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SCSL-04-16-T
(16654-16670)

16654

**SPECIAL COURT FOR
SIERRA LEONE**

Case No. SCSL-2004-16-T

Before: Justice Teresa Doherty, Presiding
Justice Julia Sebutinde
Justice Richard Lussick

INTERIM

Registrar: Lovemore Munlo

Date filed: 15 November 2005

THE PROSECUTOR

against

ALEX TAMBA BRIMA

BRIMA BAZZY KAMARA

and

SANTIGIE BORBOR KANU

**JOINT DEFENCE OBJECTIONS TO PROSECUTION NOTICE PURSUANT TO RULE 92bis TO
ADMIT INFORMATION INTO EVIDENCE**

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SPECIAL COURT FOR SIERRA LEONE
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I INTRODUCTION

1. On 1 November 2005, the Prosecution filed its "Prosecution Notice Pursuant to Rule 92bis to Admit Information into Evidence" ("**Prosecution Notice**").¹ The Defence herewith files its Joint Defence Objections to Prosecution Notice Pursuant to Rule 92bis to Admit Information into Evidence."
2. The Defence respectfully requests the honorable Trial Chamber to partly deny the Prosecution Notice, some parts of which unfairly prejudice the Defence.

II EXCLUSION OF EXHIBITS

2.1 Evidence Which Goes to the Issue of the Indictment and Opinion Evidence

3. The Appeals Chamber stated the following about Rule 92bis: "SCSL Rule 92bis is different to the equivalent Rule in the ICTY and ICTR and deliberately so. (...) The effect of the SCSL Rule is to permit the reception of 'information' – assertions of fact (but not of opinion) made in documents or electronic communications – if such facts are relevant and their reliability is 'susceptible of confirmation'."²
4. Moreover, Trial Chamber I in its Decision in *Prosecutor v. Norman et al.*, in its determination of the scope of Rule 92bis quoted an ICTY Trial Chamber Decision in *Prosecutor v. Milosevic*, where that Chamber held that "as a matter of practice, Trial Chambers still prefer to hear evidence on the acts and conduct of the accused from live witnesses who can be cross-examined. (...) The trend which may, therefore, be discerned is for a preference for live testimony on matters pertaining directly to the guilt or innocence of the accused. This practice allowed the accused to examine witnesses against him (...)."³ Trial Chamber I of the Special Court continued to state that, in spite of the

¹ Case No. SCSL-2004-16-T-428, this document does not contain a stamp with the time of filing, but the Defence only received this document on Thursday 3 November 2005.

² *Prosecutor v. Norman et al.*, Fofana – Decision on Appeal against Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, Case No. SCSL-2004-14-AR73-398, 16 May 2005 ("**Fofana Appeals Decision**"), para. 26.

³ Referred to in *Prosecutor v. Norman et al.*, Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C), Case No. SCSL-2004-14-T-447, 14 July 2005 ("**Norman Trial Chamber Decision**"), p. 4.

differences between the Rules of Procedure and Evidence of the Special Court and the Yugoslavia Tribunal, “[noting] that in defining what constitutes the evidence which goes to prove acts and conduct of the accused, the Chamber takes guidance from the case-law of the ICTY (...).”⁴

5. The ICTY Trial Chamber in *Delalic et al.* held that the “threshold standard for the admission of evidence, however, should not be set excessively high, as often documents are sought to be admitted into evidence, not as ultimate proof of guilt or innocence, but to provide a context and complete the picture presented by the evidence gathered.”⁵ Also from this decision it can be derived that material sought to be admitted under Rule 92bis of the Rules should be restricted to more general background material, and not information going to the core issues of the Indictment.
6. The Defence respectfully holds that several of the materials included in the Prosecution Notice, in fact pertain to the charges against the Accused. The Defence submits that under Rule 92bis, only material relating to general background information should be capable of being admitted into evidence, and not evidence relating to specific counts of the Indictment, the reason for this being that the Defence can in no way cross-examine the contents of this evidence. In addition, in accordance with the abovementioned Appeals Chamber decision,⁶ assertions of opinion cannot be admissible under Rule 92bis.

2.2.1 Opinion Evidence

7. In the first place, in several exhibits to Annex 1 of the Prosecution Notice, opinion evidence is provided.
8. Exhibit 26 includes opinion evidence.⁷ This UNOMSIL report for instance mentions on p. 3: “[u]ltimate responsibility for the fighting, most civilian casualties and the related humanitarian emergency in Freetown rests with the rebel forces.” It continues to state that “[i]t should also be observed that abusive behaviour of rebel forces (...) as well as the

⁴ Norman Trial Chamber Decision, p. 4.

⁵ *Prosecutor v. Delalic et al.*, Case No. IT-96-21-T, Decision on Motion of Prosecution for Admissibility of Evidence, 19 January 1998, para. 20.

⁶ Fofana Appeals Decision, para. 26.

⁷ The Defence here refers to the second column in Annex 1 to the Prosecution Notice, which refers to the annex numbers in the Judicial Notice Motion.

ongoing threat which they pose to Freetown form part of the background to the current perpetration by ECOMOG and CDF forces of unacceptable acts (...)."⁸

9. Exhibit 45 on p. 51, states about an asserted alliance between the AFRC and RUF and the continuance thereof after 1998, which also constitutes opinion evidence.
10. Exhibit 60 of the Prosecution Notice Annex 1 also contains an opinion when indicating that rape was an instrument of control and punishment.⁹
11. The Defence respectfully submits that these statements, where assertions on the guilt of the 'rebel forces' are being put forward through an opinion in a document requested to be admitted under Rule 92*bis*, should not be allowed to be admitted into evidence, for the sole reason that the statements included therein directly pertain to the charges against the Accused, and moreover taking into account the position of the Appeals Chamber on opinions in Rule 92*bis* materials.¹⁰
12. The same argument goes for Exhibits 31,¹¹ 32¹² and 35¹³ of the Prosecution Notice Annex 1.
13. Although in exhibit 26, the Accused are not mentioned by their names, the Indictment¹⁴ against them does link the three accused persons to the "AFRC, Junta and AFRC/RUF forces."¹⁵ Therefore, a statement which intends to determine the guilt of the rebel forces, AFRC, or the AFRC/RUF forces, should be excluded from admission under Rule 92*bis* because, because they are prejudicial to the Accused.

⁸ *Id.*

⁹ See p. 6 thereof.

¹⁰ Fofana Appeals Decision, para. 26.

¹¹ For instance on p. 12, "[t]his is a war being waged through attacks on the civilian population. AFRC/RUF soldiers typically capture civilians, round them up from their hiding places in the forest or in villages and commit atrocities against them in an effort to instill terror. The AFRC/RUF appears to use this campaign of fear as a means of exerting political and military control," and "[t]hese campaigns, both of which originated in the Koidu area in February 1998 and then spread throughout the country, were designed to loot, destroy or kill anything in the path of the combatants." Opinion evidence is moreover given on p. 13, 20, 22 and 23.

¹² See for instance p. 11, 12 and 35. For instance, the report states on p. 12 that "[t]he battle for Freetown and ensuing three-week rebel occupation of the capital were characterized by the systematic and widespread perpetration of a wide range of abuses against the civilian population, and marked the most intensive and concentrated period of human rights abuses and international humanitarian law violations in Sierra Leone's ten-year civil war."

¹³ P. 3 and 22 of this Exhibit contain opinion evidence, see for instance p. 3: "[t]he AFRC joined forces with the RUF after coming to power and remained its ally after the AFRC was forced from power in February 1998 by forces deployed in Sierra Leone by (...) ECOMOG."

¹⁴ Further Amended Consolidated Indictment, Case No. SCSL-2004-16-PT-147 ("Indictment").

¹⁵ Indictment, para. 22 for Alex Tamba Brima, para. 25 for Brima Bazzy Kamara, and para. 28 for Santigie Borbor Kanu.

14. In conclusion, these abovementioned exhibits should not be admitted.

2.1.2 Direct Reference to Charges of the Indictment

15. In the second place, several of the statements, as evidenced by Annex 1 to the Prosecution Notice, make reference to charges in the Indictment against the Accused. The fourth column of Annex 1 to the Prosecution Notice deals with “relevance” of the particular document. Although most documents are referred to by ‘background material,’ some directly refer to charges of the Indictment. Examples of this are the following documents:

- (i) Exhibit 18, which relevance is “Specific report of AFRC and RUF joint leadership,” and which directly refers to the issue of joint criminal enterprise, mentioned in paras. 33 – 34 of the Indictment.
- (ii) Exhibit 19, which relevance is described as “background material on continued cooperation in fighting between AFRC and RUF,” which also refers to the same part of the Indictment as mentioned under (i) above.
- (iii) Exhibit 31, the relevance of which is “background material on systematic and widespread attacks on civilians,” which is specifically charged in the Indictment.¹⁶
- (iv) Exhibits 32, and 46 where the relevance is referred to as “background material on sexual violence.” This directly goes to counts 6 – 9 of the Indictment.
- (v) Exhibit 35 provides “background material on child soldiers,” which goes directly to Count 12 of the Indictment, the use of child soldiers.
- (vi) Exhibits 52 and 53 where it is stated in the relevance column of Annex 1 to the Prosecution Notice, “joint criminal enterprise.” This document is not even referred to as ‘background’ material, but directly pertains to paras. 33 – 34 of the Indictment. Exhibit 54 is referred to as “background material on joint criminal enterprise,” but the Defence holds that this material is still directly relating to the Indictment and should not be admitted without a chance to cross-examination to the content thereof.

¹⁶ See for instance para. 19 of the Indictment.

16. Although the title of many of these is 'background material' on a specific topic, the Defence submits that this title is in fact misleading because it does not contain mere background material, but very specific information about the charges of the Indictment, and as such should be contained in witness statements, which are susceptible of cross-examination. The Defence submits that the information currently contained in these documents should not be open to admission under Rule 92*bis*.
17. Exhibit no 26 to the Prosecution Notice Annex 1 is also referred to in this respect. This exhibit speaks of all kinds of acts allegedly committed by the "rebel forces," which acts in several cases go directly to the core issues of the indictment (killing of civilians,¹⁷ mutilations and amputations,¹⁸ rape and sexual abuse,¹⁹ child soldiers,²⁰ abduction,²¹ destruction of properties and looting²²). Admission of these exhibits will violate the principles set out by Trial Chamber I in its Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92*bis* and 89(C) of 14 July 2005, stating that "the Accused will be unfairly prejudiced if documents pertaining to their acts and conduct are admitted into evidence without giving the Defence the opportunity of cross-examination."²³ Reference is also made to the view of Trial Chamber I, as quoted in para. 4 above.²⁴
18. In that same decision, the Trial Chamber refers to *Prosecutor v. Norman et al.*, Appeals Decision on Judicial Notice, where the Appeals Chamber held in para. 26 in reference to the interpretation of Rule 92*bis* that "[t]he effect of the SCSL Rule is to permit the reception of 'information' – assertions of fact (but not opinion) made in documents or electronic communications – if such facts are relevant and their reliability is 'susceptible of confirmation.'"²⁵ This is clearly not the case with the documents mentioned in this section. For this reason, the Defence submits that the Exhibits mentioned under this section should be excluded from admission under Rule 92*bis*.

¹⁷ See p. 4 – 5 of Exhibit 26.

¹⁸ See p. 5 – 6 of Exhibit 26.

¹⁹ See p. 6 of Exhibit 26.

²⁰ See p. 6 – 7 of Exhibit 26.

²¹ See p. 7 – 8 of Exhibit 26.

²² See p. 8 – 9 of Exhibit 26.

²³ Case No. SCSL-2004-14-T-447, p. 4.

²⁴ Case No. SCSL-2004-14-T-447, p. 4.

²⁵ Case No. SCSL-2004-14-T-447, p. 3.

2.3 Hearsay Evidence Which Cannot Be Verified by the Defence

19. Many of the documents annexed to the Prosecution Notice contain hearsay evidence. This is the case for Exhibits 13, 14, 15, 16, 17, 26, 29, 31, 32, 34, 35, 38, 45, 46, 60, 76, 77, 83, and 144. Moreover, the hearsay evidence contained therein goes to the issues of the Indictment.
20. For example in Exhibit 26, a report based on interviews with persons, specific incidents are mentioned such as “[p]eople who refused to comply were either killed or had their properties destroyed”²⁶ and “[t]here are reports of compounds housing up to 50 people being targeted in this manner,”²⁷ and “[o]ne five-year-old girl survived being thrown into a fire at Blackhall Road on 28 January.”²⁸ The Defence is of the opinion that if this exhibit would be admitted, the Defence would be unable to cross-examine the information of this report, and this would unfairly prejudice the Defence.
21. Also for this reason, the abovementioned Exhibits should be excluded from admission pursuant to Rule 92*bis* because they contain hearsay evidence on very specific incidents which directly relate to issues of the Indictment and which can in no way be verified by the Defence.

2.4 Incomplete Documents

22. In the alternative, if the honorable Trial Chamber would admit Exhibit 26 as evidence under Rule 92*bis*, the Defence indicates that Exhibit 26 as attached to the Prosecution Notice is incomplete.
23. May and Wierda state that “if only one part [of a document] is admitted, the opposing party has the right to see the remainder of the document and to put different parts of the document into evidence in cross-examination or as part of their own case.”²⁹

²⁶ Exhibit 26, p. 4, first paragraph.

²⁷ *Id.*

²⁸ Exhibit 26, p. 4, third paragraph.

²⁹ See May and Wierda, *International Criminal Evidence* (2002), p. 244, para. 7.93.

24. Given the fact that the remainder of the report, or at least part of it, describes the activities of ECOMOG during the period of January and February 1999, this evidence might be of relevance to the Defence case.³⁰
25. The Defence therefore requests the honorable Trial Chamber to order the Prosecution to produce the remainder of the report attached to the Prosecution Notice as exhibit 26.
26. The same argument goes for Exhibits 31 and 79 attached to the Prosecution Notice.
27. Moreover, Exhibit 29 to the Prosecution Notice is a summary report by UNHCR, which contains various witness statements. The names of individuals referred to in the report are redacted. The Defence respectfully submits that by not disclosing the redacted information to the Defence, the Prosecution introduces witness evidence through the backdoor, while not disclosing the identity of the witness, and preventing the Defence from cross-examining the evidence contained therein. Exhibit 29 should therefore be excluded from admission under Rule 92*bis*.

2.5 Unreadable Document

28. The Defence is of the humble opinion that Exhibit 81 to the Prosecution Notice should not be admitted into evidence for the reason that part of this document is unreadable. The hand-writing of accompanying letter is not readable, which possibly explains the accompanying list, that is also partly unreadable. The Defence is thus unable to understand the substance and purpose of this document, other than the Prosecution explanation thereof in the third column of Annex 1 to the Prosecution Notice, which indicates that the name of the document is "Record of Deaths 1-19 January 1999, Births and Deaths Registry, Freetown, Sierra Leone. It furthermore indicates that the entire document is submitted into evidence.
29. For this reason, the Defence objects to the admission of this exhibit into evidence pursuant to Rule 92*bis* of the Rules.

³⁰ P. 9 of Exhibit 26, which is the last page of the Exhibit, but not the last page of the document, mentions "VIII. Activities of ECOMOG."

2.6 Unreliable and Irrelevant Materials

30. Proof of relevance and probative value needs to be provided in order for evidence to be admissible under Rules 89(C) and 92bis. It has been established that irrelevant evidence should be excluded.³¹ The ICTY Trial Chamber in *Prosecution v. Kvočka* held in its Decision on Defence Motion to Introduce Exhibit Evidence, “that relevance is established with respect not only to the facts of the case or the acts alleged in the indictment, but also to the defence of the accused and to the accused himself, to the testimony of witnesses and to the credibility thereof, as well as to previously admitted evidence.”³²
31. The Defence respectfully submits that Exhibit 76 attached to the Prosecution Notice should be excluded from admission because of its irrelevant nature. On the cover page of this exhibit, the Prosecution marked which parts it wants to admit under Rule 92bis; these are pages 2, 6, 12, 14, and 16. On p. 2, of which the section ‘Women and the War’ is partly marked as relevant, the situation in March 1991 is described. No further indication of time is provided in that section. Therefore, the Defence logically deducts that this section refers to a time period prior to the relevant period of the Indictment, and should thus be excluded from admission because of irrelevancy of the content thereof. In the second place, with respect to much of the evidence presented in this report, and marked by the Prosecution, it is entirely unclear to what time frame reference is made. The report as such seems to cover the whole conflict period in Sierra Leone, i.e. from 1991 to 2001.³³ Several statements refer to the early period of the war,³⁴ but many do not make any reference to a time frame. The Defence thus holds that it cannot be determined whether the evidence contained in such report is in fact applicable to the current Indictment against the Accused, and should thus be excluded on the basis of unreliability and irrelevance. Finally, the report itself indicates on p. 35 thereof that it has done extensive study on female ex-combatants from the RUF, but not the SLA. This of course goes to the reliability of such evidence, as it does present conclusions on both the RUF

³¹ See generally on this, May and Wierda, *International Criminal Evidence* (2002), p. 103, para. 4.25.

³² *Prosecutor v. Kvočka*, Case No. IT-98-30/1-T, Decision on Defence Motion to Introduce Exhibit Evidence, 17 April 2001.

³³ See for instance p. 2, where the date 2001 is referred to.

³⁴ See for instance p. 12, where it is held that “The presence of women and girls within the former rebel RUF and AFRC fighting forces was known early on in the war” (underlining added).

and the AFRC,³⁵ but “the study population is positively biased towards female ex-combatants from the former rebel RUF, and negatively biased towards those within the SLA (...).”³⁶

32. The Defence therefore respectfully submits that all evidence contained in this report should be excluded from admission under Rule 92*bis* because of unreliability, and in the alternative, those parts of the report should be excluded from admission either because of irrelevance since no reference is made to a time frame at all, or because reference is made to a time frame prior to the relevant period of the Indictment.

2.7 Unreliability of Sources of Documents

33. In relation to the foregoing section, the Defence moreover objects to several documents mentioned in Annex 1 to the Prosecution Notice for the reason that they all derive from a website which origin is unverifiable, and thus touches the authenticity of the documents.
34. As set out by the honorable Trial Chamber in the judicial notice decision,³⁷ as well as Trial Chamber I in *Prosecutor v. Norman et al.*,³⁸ evidence admissible under Rule 92*bis* must be “susceptible of confirmation.” As indicated in the judicial notice decision in the underlying case, the Trial Chamber held the following: “[a]ccording to the Prosecution, the majority of the documents originate from the United Nations and well-respected Non-Government Organizations, or are public documents, so that the information therein is ‘susceptible of confirmation’ within the meaning of Rule 92*bis*.”
35. The Defence respectfully submits that several of the documents annexed to the Prosecution Notice do not reach the threshold of Rule 92*bis* as set out in various Trial Chamber decisions.³⁹
36. Exhibits 52 (statement by the RUF), 53 (personal statement by Johnny Paul Koroma), and 54 (the RUF’s apology to the nation), 89 (press release AFRC), Exhibit 88 (address by Johnny Paul Koroma), Exhibits 82, 83, 84, and 85 (radio transcripts), Exhibit 60 (US

³⁵ See for instance p. 12 first paragraph of this Exhibit.

³⁶ Exhibit 76, p. 35.

³⁷ Case No. SCSL-2004-16-T-423, Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence, 25 October 2005, para. 63.

³⁸ Fofana Appeals Decision, para. 26.

³⁹ See Case No. SCSL-2004-16-T-423, Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence, 25 October 2005, para. 63, and Fofana Appeals Decision, para. 26.

State Department report), all originate from the website www.sierra-leone.org (a print-out of this website is attached as Exhibit 1), which is not a website of an official institute, such as the Sierra Leone Government, the Special Court, or a respected non-governmental organization. Moreover, it is entirely unclear what the origin of this website is; it does not make any reference to the actual sources of the mentioned documents.

37. Hence it is unclear to the Defence what the actual source of these documents is; the authenticity thereof cannot be verified, and the Defence on that basis objects to the admission into evidence of the abovementioned exhibits.


III Conclusion

38. For the above reasons, the Defence objects to the Prosecution Notice, insofar as it concerns the following exhibits to Annex 1 of the Prosecution Notice: Exhibits 13, 14, 15, 16, 17, 18, 19, 26, 29, 31, 32, 34, 35, 38, 45, 46, 52, 53, 54, 60, 76, 77, 81, 82, 83, 84, 85, 88, 89 and 144.

39. Moreover, the Defence respectfully requests the honorable Trial Chamber, insofar as these documents would not be excluded from admission as requested above, to order the Prosecution to provide the Defence with the remaining part of the report of Exhibits 26, 31 and 79, for the information contained therein may be of relevance to the Defence case.

Respectfully submitted,

On 15 November 2005


Geert-Jan Alexander Knoops


Kojo Graham


Andrew Daniels

TABLE OF AUTHORITIES

Case Law:

SCSL:

- *Prosecutor v. Brima et al.*, Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence, Case No. SCSL-2004-16-T-423, 25 October 2005 – para. 63.
- *Prosecutor v. Norman et al.*, Fofana – Decision on Appeal against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence,’ Case No. SCSL-2004-14-AR73-398, 16 May 2005 (“**Fofana Appeals Decision**”) – para. 26.
- *Prosecutor v. Norman et al.*, Decision on Prosecution’s Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C), Case No. SCSL-2004-14-T-447, 14 July 2005 (“**Norman Trial Chamber Decision**”) – p. 4.

ICTY:

- *Prosecutor v. Delalic et al.*, Case No. IT-96-21-T, Decision on Motion of Prosecution for Admissibility of Evidence, 19 January 1998, URL address: <http://www.un.org/icty/celebici/trialc2/decision-e/80119EV21.htm> – para. 20.
- *Prosecutor v. Kvočka*, Case No. IT-98-30/1-T, Decision on Defence Motion to Introduce Exhibit Evidence, 17 April 2001 (URL address: <http://www.un.org/icty/kvočka/trialc/decision-e/10417AE116055.htm>).

Book:

- Judge May & Marieke Wierda, *International Criminal Evidence*, Ardsley, NY: Transnational Publishers 2002, paras. 4.25, 7.93 (attached as **Exhibit 2**).

EXHIBIT 1

Sierra Leone Web



The Laws Project: A new work in progress to put the laws of Sierra Leone on the internet.



Sierra Leone News and Information Archives. News stories, as reported on the Sierra Leone Web, from 1994 to September 2003.



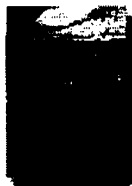
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Links to the growing number of internet websites with information on Sierra Leone.



Sierra Leone Culture. Includes Krio proverbs, lorry slogans, a farm calendar, and a section on poetry by writers - both amateurs and those who have been previously published - with ties to Sierra Leone.



Contact Peter C. Andersen at the Sierra Leone Web.

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EXHIBIT 2

03

INTERNATIONAL
CRIMINAL
EVIDENCE

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occurred. They need to be informed about the background. The situation is analogous to that of a domestic court trying a crime perpetrated in different jurisdictions, where the perpetrators and victims are non-nationals. The resultant complexities were recognized by Lord Bingham C.J. in the English case of *Sawoniuk*:

Criminal charges cannot be fairly judged in a judicial vacuum. In order to make a rational assessment of evidence directly relating to a charge it may often be necessary for a judge to receive evidence describing, perhaps in some detail, the context and circumstances in which the offences are said to have been committed.³⁸

The net of relevance must therefore be cast wider than in an ordinary criminal trial, in order to incorporate background facts essential to a fair adjudication of the case.

4.25 Power to exclude irrelevant evidence. However, courts have an inherent jurisdiction to exclude irrelevant evidence. This was reflected in the IMT and IMTFE Charters (Articles 20 and 13, respectively), which stated that the tribunal may require to be informed of the nature of any evidence before it was offered so that it may rule upon its relevance. The judges were under a duty to exclude irrelevant evidence in order to preserve the right of the accused to fair and expeditious trial. Thus the IMT Charter also stated at Article 18: "The Tribunal shall (a) confine the Trial strictly to an expeditious hearing of the issues raised by the charges, (b) take strict measures to prevent any action which will cause unreasonable delay, and rule out irrelevant issues and statements of any kind whatsoever."

4.26 Exclusion of categories of evidence. The modern tribunals have not followed the post-World War II tribunals in their explicit exclusion of entire categories of evidence as irrelevant. For instance, in the Nuremberg trial, the defense was not allowed to produce in evidence documents implicating the Allied forces in war crimes.³⁹ In the Tokyo trial, categories including "[e]vidence showing that the Japanese forces in China

38. *Sawoniuk* [2000] 2 Cr. App. R. 230 at 234, per Lord Bingham C. J. The Court went on to say: "[t]his approach seems to us of particular significance in an exceptional case such as the present, in which a London jury was asked to assess the significance of evidence relating to events in a country quite unlike our own, taking place a very long time ago in the extraordinary conditions prevailing in 1941 to 1942." *Id.* at 234-35.

39. TAYLOR TELFORD, *ANATOMY OF THE NUREMBERG TRIAL* at 627 (Little Brown and Company 1992). Kevin Chaney, *Pitfalls and Imperatives: Applying the Lessons of Nuremberg to the Yugoslav War Crimes Trials*, 14 DICK. J. INT'L L. 57 at 89 (1995).

tional criminal trials. The ad hoc tribunals have decided that whether a document is an original or a copy is relevant to its weight.

7.92 Other common law rules, such as the rule excluding self-serving documents (e.g., written by a party in their own support, such as propaganda), are not applicable in international criminal trials.¹⁵³ Independent evidence, whether oral or documentary, may serve to corroborate, support, prove or disprove the authenticity and probative value of documentary evidence, but it is not required.¹⁵⁴ Likewise, the rule against documents prepared solely for the purposes of litigation does not apply.¹⁵⁵

4.2 Tendering Documents

7.93 *Production of entire document or excerpt?* A number of issues arise concerning the tendering of documents into evidence. For instance, must the entire document be produced? Or may parts of it be produced? This question arises most often with regard to overly long documents (a common enough experience in the modern trials) or documents that require redaction for a variety of reasons. The practice has varied in both the historical and modern trials in this regard. However, it is clear that, if only part is admitted, the opposing party has the right to see the remainder of the document and to put different parts of the document into evidence in cross-examination or as part of their own case.¹⁵⁶ In the *Hostage* case, the tribunal went so far as to state that failure to produce the remainder of the document on the part of the prosecution would cause the court to infer that the evidence contained therein was unfavorable to the prosecution.¹⁵⁷

7.94 Practice also varied in the historical trials as to whether to read a document or its relevant excerpts into the record. At the IMT this was done in order to facilitate translation into four languages; but in the subsequent trials, which were usually conducted in two languages, this was unnecessary. Nonetheless documents would still be read for their emphasis or in conjunction with argument or comments on probative

153. *Musema*, Judgment and Sentence, Jan. 27, 2000 at ¶ 61.

154. *Id.* at ¶ 79.

155. *Kvočka et al.*, Decision on Defence Motion to Introduce Exhibit Evidence, Apr. 17, 2001.

156. XV NMT, at 636-37. Practice differed as to whether the relevant parts of the document should be offered into evidence a second time as a defence exhibit or simply remain in the record as a prosecution exhibit: *id.* at 638, *Medical* case, Transcript, Feb. 28, 1947, at 664-65.

157. XV NMT, at 637, 638, 663-64.