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THE SPECIAL COURT FOR SIERRA LEONE

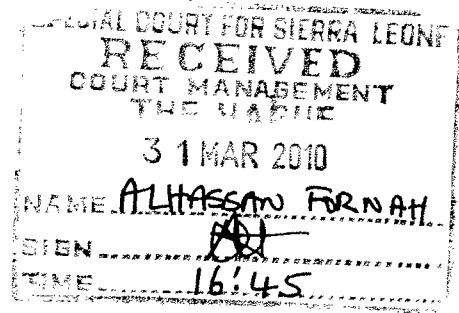
Trial Chamber II

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

Registrar: Ms. Binta Mansaray

Date: 31 March 2010

Case No.: SCSL-03-01-T



THE PROSECUTOR

-v-

CHARLES GHANKAY TAYLOR

PUBLIC

**DEFENCE REPLY TO PROSECUTION RESPONSE TO
DEFENCE APPLICATION FOR JUDICIAL NOTICE OF ADJUDICATED FACTS
FROM THE RUF TRIAL JUDGEMENT PURSUANT TO RULE 94(B)**

Office of the Prosecutor:

Ms. Brenda J. Hollis
Mr. Nicholas Koumjian
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Counsel for Charles G. Taylor:

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

I. Introduction

1. On 26 March 2010, the Prosecution filed a *Response to Defence Application for Judicial Notice of Adjudicated Facts from the RUF Trial Judgement pursuant to Rule 94(B)*.¹
2. In its Response, the Prosecution:
 - a. accepts seven proposed adjudicated facts in their entirety;²
 - b. has no objection to parts of nine other proposed adjudicated facts;³
 - c. would have no objection to nine proposed adjudicated facts if some amendments or additions were made to the text of the proposed facts;⁴ and
 - d. objects to the majority of the proposed adjudicated facts (in full or in part) on the basis that the facts go to “central issues” in the case and thus the Trial Chamber should not exercise its discretion in favour of admission.⁵
3. The Prosecution generally objects to the Defence Application⁶ on the basis that taking judicial notice of the proposed adjudicated facts: 1) would not be in the interests of justice, 2) would not promote judicial economy, and 3) that the Defence has failed to satisfy several underlying criteria for judicial notice of adjudicated facts.⁷
4. The Prosecution objections are without merit for the following reasons:
 - a. The Prosecution would not be unduly prejudiced by the admission of the proposed adjudicated facts, especially as the proposed adjudicated facts are largely based on the testimony of its own witnesses in the RUF case; and
 - b. The Prosecution seeks to put undue restrictions on the Trial Chamber’s discretion, especially by its overbroad definition of what constitutes a “central issue”.

¹ *Prosecutor v. Taylor*, SCSL-03-01-T-930, Public with Annex A Prosecution Response to Defence Application for Judicial Notice of Adjudicated Facts from the RUF Trial Judgement pursuant to Rule 94(B), 26 March 2010 (“**Response**”).

² Response, Annex A: The Prosecution has no objection to Fact 2, Fact 5, Fact 8, Fact 14, Fact 22, Fact 33, and Fact 34.

³ Response, Annex A: See part of Fact 1, Fact 4, Fact 6, Fact 9, Fact 15, Fact 18, Fact 31, Fact 36, and Fact 38.

⁴ Response, Annex A: Fact 4 (part), Fact 9 (part), Fact 12, Fact 13, Fact 17, Fact 25, Fact 29, Fact 37 (part), and Fact 45 (part).

⁵ Response, Annex A: Fact 1, Fact 3, Fact 4, Fact 6, Fact 7, Fact 9, Fact 10, Fact 11, Fact 15, Fact 16, Fact 18, Fact 19, Fact 20, Fact 21, Fact 23, Fact 24, Fact 25, Fact 26, Fact 27, Fact 28, Fact 29, Fact 30, Fact 31, Fact 32, Fact 35, Fact 36, Fact 37, Fact 38, Fact 39, Fact 40, Fact 41, Fact 42, Fact 43, Fact 44, Fact 45, Fact 46, and Fact 47.

⁶ *Prosecutor v. Taylor*, SCSL-03-01-T-928, Defence Application for Judicial Notice of Adjudicated Facts from RUF Trial Judgement pursuant to Rule 94(B), 16 March 2010 (“**Application**”).

⁷ Response, para. 2.

5. In light of some of the Prosecution objections to wording, the Defence would be amiable to making slight reformulations or amendments to Fact 4, Fact 10, Fact 12, Fact 13, Fact 25, Fact 29, Fact 44 and Fact 45 as set out in Annex A.
6. The Defence otherwise urges the Trial Chamber to admit all of the proposed adjudicated facts as set out in its Application in order to promote judicial economy and the harmonization of judgements rendered by the Special Court.

II. Submissions

No Undue Prejudice: Prosecution cannot now disown testimony of its witnesses from RUF Trial

7. The Prosecution at the Special Court is indivisible and cannot face in two opposite directions, so as to impeach its own witnesses relied on by Trial Chamber I to support a factual finding. Certainly the Prosecution must tailor the factual evidence in each case against a particular accused.⁸ However, it does not follow that the factual evidence, put on the record by predominately the same Prosecution witnesses in two different trials, should change so as to implicate the particular accused on trial.
8. One of the twin purposes of the doctrine of judicial notice is to harmonize judgements in relation to certain factual issues that arise in multiple cases before the Special Court.⁹ This purpose presupposes that the basic factual background cannot change between trials, regardless of which defendant is on trial.
9. The Prosecution cannot resile from its own witnesses, especially when the Trial Chamber bases its finding of fact on their testimony. As part of Annex A, the Defence has indicated which of the proposed adjudicated facts objected to by the Prosecution are in fact taken from Prosecution testimony in the RUF Trial. The Defence submits that there would be no undue prejudice to the Prosecution if the previous testimony of its own witnesses, as adjudicated in the RUF Trial Judgement, were given a “presumption of accuracy” in this trial; unless of course, the Prosecution is now advancing a different account simply in order to implicate the Accused in this case.

⁸ Response, para. 6 and 9.

⁹ *Prosecutor v. Taylor*, SCSL-03-01-T-765, Decision on Defence Application for Judicial Notice of Adjudicated Facts from the AFRC Trial Judgement Pursuant to Rule 94(B), 23 March 2009, para. 30 (“**Adjudicated AFRC Facts Decision**”).

10. It has apparently been the Prosecution's case from the beginning of the trials before the Special Court that the AFRC and RUF were acting in concert as part of a common plan, purpose or design to commit the same crimes in the course of the same transaction, and that the Accused was orchestrating the whole thing.¹⁰ If the Prosecution were prepared to join the trials against the AFRC and RUF accused, then the Prosecution must agree that the factual basis underlying the allegations is the same. It is illogical, therefore, for the Prosecution to argue that when the trials against the AFRC and RUF accused were kept separate, and when the current trial against the Accused took on a broader focus, the facts necessary to support the allegations somehow change.
11. Likewise, it is significant that both Trial Chamber I in the RUF Trial Judgement and Trial Chamber II in the AFRC Trial Judgement reached the same factual conclusion to form the basis of similar adjudicated facts from the AFRC and RUF Judgements.¹¹ Rather than confusing the evidentiary record of the current trial, this "overlapping" evidence provides greater support for the presumption of accuracy afforded to these facts and is a perfect example of the harmonization of factual issues between cases before the Special Court.

No Undue Prejudice: Prosecution's burden is to prove its case beyond a reasonable doubt

12. At all times, the Prosecution must prove its case beyond a reasonable doubt. The standard of proof required to establish guilt beyond a reasonable doubt is obviously higher than the standard of proof required to challenge adjudicated facts that may be afforded a rebuttable presumption of accuracy. The Prosecution disingenuously argues that it would be disadvantaged if the Trial Chamber took judicial notice of the proposed facts because it would have presented its entire case and cross-examined the Accused "without the knowledge of its burden to overcome a rebuttable presumption as to the veracity of certain now judicially noticed facts".¹² Overcoming a rebuttable presumption requires a lower standard of evidence than proving a fact beyond a reasonable doubt, which is what the Prosecution must have attempted to do throughout its case.

¹⁰ Response, para. 9.

¹¹ See contrary argument in Response, para. 18.

¹² Response, para. 17.

No Undue Prejudice: Timing of Defence Application

13. The RUF Appeals Judgement was filed in late October 2009.¹³ The Defence could not have filed an RUF adjudicated facts notice prior to the Appeals Judgement because some of the proposed adjudicated facts were being considered by the Appeals Chamber. By October 2009, the Defence case was already well underway. Rule 94(B) itself does not contain a limitation as to when facts may be adjudicated by the Trial Chamber.¹⁴ As this Trial Chamber has stated, to accept the Prosecution’s argument that it is too late to file an adjudicated facts application after the Defence case has begun would “lead to an unacceptable limitation of the application of Rule 94(B) to the pre-trial stage or to the Prosecution case”.¹⁵ It is notable that this Trial Chamber approved a number of adjudicated facts from the AFRC Trial Judgement essentially after the close of the Prosecution case.¹⁶
14. In regard to the “advanced” stage of the proceedings, the Prosecution continues to rely on case law that does not assist its position.¹⁷ It relies on *Ntakirutimana*, wherein the Prosecution brought an adjudicated facts motion after the close of its case, which was dismissed because taking judicial notice would not have advanced judicial economy. But in *Ntakirutimana*, only one of seven proposed adjudicated facts was dismissed on the basis that taking judicial notice of the issue would not assist judicial economy. Furthermore, in generally considering the issue, the Trial Chamber decided that they were “not inclined to view judicial notice as significantly influencing judicial economy” because the case itself was short – only 27 trial days for the Prosecution case and one month scheduled for the Defence case.¹⁸ The current case is obviously longer than a two month trial and so the time to be saved by adjudicating facts is more substantial.
15. The Prosecution also relies on *Hadzihasanovic*. There the Trial Chamber specifically addressed the question of the filing of such a motion very late in the proceedings.¹⁹ The Trial

¹³ *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-A, Appeals Judgment, 26 October 2009.

¹⁴ Trial Chamber I has suggested that such a motion should normally be brought prior to the close of a party’s case, and that even if it was brought after the case was closed, the timing would not serve as an absolute bar to the Chamber’s consideration. *Prosecutor v. Sesay, Kallon, Gbao*, SCSL-04-15-T-1184, Decision on Sesay Defence Application for Judicial Notice to be taken of Adjudicated facts under Rule 94(B), 23 June 2008, para. 28.

¹⁵ Adjudicated AFRC Facts Decision, para. 32.

¹⁶ Adjudicated AFRC Facts Decision, pg. 22.

¹⁷ Response, para. 16.

¹⁸ *Prosecutor v. Ntakirutimana*, ICTR-96-10-T and ICTR-96-17-T, Decision on the Prosecutor’s Motion for Judicial Notice of Adjudicated Facts, 22 November 2001, para. 52.

¹⁹ Response, para. 16.

Chamber in *Hadzihasanovic* then went on to grant the Defence application to the extent of judicially noting 39 adjudicated facts and dismissed the rest on grounds unaffected by the late stage of the proceedings. The Motion had been filed after both the OTP and Defence had finished presenting live evidence.²⁰ On the basis of this precedent, the Prosecution would not be unduly prejudiced by the admission of adjudicated facts at this stage.

16. The Prosecution also complains that if the Trial Chamber admitted the proposed adjudicated facts at this stage in the proceedings, it would require a “mental somersault” on the part of the Trial Chamber in terms of assessing the evidence at the end of the case.²¹ However, the Defence assumes that the Trial Chamber has not yet made a final determination on the accuracy, credibility or reliability of the Prosecution evidence, as the Defence case may impact its assessment in this regard. A presumption for the accuracy of adjudicated facts in comparison with contrary prosecution evidence is only one more factor for the Trial Chamber to consider when weighing all of the evidence at the conclusion of the case. A rebuttable presumption can obviously be rebutted at the end of the proceedings by the Trial Chamber considering all of the available evidence.
17. The Prosecution makes an internally inconsistent argument with respect to the volume of evidence already on the record and the need to call time-consuming rebuttal evidence.²² The Prosecution argues that the volume of evidence already led in respect to issues raised in the adjudicated facts militates against taking judicial notice of them. But as the Prosecution demonstrates in paragraphs 10 and 11 of its Response, the Trial Chamber has “received extensive testimony on these issues”. Therefore there is little need for extensive rebuttal evidence, and the Prosecution cannot use that as a reason negating judicial economy at this stage of the proceedings.

The Prosecution’s Interpretation of what Constitutes a “Central Issue” is Too Broad

18. The Defence notes at the outset that there is no prohibition on the admission of facts that may be deemed to go to central issues in a case, save that it is a discretionary consideration for the

²⁰ *Prosecutor v. Hadzihasanovic and Kubura*, IT-01-47-T, Decision on Judicial Notice of Adjudicated Facts Following the Motion Submitted by Counsel for the Accused Hadzihasanovic and Kubura on 20 January 2005, 14 April 2005.

²¹ Response, para. 19. Note that the Prosecution had the same concern in *Prosecutor v. Taylor*, SCSL-03-01-T-738, Prosecution Response to Defence Application for Judicial Notice of Adjudicated Facts from the AFRC Trial Judgement pursuant to Rule 94(B), 19 February 2009, para. 13.

²² Response, para. 18.

Trial Chamber. This Trial Chamber in its Adjudicated AFRC Facts Decision has already ascertained that facts dealing with the relationship between the AFRC and the RUF or their respective organization, while perhaps going to a central issue in the case, do not need to be excluded on that basis, as long as do not discuss the relationship of these two organizations with the Accused.²³ This Trial Chamber has also determined that facts dealing with the arms supply to one of the major rebel groups operating in the armed conflict in Sierra Leone may properly be the subject of an adjudicated fact, despite their centrality to the case.²⁴

19. The Prosecution's wide interpretation of what constitutes a central issue in this case unduly restricts the Trial Chamber's discretion to admit relevant facts from prior proceedings before the Special Court. The Prosecution would have the Trial Chamber believe that any fact (inconvenient to them) that discusses the relationship between the AFRC and RUF or any hierarchy of commanders within or between the AFRC and RUF groups is a central issue and thus inadmissible as an adjudicated. To follow such an argument to its logical conclusion would mean that only facts of peripheral relevance would not be appropriate candidates for judicial notice. As explained above, this is not the approach taken previously by this Trial Chamber.
20. Justice Doherty has opined that a central issue is "more than merely relevant but does not extend to the actual acts and conduct of the accused".²⁵ The Learned Justice suggests that facts that fall geographically and temporally outside the indictment period, such as the relationship between SAJ Musa and members of the RUF, are not sufficiently central to preclude the Chamber from exercising its discretion to have them judicially noted.²⁶
21. The Prosecution relies on *Popovic* to support its claim that the Trial Chamber should not take judicial notice of facts relating to central issues. However, in the *Popovic* decision, the ICTY Trial Chamber determined that because some of the proposed adjudicated facts went to issues which were at the "core" of the case, those facts would be excluded after balancing judicial economy with the Accused's right to a fair and public trial.²⁷ The *Popovic* decision turned on protecting the Accused's right to a fair trial as enshrined in the Statute.

²³ Adjudicated AFRC Facts Decision, paras. 41, 54 and 66.

²⁴ Adjudicated AFRC Facts Decision, paras. 61-62.

²⁵ Adjudicated AFRC Facts Decision, Separate and Partly Dissenting Opinion of Justice Teresa Doherty, para. 4.

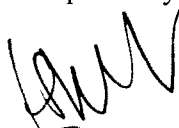
²⁶ *Ibid*, para. 7.


²⁷ *Prosecutor v. Popovic et al*, IT-05-88-T, Decision on Prosecution Motion for Judicial Notice of Adjudicated Facts with Annex, 26 September 2006, para. 19 (emphasis added).

III. Conclusion

22. Given the Prosecution and Defence agreement in relation to Facts 2, 5, 8, 14, 22, 33 and 34, and as amended Facts 4, 10, 12, 13, 25, 29, 44 and 45, the Trial Chamber should exercise its discretion in favour of their admission as adjudicated facts.
23. In order to promote judicial economy and the harmonization of factual issues in the judgements before the Special Court, subject to this reply, the Trial Chamber should exercise its discretion and grant the Defence Application.

Respectfully Submitted,


SUN S OTE KELA



Courtenay Griffiths, Q.C.
Lead Counsel for Charles G. Taylor
Dated this 31st Day of March 2010
The Hague, The Netherlands

Table of Authorities

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Prosecutor v. Sesay, Kallon, Gbao, SCSL-04-15-T, Trial Judgement, 2 March 2009

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Prosecutor v. Taylor, SCSL-03-01-T-738, Prosecution Response to Defence Application for Judicial Notice of Adjudicated Facts from the AFRC Trial Judgement pursuant to Rule 94(B), 19 February 2009

Prosecutor v. Taylor, SCSL-03-01-T-765, Decision on Defence Application for Judicial Notice of Adjudicated Facts from the AFRC Trial Judgement Pursuant to Rule 94(B), 23 March 2009

Prosecutor v. Taylor, SCSL-03-01-T-928, Defence Application for Judicial Notice of Adjudicated Facts from RUF Trial Judgement pursuant to Rule 94(B), 16 March 2010

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Annex A – Proposed Adjudicated Facts from RUF Judgement

No.	RUF Judgement Para.	Proposed Adjudicated Fact	Prosecution Objections & Defence Reply
1	651 (part)	<p>The RUF documented its ideological goals and political objectives and disseminated them to its recruits. The RUF agenda fixed the aims and objectives which the RUF sought to achieve and the means they had to employ to attain them. The agenda was the ideology of the RUF movement. It was documented and printed matter and set out the said objectives. The political ideology of the RUF was an integral component of the movement and comprised a key aspect of the training for RUF fighters at Camp Naama in Liberia in the early years of the movement.</p>	<p>The portions objected to are taken primarily from RUF Prosecution testimony: TF1-071, TF1-371, TF1-168, TF1-362.</p>
2	652	<p>A crucial aspect of the political ideology of the RUF was the acceptability of taking up arms to further the goals of its revolution. The ideology consisted in "the use of weapons to seek total redemption"; "to organize themselves and for a sort of People's Army"; "to procure arms for a broad-based struggle so that the rotten and selfish government is toppled". The RUF claimed to be fighting to overthrow a corrupt military Government in order to realize the right of every Sierra Leonean to true democracy and fair governance. Nonetheless, when democratic elections were held in 1996 the RUF boycotted the ballot box and continued active hostilities.</p>	<p>Complete agreement between Prosecution and Defence</p>
3	653	<p>Sankoh labeled the RUF revolution as a struggle of self-reliance, meaning that the</p>	

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4	656 (part)	<p>people of Sierra Leone were the owners of the revolution. RUF fighters were told that if the Sierra Leonean people did not accept Sankoh's vision of a new society achieved through armed liberation, then the revolution would fail.</p> <p>The RUF's military ideology consisted of various sets of rules and principles, not all of which were equally well-known, that governed the conduct of military operations in Sierra Leone, focusing on the behaviour of fighters toward civilians and the importance of discipline and respect for superior orders. The Chamber has considered the military ideology in further detail in its findings on the disciplinary system within the RUF. The ideology assisted in maintaining the cohesion of the RUF and was a driving force in the pursuance of the objectives and goals of the revolution to eventually take control of the people and the territory of Sierra Leone.</p>	<p>The entire text must be included the phrase "the behaviour of fighters toward civilians" or else the fact is taken out of context.</p> <p>The Defence does not object to the inclusion of the sentence in bold as indicated by the OTP, but does not find it necessary or useful, as it is not really a factual finding.</p>
5	705	<p>The RUF ideology included the Eight Codes of Conduct which governed the fighters' interactions with civilians. The Codes provided in part:</p> <ul style="list-style-type: none"> To speak politely to masses To pay fairly for all [that] you buy To return everything that you borrow To pay for everything that you demand or damage Do not damage crops 	<p>Complete agreement between Prosecution and Defence</p>

Annex A – Proposed Adjudicated Facts from RUF Judgement

No.	RUF Judgement Para.	Proposed Adjudicated Fact	Prosecution Objections & Defence Reply
6	657, 661, 662, 721	<p>Do not take liberty from women Do not ill-treat captives Do not hate or swear people</p> <p>The most senior assignments in the RUF movement were the Leader, the Battle Field Commander ("BFC") and the Battle Group Commander ("BGC"). This <i>trias</i> was the center of the military power and control of the RUF and together formed the core of the RUF "High Command." Subordinate to these senior Commanders there was a system of appointments of both operational and staff commanders whose responsibilities generally corresponded to a particular geographical area of control.</p> <p>The Battle Field Commander was the Leader's second in command. The BFC was responsible for planning and executing military operations, inspecting the front line and ensuring the welfare of the fighters there. The BFC received instructions from the Leader and was superior to the Commanders of combat and staff units.</p> <p>In the RUF military structure the Battle Group Commander functioned <i>de facto</i> as third-in-command of the RUF and second-in-command to the BFC. The BGC was responsible for the welfare of all members of the RUF, both civilians and fighters, and for all internal affairs of the RUF. The BGC</p>	<p>The Prosecution objects to Defence additions that are not in the facts found by Trial Chamber I. However, the paragraphs are taken verbatim from the RUF Trial Judgement and there are no additions. Thus the Prosecution objection is without merit.</p> <p>The facts comprising paragraph 721 and objected to by the Prosecution, are taken from the evidence of Prosecution witnesses: TF1-371, TF1-071, and TF1-045.</p>

Annex A – Proposed Adjudicated Facts from RUF Judgement

No.	RUF Judgement Para.	Proposed Adjudicated Fact	Prosecution Objections & Defence Reply
7	658, 651 (part)	<p>reported to the BFC.</p> <p>When the RUF began organised armed operations in Sierra Leone in March 1991, the High Command was comprised of the Leader Foday Sankoh, the BFC Mohamed Tarawallee and the BGC Rashid Mansaray.</p> <p>Foday Sankoh, a former SLA Corporal and radio operator, was the <i>de jure</i> and <i>de facto</i> leader of the RUF from the commencement of hostilities in 1991 until his arrest in Nigeria in February 1997. Sankoh was also referred to as the Commander in Chief. As the leader of the movement Sankoh had paramount responsibility over all activities within the RUF and determined its political and military goals. Foday Sankoh was the driving force behind the RUF movement and shaped its political and military ideology. Sankoh was at times authoritarian, if not dictatorial.</p>	Part of para. 658 and para. 651, and objected to by the Prosecution, is attributed to the testimony of TF1-371.
8	659	<p>Shortly after Sankoh's arrest in Nigeria in February 1997, Bockarie replaced him as the <i>de facto</i> Leader. Sankoh, however, remained capable of communicating with his subordinates and giving directions and orders until he was transferred by the Nigerian authorities to the Sierra Leonean Government in September 1998.</p>	Complete agreement between Prosecution and Defence
9	736 (part)	<p>In February 1997, Sankoh was arrested at an airport in Nigeria on allegations that he was carrying arms. Bockarie subsequently put</p>	The Defence does not agree to add the sentence indicated in bold by the Prosecution because it intends to lead

Annex A – Proposed Adjudicated Facts from RUF Judgement

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		himself in control of the movement. Although Sankoh continued to occupy the position of overall Leader and continued to communicate with the RUF via radio from Nigeria, Bockarie acted as the de facto Commander-in-Chief for the next two and a half years.	detailed evidence on this issue through DCT-306.
10	737 (part)	In March 1997, Sankoh sent a radio message to Bockarie from Nigeria issuing promotions to certain Commanders. Bockarie was promoted from Major to Colonel, while Sesay was simultaneously reinstated in his rank as Major and further promoted to Lieutenant Colonel. Bockarie and Sesay had been de facto operating as BFC and BGC since Tarawallie's death in late 1996, thereupon, Sankoh officially confirmed these assignments.	The Defence agrees to add the phrase indicated by the Prosecution in bold: "since Tarawallie's death". These facts are attributed in part to the evidence of TF1-371 and TF1-360.
11	738	At the same time, Sankoh promoted Superman and Isaac Mongor from Major to Colonel and appointed them as Area Commanders for the Western Jungle and Kangari Hills (Northern Jungle) respectively. Vandi was promoted from Major to Lieutenant Colonel and maintained his assignment as Area Commander for Kaijahun District. Gibril Massaquoi was promoted from Staff Captain to Lieutenant Colonel and was named RUF Spokesperson.	The facts objected to by the Prosecution as "central issues" was taken in large part from the testimony of Prosecution witnesses: TF1-036, TF1-371, TF1-366, TF1-071, TF1-360, TF1-367, and TF1-168.
12	743, 744	On 25 May 1997, the SLPP Government of President Ahmad Tejan Kabbah was overthrown by a military coup d'état led by	The Defence has no objection to the inclusion of the sentence indicated in bold, and the deletion of the phrase "led by

Annex A – Proposed Adjudicated Facts from RUF Judgement

No.	RUF Judgement Para.	Proposed Adjudicated Fact	Prosecution Objections & Defence Reply
13	745, 747, 749	<p>soldiers of the Sierra Leone Army (SLA). SLA Corporal Tamba Gborie announced the coup over the radio and requested all senior military and police Commanders to report to the SLA. The SLA's chief grievance was that the creation of the Kamajors as a military auxiliary force was unconstitutional, prolonged the war, and fuelled corruption, nepotism, and tribalism.</p> <p>The chief plotters of the coup were all members of the football team of the 1st Battalion of the SLA and included Abu Sankoh aka Zagalo, Sergeant Tamba Alex Brima ("Gullit"), Sergeant Ibrahim Bazzy Kamara ("Bazzy"), Santigie Kanu ("Five-Five"), Idrissa Kamara ("Leather Boot") and Corporal Hassan Pappah Bangura ("Bomb Blast").</p>	<p>soldiers", but notes that it was Judicially Noted in the RUF case and therefore the Defence did not consider it appropriate for an adjudicated facts filing.</p>
		<p>The coup members immediately freed Major Johnny Paul Koroma from Pademba Road prison in Freetown where he had been held after an earlier coup attempt. The group called themselves the Armed Forces Revolutionary Council ("AFRC") and announced over the radio that Johnny Paul Koroma was their leader.</p> <p>Shortly after the AFRC seized power, Johnny Paul Koroma contacted Sankoh in Nigeria to invite the RUF to form an alliance. Sankoh accepted the invitation.</p>	<p>The Defence agrees to add the phrase in bold "to invite the RUF".</p>

Annex A – Proposed Adjudicated Facts from RUF Judgement

No.	RUF Judgement Para.	Proposed Adjudicated Fact	Prosecution Objections & Defence Reply
14	754	<p>The RUF spokesperson, Eldred Collins, subsequently issued a radio broadcast proclaiming that the AFRC and RUF movements would work cooperatively to defend Sierra Leone.</p> <p>The governing body of the Junta Government was referred to alternatively as the AFRC Council or the Supreme Council. The AFRC Supreme Council included members of the former SLA, RUF and civilians. It was the highest decision-making body in the Junta regime and the sole de facto executive and legislative authority within Sierra Leone during the Junta period.</p>	Complete agreement between Prosecution and Defence
15	761, 762	<p>The Chief of Defence Staff, FSY Koroma, and the Army Chief of Staff, SO Williams, oversaw the military and reported to Johnny Paul Koroma. A proposal by Bockarie to integrate the armed forces of the RUF and the AFRC, making Bockarie and Sesay respectively second-in-command to the Chief of Defence Staff FSY Koroma and to the Army Chief of Staff, SO Williams, was rejected.</p> <p>Senior RUF officers were consequently left without official appointments within the Junta military structure and the RUF retained its own command structure, with the notable difference that Bockarie was officially subordinate to Johnny Paul</p>	Portions objected to by the Prosecution are based on the testimony of Prosecution witnesses: TF1-366, TF1-371, TF1-045, TF1-334, and TF1-036.

Annex A – Proposed Adjudicated Facts from RUF Judgement

No.	RUF Judgement Para.	Proposed Adjudicated Fact	Prosecution Objections & Defence Reply
16	763, 764 (part)	<p>Koroma.</p> <p>The failure to integrate the two military organizations into a unitary command structure led to misunderstandings and conflicts. While some AFRC fighters obeyed orders from RUF Commanders, others would not. Lower-ranking RUF fighters disobeyed orders from their senior officers. The AFRC considered this to be unacceptable as it was contrary to conventional military discipline. Many RUF fighters felt that the AFRC did not respect the RUF as an organization.</p>	<p>Prosecution witnesses relied on for this information are: TFI-366 and TFI-360</p>
17	776 (part)	<p>By early September 1997, Bockarie had also become disillusioned with the RUF's limited role in the AFRC government. Bockarie was particularly aggrieved by the AFRC's disregard for the RUF's advice on military matters.</p> <p>Between 6 and 14 February 1998, ECOMOG forces acting on behalf of the ousted government of President Kabbah battled AFRC/RUF forces in Freetown and the Western Area. The Junta forces were ill-prepared: they soon expended their ammunition supplies and were forced to retreat. Kabbah's Government was restored to power in March 1998.</p>	<p>The Defence does not object to the inclusion of the sentence the Prosecution has indicated in bold, but since it was the subject of Judicial Notice in the RUF Trial, the Defence did not think it appropriate as an adjudicated fact. This Trial Chamber specifically rejected a similar fact in the Adjudicated AFRC Facts Decision at para. 52.</p>
18	778	<p>The withdrawal of the RUF and AFRC troops from Freetown was unplanned and chaotic. They left Freetown via the Peninsula road</p>	<p>This is the evidence of Prosecution witness TFI-334.</p>

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No.	RUF Judgement Para.	Proposed Adjudicated Fact	Prosecution Objections & Defence Reply
19	782	and travelled eastwards through Juba, York, Tombo and Newton on the Makeni highway towards Masiaka.	This is basic factual information about factions in the Sierra Leonean conflict and is not central to the issues in the current case.
20	789	Upon arrival in Masiaka in Port Loko District, the retreating troops regrouped into four discernable factions, each with its own command structure: the AFRC, the STF, and two RUF contingents, one of each of which was controlled by Superman and the other by Sesay.	This is evidence of Prosecution witness TF1-334.
21	792	After less than a week in Makeni, several high ranking AFRC and RUF Commanders such as SAJ Musa, Superman, Bazzy and Hassan Pappah Bangura proceeded to Kabala in Koinadugu District. Koroma travelled to his native village Magbonkinneh.	This is based on evidence of Prosecution witness George Johnson, TF1-071, and TF1-184.
22	793 (part)	Prior to the joint attack on Kono District, a rift developed between SAJ Musa and the other AFRC and RUF Commanders. SAJ Musa considered the AFRC to be professional soldiers and would not stand the prospect of subordination to RUF command. In particular, he refused to accept orders from Bockarie and Sesay.	Complete agreement between Prosecution and Defence
23	804	SAJ Musa accordingly decided to establish his own base in Koinadugu District with troops loyal to him. Although a number of AFRC troops followed him, the majority elected to remain allied with the RUF. From that point onwards no relationship existed between SAJ Musa and the RUF.	Bockarie then expelled Koroma to This is based on Prosecution evidence from

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No.	RUF Judgement Para.	Proposed Adjudicated Fact	Prosecution Objections & Defence Reply
24	806 (part)	Kangama, where he was effectively placed under house arrest. Koroma had no means of communication with his troops until after the Lome Accord in 1999. After his arrest, the RUF assaulted Gullit and detained him in Kailahun District. The AFRC troops in Kono District were not informed about Koroma's removal from power until Gullit was permitted to return to Kono in April 1998.	TF1-334 and TF1-184.
25	817 (part), 819 (part), 820 (part)	In order to motivate his senior officers, Bockarie issued a series of promotions. Sesay was promoted to full Colonel and assigned as BFC, while Superman became BGC. Kallon was tasked with monitoring developments at the front lines and reporting to Sesay as BFC. In April 1998, shortly after the Junta forces were pushed out of Koidu Town, Gullit returned to Kono District and assumed command of the AFRC from Bazzy. The relationship between the AFRC and RUF was fractious. These tensions coincided with sustained military pressure from ECOMOG on the RUF and AFRC positions.	This is based on Prosecution evidence from TF1-071 and TF1-360.
		The rift between the two forces erupted after an attack on Sewafe Bridge when Gullit disclosed to his troops that Bockarie had beaten him and seized his diamonds and that Johnny Paul Koroma was under RUF arrest. Gullit declared that the AFRC troops would withdraw from Kono District to	The Defence agrees to include the sentence in bold as indicated by the Prosecution. The facts are based on information from Prosecution witness TF1-334.

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No.	RUF Judgement Para.	Proposed Adjudicated Fact	Prosecution Objections & Defence Reply
26	823, 824, 825	<p>join SAJ Musa in Koinadugu District. Gullit and Bazy accordingly departed, taking with them the vast bulk of the AFRC fighters in Kono District. The split was acrimonious and Gullit decisively refused to accept Superman's attempt to re-impose cooperation, ignoring a directive from him to return to Kono District.</p> <p>The split between the AFRC and RUF forces occurred when Gullit's troops left Kono District for Koinadugu and Bombali Districts, prior to the end of April 1998.</p>	<p>These facts are based in part on testimony from Prosecution witnesses TF1-041 and TF1-361.</p>
		<p>In August 1998, the RUF attempted to retake control of Koidu from ECOMOG in an attack led by Superman and code named the Fiti-Fata mission. Although Kallon was Superman's deputy for that mission, the operation was hampered by enmity between the two Commanders and excessive looting by the troops, and the mission failed. Superman alleged that Kallon had sabotaged the mission and Bockarie then recalled Kallon to Buedu.</p> <p>The animosity between Superman and Bockarie was heightened by the failed Fiti-Fata mission. Shortly thereafter Superman decided to join forces with SAJ Musa in Koinadugu District and he departed Kono District with a contingent of loyal RUF fighters and a store of captured</p>	

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27	845	<p>ammunition. Bockarie ordered Superman to report to Headquarters in Buedu, but Superman refused to do so.</p> <p>In August 1998, Bockarie modified the radio codes utilized by the RUF to prevent Superman from monitoring radio transmissions and forbade all RUF radio operators from contacting Superman, on threat of death.</p>	<p>This is based on evidence from Prosecution witnesses TF1-184, TF1-334, TF1-360 and George Johnson.</p>
28	846	<p>After Gullit and his troops departed Kono District in late April 1998, they travelled to Kurubola in Koinadugu District, where Gullit detailed to SAJ Musa his mistreatment at the hands of the RUF in Kailahun. SAJ Musa advised him to establish an AFRC defensive base in Bombali District. Gullit accordingly led his group of AFRC fighters from Mansofinia across Bombali District to Rosos. A small number of RUF fighters also formed part of the group and were subordinate to Gullit's command.</p>	<p>This is based on evidence from Prosecution witness TF1-334.</p>
29	848 (part), 850 (part)	<p>After their departure from Kono, the AFRC troops no longer received arms and ammunition from Kailahun. Instead, they were forced to be self-reliant and depended upon supplies captured from their enemies.</p> <p>During the march [to Rosos], Gullit's radio operator was captured and the microphone for their radio was lost as a result of which the AFRC was unable to</p>	<p>The language in brackets as added by the Defence is to provide clarity and does not misrepresent the findings in the RUF Judgement.</p>

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		<p>transmit or monitor radio signals. Gullit's group was therefore not in direct communication with SAJ Musa or the RUF High Command until they reached Rosos sometime in July or August 1998. At about this time, Gullit also communicated with Sesay and Kallon on the radio.</p> <p>After two months, Gullit's group was forced to abandon Rosos due to heavy aerial bombardment by ECOMOG. They proceeded to a location nearby known as Major Eddie Town. From Major Eddie Town, Gullit communicated with AFRC and RUF commanders including Superman, SAJ Musa, and Bockarie.</p>	<p>The Defence does not object to adding the sentences in bold as indicated by the Prosecution.</p>
30	851	<p>Following the departure of Gullit and his AFRC fighters from Kurunbonla and the arrival of Superman, three distinct factions of fighters operated in Koinadugu District: the AFRC under command of SAJ Musa, the STF commanded by Bropleh, and the RUF commanded by Superman. SAJ Musa refused to take orders from Bockarie or Superman; while Bropleh and Superman largely subordinated their fighters to SAJ Musa's command.</p>	<p>This is based on the evidence of Prosecution witnesses TF1-184, TF1-360, TF1-361 and TF1-071.</p>
31	853	<p>In late August 1998, Bockarie ordered that a group of four radio operators (three RUF and one AFRC) be dispatched from Kono to join Gullit's fighting force as informants, to ensure that the RUF High Command was</p>	<p>This is taken from Prosecution witnesses TF1-334, TF1-360 and TF1-361. This information is also unavailable to be admitted through viva voce testimony by the Defence since the recent death of DCT-024.</p>

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32	854	<p>apprised of Gullitt's movements and intentions. The radio operators travelled first to Superman and SAJ Musa in Koinadugu. They departed for Rosos on or about 1 September 1998 in the company of a large contingent of fighters sent by SAJ Musa to reinforce Gullitt's group. While most were AFRC, there was one platoon of 64 RUF fighters and some STF.</p>	<p>This is based on the evidence of Prosecution witness TF1-361.</p> <p>The final sentence is not a legal conclusion but a factual finding by Trial Chamber I that has legal implications.</p>
33	856	<p>When SAJ Musa arrived at Major Eddie Town, he assumed the control over the AFRC forces from Gullitt, declaring himself the Commander-in-Chief. There were approximately 30 low-ranking RUF fighters, including the signaller Alfred Brown, amid several thousand AFRC fighters at Major Eddie Town. SAJ Musa initially intended to arrest and execute the RUF fighters, but he</p>	<p>Complete agreement between Prosecution and Defence</p>

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34	858	<p>was dissuaded by other AFRC Commanders. However, he declared that no person was to communicate with Superman in Koinadugu or Bockarie in Buedu. SAJ Musa prohibited RUF radio operators from using the communication sets and ordered that any RUF radio operator who approached a radio was to be killed.</p>	<p>Complete agreement between Prosecution and Defence</p>
35	859	<p>SAJ Musa and the AFRC troops commenced their advance towards Freetown in November 1998. From Major Eddie Town, the troops attacked Mange and Lunsar. In Lunsar, a further altercation between SAJ Musa and Gullit occurred as Gullit had again contacted Bockarie by radio. From Lunsar, the AFRC troops bypassed Masiaka and attacked the Guinean ECOMOG troops at RDF Junction between Mile 38 and Masiaka.</p>	<p>This fact is based in part on the testimony of Prosecution witnesses TF1-334 and TF1-184. This information is also not otherwise readily available to the Defence since the death of DCT-024.</p>

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36	861	disclosing their operations to the RUF. By December 1998 Sesay had been recalled to Buedu from Pendembu and reinstated as BFC. In the first week of December, Bockarie convened a strategic meeting in his compound in Buedu, attended by senior members of the RUF including Sesay, Kallon, Isaac Mongor, Mike Lamin and Peter Vandi.	This is based in part on Prosecution testimony from witness TF1-071.
37	875	As a result [of SAJ Musa's death], Gullit assumed overall command of the AFRC forces. On his instructions, one of the radio operators contacted Bockarie, informed him of SAJ Musa's death and requested RUF reinforcements for the attack on Freetown. Bockarie suspected that the call was a ruse and accused Gullit of attempting to deceive him.	The language in brackets added by the Defence is for clarity and does not misrepresent the RUF Trial Judgement's findings. The portion objected to by the Prosecution is based on testimony from Prosecution witnesses TF1-360 and George Johnson.
38	876, 877	On 5 January 1999, on the outskirts of Freetown, Gullit again called Bockarie. He informed him that his troops were poised to enter Freetown but lacked logistics, arms and ammunition and needed reinforcements. Bockarie told Gullit that his plan to attack Freetown was foolish. He nonetheless agreed to send reinforcements from Makeni and told Gullit to postpone the attack until their arrival.	The AFRC troops delayed their advance for approximately one day before continuing towards Freetown. The decision not to wait

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39	879, 880	<p>for the promised RUF support appears to have been motivated by a combination of impatience on the part of the fighters and pressure from Kamajor attacks.</p> <p>In the early hours of 6 January 1999, the AFRC entered Freetown. The troops were divided into two flanks and ordered to take different routes through Ferry Junction to converge on the ECOMOG troops at Upgun. The AFRC forces overwhelmed ECOMOG at Upgun and continued toward the central part of Freetown. At approximately 7:30am, the fighters secured State House, the seat of Government.</p>	<p>This information is based on testimony from Prosecution witnesses TF1-360, TF1-334, and George Johnson.</p>
40	893	<p>Gullit then dispatched a group of AFRC troops to Pademba Road Prison, where they released the inmates, including former President JS Momoh and RUF members Gibril Massaquoi and Steve Bio. The troops searched for Sankoh, but were informed by one of the prisoners that he had been moved to another location.</p> <p>The RUF had no control over the AFRC forces in Freetown during the attack and the RUF did not form part of a common operation with the AFRC forces for this attack on 6 January 1999.</p>	<p>This is a factual finding reached by Trial Chamber I after considering the testimony of all of the witnesses. While it has legal implications, it is not a legal conclusion in and of itself.</p>
41	882, 884, 892 (part)	<p>Throughout 6 and 7 January 1999, the AFRC forces attempted to advance into the western part of Freetown, but ECOMOG engaged the rebels in heavy fighting and</p>	<p>This is based on the testimony of Prosecution witnesses George Johnson, TF1-360, TF1-184, TF1-036, TF1-334, and TF1-366.</p>

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		<p>they were unable to penetrate further across the city.</p> <p>On 9 January 1999, under pressure from ECOMOG, the AFRC abandoned State House and began retreating through the eastern part of the city. Gullit again radioed Bockarie and requested him to send RUF reinforcements. Bockarie promised to do so and the two men arranged that AFRC fighters would meet the RUF reinforcements at a factory near Wellington on the eastern edge of Freetown. A group of AFRC fighters were dispatched to Wellington and a group of RUF troops led by RUF Rambo and Superman moved from Lunsar to the Waterloo area. However, ECOMOG controlled Kossoh Town, Hastings, and Jui, which are situated between Wellington and Waterloo.</p> <p>The contingent of Guinean ECOMOG troops stationed at Jui and Kossoh town blocked the path of the RUF troops from Waterloo to Freetown. The RUF attacked the ECOMOG soldiers but were unable to pass through to Freetown. In addition, in-fighting persisted between Superman and Rambo.</p> <p>Ultimately the RUF troops were unable or unwilling to break through the ECOMOG</p>	

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No.	RUF Judgement Para.	Proposed Adjudicated Fact	Prosecution Objections & Defence Reply
42	892 (part), 888 (part)	<p>position to meet the AFRC fighters.</p> <p>After about two weeks of heavy fighting, ECOMOG reinforcements arrived from Port Loko and opened a passage to secure the safe retreat of Guinean ECOMOG troops to Port Loko. The removal of the ECOMOG troops appears to have facilitated the retreat of the AFRC from Freetown to Waterloo.</p>	<p>The Defence accurately states verbatim the findings of Trial Chamber I and does not inaccurately set out the findings.</p>
43	904	<p>The AFRC and RUF met in Waterloo about three weeks after the AFRC had first entered Freetown.</p> <p>In February 1999, Bockarie promoted Sesay, Mike Lamin, Peter Vandi, Isaac Mongor, Superman, and Kallon to Brigadier.</p>	<p>Taken from the testimony of Prosecution witness TF1-012.</p>
44	910 (part)	<p>In October 1999, Sankoh ordered Bockarie to send Sesay to Makeni to take command there. Sesay went to Makeni with Kallon, Gbao, and other officers and fighters. Sankoh ordered Superman to cede command to Sesay and move to Lunsar. Superman, Isaac Mongor, Gibril Massaquoi and CO Rocky left Makeni and traveled to Lunsar.</p> <p>In October 1999, fighters loyal to Superman in Kambia were refusing to obey Sesay's orders until Sankoh intervened to order them to do so.</p>	<p>The Defence does not object to the inclusion of the paragraph in bold as indicated by the Prosecution.</p>
45	908 (part), 912	<p>On 7 July 1999, the RUF and the Kabbah Government signed the Lome Peace</p>	<p>The Defence does not object to the inclusion of the paragraph in bold as</p>

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		<p>Accord. As a result of the power sharing arrangement therein, Sankoh became Chairman of the Strategic Mineral Resources Commission and RUF commanders including Mike Lamin and Peter Yandi were appointed as Government Ministers and Deputy Ministers. The Accused did not receive Government positions. The Lome Peace Accord provided for the RUF to be transformed into a political party, which became known as the RUF.</p> <p>In November 1999, the RUF transformed itself into the RUF.</p>	<p>indicated by the Prosecution.</p> <p>The transformation of the RUF to the RUF is not a central issue in the case.</p>
46	913 (part)	<p>By December 1999, Bockarie and Sankoh were in open dispute over the implementation of the Lome Peace Accord and Bockarie no longer took orders from Sankoh. Bockarie was not present at the peace negotiations prior to the Lome Peace Accord and he became highly dissatisfied with it. He considered the Accord to be an attempt by the Kabbah Government to dupe the RUF leadership and he objected strongly to its disarmament requirements. In view of his recalcitrance, Sankoh and rebels loyal to him made plans to attack Bockarie in Buedu.</p>	<p>The Defence objects to the inclusion of the sentence in bold as indicated by the Prosecution.</p>
47	916 (less the reference to	<p>On 17 May 2000 Sankoh was arrested in Freetown on treason charges, leaving the</p>	<p>The fact has been discussed extensively by the Accused in his testimony, but the fact as</p>

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	Charles Taylor)	RUF without official leadership. Concerned that the absence of a recognized overall leader of the RUF could undermine the carefully negotiated peace process, the ECOWAS leaders invited Sesay to meet with them to discuss the leadership question. On 25 July 2000, Sesay travelled to Liberia and met with various ECOWAS leaders including ... the Nigerian President Obasanjo. The ECOWAS leaders requested Sesay to assume the leadership of the RUF and implement the Lome Peace Accord in Sankoh's absence.	stated does not include acts and conduct of the Accused and therefore is admissible.
48	917	As Sesay did not feel able to unilaterally accept the offer, he returned to Kono and convened a meeting to discuss the ECOWAS proposal. The meeting was attended by over 30 RUF Commanders including Gbao, Kallon and Gibril Massaquoi. Although other candidates for the leadership were nominated, the majority of Commanders present endorsed Sesay. Sesay returned to Monrovia and informed the ECOWAS leaders that he would act as interim leader of the RUF. An announcement to this effect was subsequently broadcast on BBC Radio.	