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

TRIAL CHAMBER III ("Chamber") of the 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 ("Tribunal"),

SEIZED of the "Prosecution Motion for Clarification on the Use of 'New' Documents During Cross-Examination", filed publicly by the Office of the Prosecutor ("Prosecution") on 30 November 2009 ("Motion"), in which the Prosecution asks the Chamber to clarify the manner of application of the "Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses" of 27 November 2008 ("Decision of 27 November 2008"), and in particular the procedure related to the use of "new documents" during the cross-examination of defence witnesses,¹

NOTING the "Joint Response of Accused Stojić, Praljak, Petković, Ćorić and Pušić to the Prosecution's 30 November 2009 Motion for Clarification on the Use of "New" Documents During Cross-Examination", filed jointly and publicly by the Defence teams for the Accused Bruno Stojić, Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušić ("Joint Defence"²) on 8 December 2009 ("Joint Response"), in which the Joint Defence requests that the Chamber reject the Prosecution Motion,³

CONSIDERING that the Prlić Defence did not file a response to the Motion,

NOTING the "Decision on the Interlocutory Appeal Against the Trial Chamber's Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses", rendered publicly by the Appeals Chamber on 26 February 2009, in which the Appeals Chamber upheld the Decision of 27 November 2008,⁴

CONSIDERING as a preliminary matter that the Chamber notes that the Joint Defence filed its Joint Response on 8 December 2009, which is one day after the

¹ Motion, paras 1, 5, 10 and 22 and footnote 3.

² Since the Stojić, Praljak, Petković, Ćorić and Pušić Defence teams filed a Joint Response to the Prosecution Motion, the Chamber will refer to the "Joint Defence" as an entity for this Decision.

³ Response, paras 5 and 6.

⁴ *The Prosecutor v. Prlić et al.* Case No. IT-04-74-AR73.14, "Decision on the Interlocutory Appeal Against the Trial Chamber's Decision on Presentation of Documents by the Prosecution in Cross-Examination of Defence Witnesses", public, 26 February 2009 ("Appeals Chamber Decision of 26 February 2009"), paras 23 to 31.

deadline set by the Chamber;⁵ that it decides, however, as an exception and in keeping with the subject of the Motion, that it is in the interest of justice to admit the Joint Response; that the Chamber nevertheless orders the Parties, in the future, to adhere strictly to set deadlines,

CONSIDERING that the Chamber notes that in its Motion, the Prosecution argues that when it wishes to use “new documents” during the cross-examination of a Defence witness, it is not required in advance to state its intention, or to give an explanation or seek permission of the Trial Chamber before using it;⁶ that if it later wishes to tender these “new documents” for admission, it will have to adhere to the Chamber's admissibility criteria defined in the Decision of 27 November 2008;⁷ that, furthermore, the defence teams were unable to prove that the Prosecution use of the “new documents” in court caused any specific prejudice and that like the approach adopted by the Chamber for the cross-examination of Prosecution witnesses by Defence teams, there can be no limitation on the presentation of “new documents” by the Prosecution;⁸

CONSIDERING that in the Joint Response, the Joint Defence argues firstly that the Prosecution is using the Motion to dispute the Decision of 27 November 2008 under the pretext of seeking clarification;⁹ that secondly, a clarification of the Decision of 27 November 2008 is unnecessary since the said Decision clearly stipulates that the Prosecution may present “new documents” during the cross-examination for the purpose of testing a Defence witness's credibility or refreshing his memory but that the Prosecution presentation of “new documents” must be justified by exceptional reasons and requires the prior permission of the Chamber,¹⁰

CONSIDERING that like the argument put forth by the Prosecution, the Chamber recognises that the use of “new documents” during the cross-examination of a Defence witness and a request by the Prosecution to tender the “new documents” into evidence constitute two separate stages regulated by different procedures,

⁵ Chamber's email addressed to the Parties setting a deadline for filing the Prosecution Motion and responses from the parties, 23 November 2009.

⁶ Motion, paras 5, 11-15 and 22.

⁷ Motion, paras 5, 19 and 22.

⁸ Motion, paras 7 and 8.

⁹ Joint Response, para. 5 (i).

¹⁰ Joint Response, paras 5 (ii) to (iv).

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CONSIDERING that the Chamber further notes that this distinction between the procedure for using and the procedure for tendering "new documents" also applies to the Defence Teams whose cases have ended,

CONSIDERING that the Chamber recalls that while using "new documents" during the cross-examination of a Defence witness, whether the "new document" is used for the purpose of testing the credibility of that witness, refreshing his memory or establishing the guilt of one or more accused, the Prosecution and the Defence teams who have concluded their cases are not obliged to disclose their strategy; that consequently, they do not have to specify at that stage whether or not they wish subsequently to tender these "new documents"; that while using these "new documents" during the cross-examination of a Defence witness, the Prosecution and the Defence teams who have concluded their cases are not required to provide justifications regarding the use of the said documents,

CONSIDERING that the Chamber recalls that the Prosecution and the Defence teams who have concluded their cases and wish subsequently to tender "new documents" are required, when filing their respective IC lists, to specify their purpose for tendering these "new documents"; that when a party that has concluded its case requests the admission of "new documents" for the establishing the guilt of one or more Accused, it must at that moment specify the exceptional circumstances justifying the admission of these "new documents", namely the date of the documents and their source, the date when they were disclosed to the Defence teams and the reasons why these documents are being presented after the close of their respective cases;¹¹ that, in the spirit of clarification, the Chamber recalls that the an *inter partes* hearing will take place at this stage, namely during the motion for admission and that the objections related notably to the nature of the documents presented and formulated in court are therefore premature,

¹¹ "Decision of 27 November 2008," paras 20, 21, 23 and 24; "Appeals Chamber Decision of 26 February 2009," paras 24 and 30.

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FOR THE FOREGOING REASONS,

PURSUANT TO Articles 20 and 21 of the Statute of the Tribunal and Rules 54 and 85 (A), 89 (B) and 90 (H) of the Rules of Procedure and Evidence,

RECALLS that the parties who have concluded the presentation of their case do not have to justify the use of "new documents" in court when they are cross-examining a Defence witness, **AND**

INVITES the parties not to raise objections in court on the nature of the "new documents" and to reserve such objections for when these "new documents" are the subject of a request for admission,

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

/signed/

Judge Jean-Claude Antonetti
Presiding Judge

Done this 12 January 2010
At The Hague
The Netherlands

[Seal of the Tribunal]