

SPECIAL COURT FOR SIERRA LEONE

OFFICE OF THE PROSECUTOR

FREETOWN - SIERRA LEONE

Before: Hon. Justice Pierre Boutet, Presiding Judge
Hon. Justice Benjamin Mutanga Itoe
Hon. Justice Bankole Thompson

Registrar: Robin Vincent

Date filed: 24th June 2005

THE PROSECUTOR

Against

SAMUEL HINGA NORMAN

MOININA FOFAN

ALLIEU KONDEWA

(Case No. SCSL-2004-14-T)

**PROSECUTION'S CONSEQUENTIAL REQUEST TO ADMIT INTO
EVIDENCE CERTAIN DOCUMENTS PURSUANT TO RULE 92 BIS AND 89 (C)**

Office of the Prosecutor:

Luc Côté
James C. Johnson
Kevin Tavener
Joseph Kamara
Bianca E. Suciú

**Court Appointed Counsel for Samuel
Hinga Norman**

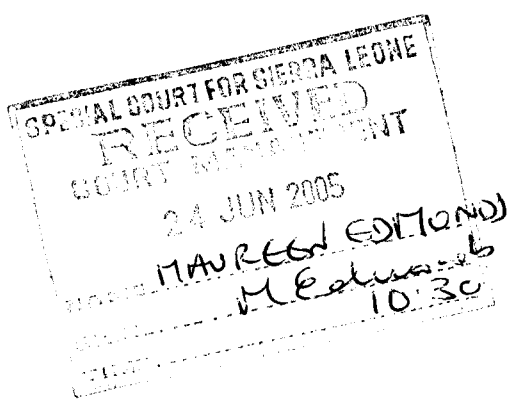
Dr. Bu-Buakei Jabbi
John Wesley Hall, Jr.

**Court Appointed Counsel for Moinina
Fofana**

Victor Koppe
Michiel Pestman
Arrow J. Bokarie

**Court Appointed Counsel for Allieu
Kondewa**

Charles Margai
Yada Williams
Ansu Lansana



I. INTRODUCTION

1. On the 2nd June 2004 the Trial Chamber handed down its “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence” (“**Trial Chamber Decision of Judicial Notice**”). This decision was subsequently appealed and the Appeals Chamber rendered its decision (the “**Fofana-Appeal Decision on Judicial Notice**”¹) on 16th May 2005.
2. On the 14th June 2005, notice was given to the Defence of the documents sought to be tendered by way of Rules 92*bis* and 89(C) of the Rules of Procedure and Evidence of the Special Court for Sierra Leone (the “**Rules**”). The documents have been culled from the general exhibits list. The documents are divided into three separate bundles which can be considered both generally and individually.
3. The Prosecution requests the Trial Chamber to admit into evidence the proposed documents under Rule 92 *bis* and 89 (C). The documents have been extracted, and collated into three bundles, from the General List of Exhibits filed on 26 April 2004² and are catalogued in the attached **Annex A**. A good number of the documents in question were submitted with the Prosecution’s Motion for Judicial Notice, filed on 1 April 2004. The Prosecution has highlighted, where appropriate, those portions of the respective documents upon which reliance is placed.

II. GENERAL SUBMISSIONS

4. The replacement of the traditional preference of oral testimony with extensive flexibility in the admission of documentary evidence, and the establishment of the principle of “extensive admissibility of evidence” are recent trends in

¹ *Prosecutor v. Norman et al*, SCSL-04-14-T, Appeals Chamber, “Fofana-Decision on Appeal against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence” (hereinafter “**Fofana-Appeal Decision on Judicial Notice**”), 16 May 2004.

² *Prosecutor v. Norman et al*, SCSL-04-14-T, SCSL-04-14-T, “Materials Filed Pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial of 1 April 2004, 26 April 2004.

international criminal law.³ The notion underlying these principles is the competence of the professional judges to receive evidence and to subsequently evaluate it according to its contents, credibility, the manner in which it was obtained, in the light of all other evidence.⁴

5. The basic principle applicable to any form of evidence is stipulated in Rule 89(C), which provides that any relevant evidence is admissible. According to international jurisprudence, in deciding what constitutes “relevant” evidence, wide discretion is granted to the Trial Chamber. The Chamber is free to consider the reliability of the evidence, its probative value, prejudicial impact, or any other reasonably related factor.⁵
6. Moreover, pursuant to Rule 93, it is possible to introduce evidence of instances not necessarily covered by the indictment, which demonstrates ‘a consistent pattern of conduct’, in order to prove elements such as knowledge or intent;⁶ identity or position of authority;⁷ opportunity, preparation, plans or mode of operation⁸. Such evidence, however, must be submitted to show a consistent or

³ First trend manifested, for example, in ICTY’s adoption of Rule 89(F) in December 2000. Regarding second trend see *Blaškić* Trial Judgement, 3 March 2000, para. 34.

⁴ *Prosecutor v. Delalić et al.*, IT-96-21-T, “Decision on the Motion of the Prosecutor for the Admissibility of Evidence, 19 January 1998” (“*Čelebići* Evidence Decision, 19 Jan. 1998”), para. 20; *Blaškić*, Trial Judgement, 3 March 2000, para. 35.

⁵ See for example in *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, “Decision on Admissibility of Proposed Testimony of Witness DBY”, 18 September 2003 (“*Bagosora* Trial Chamber Evidence Decision, 18 September 2003”), para. 18: “Relevance, probative value and even prejudice are all relational concepts. The content of the putative facts must be defined and then evaluated in relation to their possible value as proof of the existence of a crime as described in the indictment. The nature of this evaluation explains the discretion conferred on the Trial Chamber by Rule 89(C).”

⁶ *Prosecutor v. Bagilishema*, ICTR-95-I, Trial Judgement, 7 June 2001, para. 63: “[t]he Chamber is of the opinion that the Accused’s intent ... should be evident from patterns of purposeful action.” *Prosecutor v. Kayishema and Prosecutor v. Ruzindana*, ICTR-95-I, Trial Judgement, 21 May 1999, para. 535: “consistent and methodical pattern of killing is further evidence of the specific intent” (upheld by the Appeals Chamber in *Kayishema and Ruzindana* Appeal Judgement, 1 June 2001, para. 159).

⁷ *Prosecutor v. Bagilishema*, ICTR-95-I, Trial Judgement, 7 June 2001, para. 50: “command responsibility for failure to punish may be triggered by a broadly based pattern of conduct by a superior, which in effect encourages the commission of atrocities by his or her subordinates.”

⁸ In *Galic*, the ICTY permitted the Prosecution to submit evidence on of an incident which was not covered by the indictment, as corroborating evidence of a consistent pattern of conduct pursuant to Rule 93 of the Rules of Procedure and Evidence of the Tribunal. See *Prosecutor v. Galic*, IT-98-29-PT, “Decision on the Defence motion for Indicating that the First and Second Schedule to the Indictment Dated 10th October 2001 Should be Considered as the Amended Indictment”, 19 October 2001, paras. 16 and 23.

systematic practice, rather than the good character of the Accused or his disposition.⁹

7. Extra precaution is taken to ensure that the admission of documentary evidence does not adversely affect the right of the Accused to a fair trial, by tending to admit only such documentary evidence that pertains to the background of the crime, as opposed to evidence directly implicating the Accused in the perpetration of a crime.¹⁰ Examples of such 'background' evidence include evidence demonstrating the occurrence of crimes in a certain location, or in the context of an armed conflict, or in a widespread or systematic manner, or evidence proving the command structure.¹¹

General Principles on the Admission of Evidence

Relevance as a Prerequisite of Admissibility

8. Rule 89(C) differs from the parallel ICTY and ICTR rules, the latter requiring, in addition to the evidence being relevant, that it have probative value to be admitted. Discretion is granted to the Court by Sub-rule 89(C), by which any

⁹ See Judge Cassese in ICTY Transcripts of 15 February 1999 in *Prosecutor v. Kupreškić et al*, IT-95-16-T, p. 6889, lines 5-15 "As for the model of behaviour,... Rule 93 on pattern of conduct is not relevant to that. ...I took some part in the drafting of this Rule 93, and I can tell you ... this rule was conceived of as relating to crimes against humanity. When you may have to prove the existence of a consistent practice or systematic practice, I don't see why and what extent Rule 93 could relate to the issue of character." The ICTR shared this view when it noted in *Bagilishema* that "Rule 93 ... is the only Rule that deals with evidence of a consistent pattern of conduct. However, this Rule is relevant not to evidence of a pattern of conduct which may favour the Accused, but rather to evidence to demonstrate the existence of a consistent practice or systematic practice so as to prove a charge, such as crimes against humanity." See *Prosecutor v. Bagilishema* Trial Judgement, ICTR-95-I, 7 June 2001, para. 114. In *Bagosora*, the ICTR Appeals Chamber held that evidence relating to the defendant's prior criminal acts may not be used to demonstrate "a general propensity or disposition" to commit the crimes with which he is charged, subsequently stating that "this does not preclude the introduction of such evidence for other valid purposes." *Prosecutor v. Bagosora* "Decision on Prosecutor's Interlocutory Appeals Regarding Exclusion of Evidence", 19 December 2003, para. 14, upholding and quoting from *Bagosora* Trial Chamber Evidence Decision, 18 September 2003, para. 35.

¹⁰ *Prosecutor v Natelitic*, ICTY-98-34, "Decision on the Prosecutor's Motion to Take Depositions for Use at Trial (Rule 71)" 10 November 2000, paras. 17-20.

¹¹ *Prosecutor v Natelitic*, ICTY-98-34, "Decision on the Prosecutor's Motion to Take Depositions for Use at Trial (Rule 71)" 10 November 2000, para. 17. Also see R. May and M. Wierda, *International Criminal Evidence* (NY, 2002), p. 346.

reasonable consideration could be taken into account in deciding whether certain evidence is relevant.

Reliability as a Prerequisite of Admissibility

9. Reliability was held to be an implicit component of admissibility, rather than a separate prerequisite for admissibility.¹² Since Rule 89 clearly stipulates the conditions for admissibility, there is no need to read additional requirements into it.¹³

Burden and Standard of Proof Required for Admission

10. The *burden* of proof relating to the admissibility of documentary evidence lies on the party seeking to rely on the document.¹⁴ The *standard* of proof generally required is a “balance of probabilities” standard.¹⁵

¹² “Reliability is the invisible golden thread which runs through all the components of admissibility” *Prosecutor v. Delalić et al.*, IT-96-21-T, “Decision on the Prosecution’s Requests for the Admission of Exhibit 155 into Evidence and for an Order to Compel the Accused, Zdravko Mucic, to Provide a Handwriting Sample”, 19 Jan. 1998 para 32. *Prosecutor v. Musema*, ICTR-96-13-A, Judgement and Sentence, 27 January 2000 (“*Musema* Judgement”), para. 37-8.

¹³ *Prosecutor v. Delalić et al.*, IT-96-21-T, “Decision on the Prosecution’s Requests for the Admission of Exhibit 155 into Evidence and for an Order to Compel the Accused, Zdravko Mucic, to Provide a Handwriting Sample”, 19 Jan. 1998, para. 32: “...it is neither necessary nor desirable to add to the provisions of Sub-rule 89(C) a condition of admissibility which is not expressly prescribed by that provision.”

¹⁴ *Musema* Judgement, 27 January 2000, para. 55: “The Chamber notes that in order for a document to be admissible as evidence, the Party that seeks to rely on the document must first prove that it meets with the standards of relevance and probative value (discussed above) laid out by sub-Rule 89(C). In other words, the burden of proof of the reliability (which, as discussed above, “runs through” the criteria of admissibility, namely relevance and probative value) of the document lies on the Party that seeks to rely on the document. When documents are admitted with the consent of both Parties, as has occurred in the instant case, the issue of proof of reliability does not arise. A similar situation arises when a document is admitted by way of judicial notice, as a “fact of common knowledge” under Rule 94, since no proof of the fact is required. When, however, the reliability of documentary evidence is questioned, the issue arises as to the required standard of proof of reliability for the admission of evidence.”

¹⁵ *Musema* Judgement, 27 January 2000, para. 56: “With certain exceptions, discussed below, the Chamber is of the opinion that the standard of proof required to establish the reliability of documentary evidence is proof on the balance of probabilities. The admission of evidence requires, under sub-Rule 89(C), the establishment in the evidence of *some* relevance and *some* probative value. Accordingly, the standard of proof required for admissibility should be lower than the standard of proof required in the final determination of the matter at hand through the weighing up of the probative value of all the evidence

11. In *Celebici*, the ICTY explained that “[t]he threshold standard for the admission of evidence...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.”¹⁶

Evaluation of Documentary Evidence

12. Once evidence is admitted, a document is accorded weight by the Trial Chamber.¹⁷ When evaluating evidence, the Trial Chamber may adopt any approach it deems suitable.¹⁸ It should, nonetheless, in accordance with Sub-rule 89(B), apply rules “which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law”.¹⁹

before the Chamber. The admission of evidence does not require the ascertainment of the exact probative value of the evidence by the Chamber; that comes later. Admission requires simply the proof that the evidence has *some* probative value. Different standards of proof are appropriate for the process of admission and the process of determining the exact probative value of the same evidence.” The exceptions, where the higher standard of proof “beyond reasonable doubt” applies, according to the ICTR in *Musema*, include cases where “the rights of the Accused are threatened by the admission of the evidence in question” and where “the allegations about the unreliability of the evidence demand for admissibility the most exacting standard”. *Musema* Judgement, 27 January 2000, para. 58. This finding is consistent with the ICTY’s holding in *Čelebići* that “[t]he burden of proof of voluntariness or absence of oppressive conduct in obtaining a statement is on the Prosecution... [which] is required to prove it convincingly and beyond reasonable doubt.” See *Prosecutor v. Delalić et al.*, IT-96-21-T, “Decision on Zdravko Mucic’s Motion for the Exclusion of Evidence”, 2 September 1997, para. 42. The full text of this paragraph is as follows: “The burden of proof of voluntariness or absence of oppressive conduct in obtaining a statement is on the Prosecution. Since these are essential elements of proof fundamental to the admissibility of a statement, the Trial Chamber is of the opinion that the nature of the issue demands for admissibility the most exacting standard consistent with the allegation. Thus, the Prosecution claiming voluntariness on the part of the Accused/suspect, or absence of oppressive conduct, is required to prove it convincingly and beyond reasonable doubt. We agree with the Defence that this is the required standard.”

¹⁶ *Prosecutor v. Delalic, Mucic, Delic and Landzo*, IT-96-21-T “Decision on the Motion of the Prosecutor for the Admissibility of Evidence”, 19 January 1998 (“*Celebici* Evidence Decision 3”), para. 20.

¹⁷ *Musema* Appeal Judgement, 16 November 2001, para. 18; *Rutaganda* Appeal Judgement, 26 May 2003, para. 207.

¹⁸ *Kayishema and Ruzindana*, ICTR-95-I, Appeal Judgement, 1 June 2001, para. 119.

¹⁹ In accordance with SCSL Rule 89(B), the judges must apply, the rules of evidence which best favour a fair determination of the matters before it and which are consonant with the spirit of the Statute and the general principles of law, where such have not been expressly provided for in the Tribunal’s Rules of Procedure and Evidence. See *Kamuhanda*, ICTR-99-54A-T, Judgment, 22 January 2004 (“*Kamuhanda* Trial Judgement, 22 January 2004”), para. 33. Also see *Blaškić* Hearsay Decision, 26 January 1998, para. 5.

13. Reliability of evidence is an issue which usually arises with relation to the weight it is given, as opposed to constituting a condition for its admissibility.²⁰ The *credibility* of the evidence, on the other hand, never effects its admissibility but rather only goes to the weight it is given.²¹

III SPECIFIC ARGUMENT

14. The Court held in the Fofana-Appeal Decision on Judicial Notice that Rule 92 *bis* was amended specifically to accommodate the operations and peculiarities of the Special Court envisioned to exist for a short period of time, which constitutes a more flexible and broad alternative mode of presentation of evidence than the regime existing in the *ad hoc* tribunals.
15. In the Appeal Chamber's view Rule 92 *bis* was deliberately construed "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".²² The majority decision held that proof of reliability is not a condition of admission under Rule 92 *bis*. "[A]ll that is required is that the information should be *capable* of corroboration in due course."²³ [emphasis in the original text]
16. In the Fofana-Appeal Decision on Judicial Notice, the requirement under rule 92 *bis* that the reliability of the evidence be susceptible of confirmation was interpreted as meaning that: "the information should be capable of corroboration in due course."²⁴ The requirement should be interpreted as allowing any evidence which is relevant and contains some indicia of reliability to be admissible. This

²⁰ This is in line with the ICTY's view in *Čelebići*, that "the mere admission of a document into evidence does not in and of itself signify that the statements contained therein will necessarily be deemed to be an accurate portrayal of the facts". See *Čelebići* Evidence Decision, 19 Jan. 1998, para. 20.

²¹ The ICTR stressed that "...the determination of admissibility does not go to the issue of *credibility*, but merely *reliability*. Accordingly, documentary evidence may be assessed, on the balance of probabilities, to be reliable, and as a result admitted. Later, that same evidence may be found, after examination by the Chamber, not to be credible." See *Musema* Trial Judgement, 27 January 2000, para. 57.

²² *Id.*

²³ *Id.*

²⁴ Fofana-Appeal Decision on Judicial Notice, 16 May 2004, , (majority decision) para. 26. See also Separate Opinion of Justice Robertson, paras. 13, 14.

- should automatically exclude opinions, propaganda information, and such other evidence that does not contain any guaranty of reliability.²⁵
17. The assessment of the weight and reliability of the information admitted under Rule 92 *bis* is to be made by the Trial Chamber at the end of the trial in light of all the evidence presented.²⁶
18. The Prosecution submits, in respect of the **first bundle**²⁷, headed “Rule 92 *bis* and 89 (C) submissions of certain documents received in the Judicial Notice Decision, 2 June 2004, for Existence and Authenticity” – that those documents originate from the United Nations and a respected Non-Governmental Organization and should therefore be admitted under Rules 89 (C) and 92 *bis*.²⁸ The Trial Chamber has admitted those documents, “as to their Existence and Authenticity”, by its decision of the 2nd June 2004. The Prosecution is now seeking to complete the process, in recognition of the decision of the Trial Chamber, by formally tendering those documents.
19. In respect of the **second bundle**²⁹, the Prosecution requests that all documents listed be admitted into evidence under Rule 92 *bis*. Those documents form a fraction of the documents that were submitted in the Prosecution’s Motion for Judicial Notice and Admission of Evidence³⁰ in support of certain facts that the Prosecution sought to be judicially noticed by the Court, namely facts D, K, L, M and U. Having failed to be facts judicially noticed by the Appeals Chamber, the Prosecution seeks to have these documents admitted via Rule 92 *bis*. As expressed in the Fofana-Appeal Decision on Judicial Notice “the evidential

²⁵ *Id.*

²⁶ Fofana-Appeal Decision on Judicial Notice, (majority decision) para. 27. See also Separate Opinion of Justice Robertson, para. 14.

²⁷ The documents are not attached hereto as they have already been disclosed to the Defence on 14 June 2004 and submitted to the Trial Chamber on the 21 June 2005.

²⁸ Fofana-Appeal Decision on Judicial Notice, (Separate Opinion of Justice Robertson) para. 13.

²⁹ The documents are not attached hereto as they have already been disclosed to the Defence on 14 June 2004 and submitted to the Trial Chamber on the 21 June 2005.

³⁰ *Prosecutor v Norman et al*, SCSL-04-14-T, “Prosecution’s Motion for Judicial Notice and Admission of Evidence”, 1 April 2004.

material submitted by the prosecution in respect of that notice is, however, admissible under Rule 92 *bis*.³¹

20. The documents in the second bundle include documents that have been issued by the CDF³² and respected NGO's. All documents in question are relevant and refer to the factual allegations as stipulated in the Consolidated Indictment against Hinga Norman, Moinina Fofana and Allieu Kondewa.
21. In accord with the Appeals Chamber "Rule 92 *bis* permits facts that are not beyond dispute to be presented to the court in a written or visual form that will require evaluation in due course. A party which fails in an application to have a fact judicially noticed under 94(A) may nonetheless be able to introduce into evidence under Rule 92 *bis* the sources upon which it has relied under 92 *bis* and at the end of the trial; the court may well conclude that the fact have been proved beyond reasonable doubt. The weight and reliability of such 'information' admitted under Rule 92 *bis* will have to be assessed in the light of all the evidence in the case."³³ The court then went onto to provide guidelines as to how Trial Chambers should approach such evidence.
22. The **third bundle**³⁴ is headed "Rule 92bis and 89(C) submission of certain documents for admission from exhibits list not otherwise tendered at trial." As the Appeals Chamber stated "Rule 92 *bis* is different to the equivalent Rule in ICTY and ICTR and deliberately so [...] The effect of the SCSL Rule is to permit the reception of 'information' – assertions of fact (but not opinion) made in documents or electronic communications – if such facts are relevant and their reliability is 'susceptible of confirmation'. This phraseology was chosen to make

³¹ Fofana-Appeal Decision on Judicial Notice, (Separate Opinion of Justice Robertson) para. 32 and (Majority Decision) para 46.

³² See *Prosecutor v Kordic*, IT-95-14-2, " Decision on Prosecutor's Submissions concerning "Zagreb Exhibits" and Presidential Transcripts", 1 December 2000 which illustrates that military orders and reports are generally admissible especially if signed and bearing an official seal.

³³ Fofana-Appeal Decision on Judicial Notice, (Majority Decision) para 27.

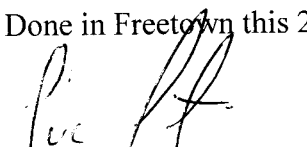
³⁴ The documents are not attached hereto as they have already been disclosed to the Defence on 14 June 2004 and submitted to the Trial Chamber on the 21 June 2005.

clear that proof of reliability is not a condition of admission; all that is required is that information should be *capable* of corroboration in due course. It is for the trial chamber to decide whether the information comes in a form, or is of a kind, that is ‘susceptible to confirmation’³⁵. “Propaganda claims or political attacks in partisan newspapers might be excluded, for example, but information set out in UN or NGO or Truth Commission reports, or books by serious historians, should be admitted. So might certain newspaper reports if they carry a reporter’s by-line and purport to be based on eyewitness reports or interviews or have other indicia of reliability.”³⁶ Reliability can be confirmed or disproved.

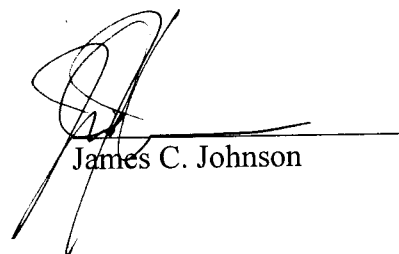
IV CONCLUSION

23. Based on the forgoing and in accordance with the principles laid down in the Fofana-Appeal Decision on Judicial Notice, the Prosecution respectfully requests the Trial Chamber to admit the highlighted information contained in the documents catalogued in the Annex A, pursuant to Rule 92 *bis* and 89(C).


Done in Freetown this 24th of June 2005.



Luc Côté



James C. Johnson



Kevin Tavener

³⁵ *Id* para. 26.

³⁶ Fofana-Appeal Decision on Judicial Notice, (Separate Opinion of Justice Robertson) para. 13

ANNEX A- DOCUMENTS CATALOG

ANNEX B- PROSECUTION'S INDEX OF AUTHORITIES

Annex A-I

First bundle

Rule 92*bis* and 89(C) submissions of certain documents received in the Judicial Notice Decision, 2 June 2004, for Existence and Authenticity.

From Annex B, Prosecutor's Motion for Judicial Notice

Reports of the UN Secretary General

- #11. 5 February 1998
- 13. 9 June 1998
- 14. 12 August 1998
- 15. 16 October 1998
- 16. 16 December 1998
- 18. 4 June 1999

Other UN Reports

- 31. UNICEF Press Release, 19 June 1997
- 32. UNICEF Monthly Report, 31 July 1999

Second bundle

Rule 92bis submissions of evidential material submitted in support of the Judicial Notice Request of facts D, K, L, M and U which were over turned on appeal.

From Annex B, Prosecutor's Motion for Judicial Notice

- #42. Human Rights Watch, "Getting Away with Murder, Mutilation and Rape" Vol. 10, No. 3 (A) July 1998
54. International Crisis Group Africa Report No. 28 "Sierra Leone: Time for a New Military & Political Strategy," 11 April 2001
57. Mazurana, Dyan and Dhristopher Carlson, "From Combat to Community: Women and Girls of Sierra Leone" January 2004
58. No Peace Without Justice, "Sierra Leone Conflict Mapping Program" Draft Copy, 9 March 2004 (excerpts)
61. CDF Statement of FM 98.1, 22 December 1997
62. Kamajor Press Release, 23 December 1997, available online at <http://www.sierra-leone.org/kamajor1.html>
63. Summary of Conversations Held with Civil Defence Force Leader Sam Hinga Norman, 10 January 1998 by Alfred Sam Foray, available online at <http://www.sierra-leone.org/cdu2.html>
66. Report of Unacceptable Behaviour of CDF in the Southern Region, August 2000 by the Regional Reconciliation Committee (RRC) Souther Region
68. CDF Calendar 2001

Third bundle

Rule 92*bis* and 89(C) submissions of certain documents for admission from exhibits list not otherwise tendered at trial.

From exhibit list filed 26 April

#23
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96(B)
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ANNEX A-II

CDF: Admission of Documents Pursuant to Rule 92(bis) and 89(C)

Document Name/Type	Exhibit No.	Relevant Bundle of Documents	Description	Relevance to Indictment by paragraph number And General Allocation of Applicability	Reference Page
Curriculum Vitae of Hinga Norman	23	3	Contains bio data and other information about career of Hinga Norman.	Background information 1,13	00000886-887
Passport	38	3	Sierra Leone Passport (34 pages) Number S005865, issued in the name of Samuel Hinga Norman.	Background information 1,13	00000917-950

13118

Document Name/Type	Exhibit No.	Relevant Bundle of Documents	Description	Relevance to Indictment by paragraph number And General Allocation of Applicability	Reference Page
Daily Front Line Report dated 02/10/1997	85	3	<p>This Report written by Alpha K. Siaka, Secretary General was addressed to S.H. Norman, Deputy Minister of Defence. The report refers to the capture of Gofor front line by Kamajor patrol and a married couple from Zimmi were arrested for mining diamonds. The couple were then "instantly sentenced to death".</p> <p>An additional small note is appended and signed by Andrew Harding at the end of the report.</p>	Individual Criminal Responsibility. Command structure. Paragraphs 13, 18, 19, 21-29.	00003897-3899
List of children with the CDF Registered under C.A.W. Program	96(b)	3	A list compiled by the NGO "Children Affected by War" of names of children engaged with the CDF.	Child soldiers Background	00003938-3939

Document Name/Type	Exhibit No.	Relevant Bundle of Documents	Description	Relevance to Indictment by paragraph number And General Allocation of Applicability	Reference Page
"Front Line Report, Pujehun District, Date: 19/06/1997, Time: 1030 PM".	101	3	<p>The heading on the first page of the report reads: "Commanders, Civil Defence Forces From Bo Waterside came to Monrovia with the Following Reports"</p> <p>The document is compiled and signed by Baimba Adam Zorokong, Secretary to Sam Hinga Norman. The document is "submitted" and signed by Sam Hinga Norman Deputy Minister of Defence / Coordinator CDF, Sierra Leone.</p>	Individual Criminal Responsibility, command structure. Paragraphs 13, 18, 19, 21-29.	00003954-3955
"Front Line Reports, Pujehun District, Date: 20/06/1997, Time: 7 AM".	102	3	<p>The document is compiled and signed by Baimba Adam Zorokong, Secretary to Sam Hinga Norman. The document is "submitted" and signed by Sam Hinga Norman as Deputy Minister of Defence / Coordinator CDF, Sierra Leone.</p>	Individual Criminal Responsibility, command structure. Paragraphs 13, 18, 19, 21-29.	00003956
Communiqué	104	3	<p>Issued by the CDF relating to child soldiers and communiqué from meeting of the joint Committee on Disarmament Demobilization and Reintegration-15 May 2001</p>	Child Soldiers Paragraph 29.	00003890-

Document Name/Type	Exhibit No.	Relevant Bundle of Documents	Description	Relevance to Indictment by paragraph number And General Allocation of Applicability	Reference Page
Minutes of Meeting held between Chief Norman and the Delegation of Kamajors From Bo District.	107	3	<p>A 2-page typed document titled: "Minutes of Meeting held between Chief Norman and the Delegation of Kamajors (sic, Kamajors) From Bo District on the 26 July 1997 at Gendema – Bo Water Side Mano River Bridge.</p> <p>Signatures of Sam Hinga Norman dated 28/07/1997 are placed at the bottom of the first page.</p> <p>The second page is a list titled "Requirements"</p> <p>This document was found inside a yellow file cover with a white label which read "Front Line Reports".</p>	Command responsibility and command structure. Paragraphs 13 -21	0003968-69
Very Urgent Front Line Request.	109	3	<p>A 1-page typed document dated 27/08/1997 titled "Very Urgent Front Line Request". It is written by Hinga Norman and addressed to The Chief of Staff, ECOMOG, ECOMOG Headquarters, Monrovia, Liberia.</p>	Individual Criminal Responsibility, Command structure. Paragraphs 13, 18, 19, 21-29.	0003973

Document Name/Type	Exhibit No.	Relevant Bundle of Documents	Description	Relevance to Indictment by paragraph number And General Allocation of Applicability	Reference Page
Hinga Norman's letter to Chief of Staff, ECOMOG HQ.	112	3	<p>A set of documents the first of which is dated 26/08/1997, written and signed by Sam Hinga Norman, and is addressed to The Chief of Staff, ECOMOG Headquarters, Monrovia, Liberia, forwarding an Emergency Front Line Request.</p> <p>The second document is three page report dated 26/08/1997. It is written by Hon. M.L. Kallon and addressed to Chief Norman. The report bears the header: "Sierra Leone Civil Defence Force, Emergency Front Line Report From Jendema, Mano River Bridge". The subject of the report is: "Emergency Front Line Report". It is signed for Hon. M. L. Kallon, Chairman Adm (Administration) Wing.</p> <p>The third document is a list titled: "Civil Defence Forces Sierra Leone: Requisition for Arms and Ammunitions (sic, Ammunitions)". This list also bears the date 26/08/1997 but is not signed.</p> <p>The fourth document, consisting of one page, is dated 26/08/1997 and titled "Ration/Other logistical Requirements". It is written by Andrew Harding and addressed to no one in particular. At the bottom of the page are listed front line operational areas.</p>	<p>Individual Criminal Responsibility, Command Structure Paragraphs 13, 18, 19, 21-29.</p>	00003976-78

Document Name/Type	Exhibit No.	Relevant Bundle of Documents	Description	Relevance to Indictment by paragraph number And General Allocation of Applicability	Reference Page
A letter written and signed by Sam Hinga Norman.	113	3	<p>A set of two documents, the first of which is a letter written and signed by Sam Hinga Norman dated 17/09/1997 and addressed to The Commander, Nigerian Contingent, ECOMOG Headquarters, Monrovia, Liberia.</p> <p>The second document was written and signed for by Hon. M.L. Kallon, Chairman, Adm (Administration Wing). It is addressed to no one in particular and is dated 17/08/1997. It bears the heading "Sierra Leone Civil Defence Force, Emergency Front Line Report From Jendema - Mano River Bridge".</p>	Individual Criminal Responsibility, CDF command structure. Paragraphs 13, 18, 19, 21-29.	00003984-3986

Document Name/Type	Exhibit No.	Relevant Bundle of Documents	Description	Relevance to Indictment by paragraph number And General Allocation of Applicability	Reference Page
<p>A set of two documents, the first of which is a letter written and signed for by Sam Hinga Norman dated 29/09/1997 and addressed to The Commander, Nigerian Contingent, ECOMOG Headquarters, Monrovia, Liberia.</p>	<p>114</p>	<p>3</p>	<p>A set of two documents, the first of which is a letter written and signed for by Sam Hinga Norman dated 29/09/1997 and addressed to The Commander, Nigerian Contingent, ECOMOG Headquarters, Monrovia, Liberia.</p> <p>The second document was written and signed for by Andrew N. K. Harding, Administrator, CDF, Jendema, and is addressed to Chief Norman. It is dated 29/09/1997 and bears the header "Sierra Leone Civil Defence Force, Front Line Report From Jendema, Mano River Bridge". The subject of the report is "Front Line Report".</p>	<p>Individual Criminal Responsibility, CDF command structure. Paragraphs 13, 18, 19, 21-29.</p>	<p>00003987-3900</p>

Document Name/Type	Exhibit No.	Relevant Bundle of Documents	Description	Relevance to Indictment by paragraph number And General Allocation of Applicability	Reference Page
A letter written and signed by Sam Hinga Norman dated 14/11/1997 and addressed to The Commander, Nigerian Contingent, ECOMOG Headquarters, Monrovia, Liberia.	118	3	<p>A set of two documents, the first of which is a letter written and signed by Sam Hinga Norman dated 14/11/1997 and addressed to The Commander, Nigerian Contingent, ECOMOG Headquarters, Monrovia, Liberia.</p> <p>The second document was written and signed for by Monina Fofana (sic, Moinina Fofanah), Director of Ops, Mainland Base, Sierra Leone and is addressed to Chief Norman. It is dated 21/11/1997 (Sic) and bears the header "Sierra Leone Civil Defence Force, Front Line Report From Mainland Base, Sierra Leone". The subject of the report is "Front Line Report".</p>	Individual Criminal Responsibility CDF command structure. Paragraphs 13, 18, 19, 21-29.	00004000-002
Bonthel District Civil Defence Kamajors HQ, Tihun, Sogbeni Chiedom pass.	125	3	<p>The pass dated 14/11/97, certifies that the holder is an initiate of King Dr Allieu Kondewa, the High Priest and requests that all privileges be accorded the holder.</p>	Individual Criminal Responsibility, position of authority of Allieu Kondewa within the CDF structure. Paragraphs 14 - 29.	

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Document Name/Type	Exhibit No.	Relevant Bundle of Documents	Description	Relevance to Indictment by paragraph number And General Allocation of Applicability	Reference Page
Letter from Moinina Fofana, Director of War, Civil Defence Force, Sierra Leone to All Battalion Commanders CDF SL dated 15/05/98, signed by Fofana	128	3	The letter is a "request for troops" from all CDF commanders. It specifies the particular needs from each area.	Individual Criminal Responsibility, CDF command structure. Paragraphs 14,15,18, 19, 20,21, 23 -29.	
A handwritten Letter from the representatives of the War Council Now resident in Dassamu Village, Bumpeh-Ngao Chiefdom to Mr Joe Timide, Commander for the Special Operation – Koribondo dated 18/02/98.	129	3	The letter requests Commander Joe Timide to join other commanders from Bo District for the attack on junta forces in Bo.	Command structure Background	
Declaration	160	3	Declaration of commitment signed by Samuel Hinga Norman, to the Release of Child Combatants and Child Abductees by various Factions, March 2000.	Child soldiers. Paragraph 13, 17, 29	
Calendar	161	2 #68	CDF Calendar for the year 2001 depicting photos of senior figures of the CDF.	Command Structure, Background Paragraphs 1, 2, 3, 6, 13, 14, 15, 16, 18, 19.	00000837-862

Document Name/Type	Exhibit No.	Relevant Bundle of Documents	Description	Relevance to Indictment by paragraph number And General Allocation of Applicability	Reference Page
Report	162	2 #66	"Report on unacceptable behaviour of CDF in the Southern Region, August 2000" by the Regional Reconciliation Committee (RRC) Southern Region	Individual Criminal Responsibility, Command Structure, Background Para.25-29	4316-4332
United Nations Document	168	3	Sierra Leone Humanitarian Situation Report, 15 June 1998	Child Soldiers. 17, 20, 21, 29	4356- at para.13
United Nations Document	172	3	Sierra Leone Humanitarian Situation Report, 7 August 2000	Terrorizing the civilian population and collective punishment, Background. Para.25-29	4404
United Nations Document	175	1 #11	Third Report of the UN Secretary General on the Situation in Sierra Leone, 5 February 1998 (S/1998/103)	Existence of an armed conflict during the relevant period. Background 1, 4, 5, 6, 13, 21, 23, 24(f)	Para. 10,11,18,25
United Nations Document	176	1 #13	Fifth Report of the UN Secretary General on the Situation in Sierra Leone, 9 June 1998 (S/1998/486)	Support the existence of an armed conflict during the relevant period. Background Paras. 4, 5, 6, 10, 17, 21, 23, 24, 28, 29	Para. 23,38

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Document Name/Type	Exhibit No.	Relevant Bundle of Documents	Description	Relevance to Indictment by paragraph number And General Allocation of Applicability	Reference Page
United Nations Document	177	1 #14	First Progress Report of the UN Secretary General on the Situation in Sierra Leone, 12 August 1998 (S/1998/750)	Existence of an armed conflict during the relevant period, Background. 4, 5, 10, 17, 21, 23, 28, 29	Para.16,43,59
United Nations Document	178	1 #15	Second Progress Report of the UN Secretary General on the Situation in Sierra Leone, 16 October 1998 (S/1998/960)	Existence of an armed conflict during the relevant period Background. 1, 4, 5, 13, 17, 21, 23, 24, 28, 29	Para.5,23,
United Nations Document	179	1 #16	Third Progress Report of the UN Secretary General on the Situation in Sierra Leone, 16 December 1998 (S/1998/1176)	Existence of an armed conflict during the relevant period Background. 4, 5, 10, 17, 21, 23, 24, 25, 28, 29	Para.39
United Nations Document	181	1 #18	Sixth Report of the UN Secretary General on the Situation in Sierra Leone, 4 June 1999 (S/1999/645)	Background 4, 5, 10, 17, 20, 23, 24, 29	Para.35,36
United Nations Document	188	1 #31	UNICEF Press Release, "Stop Using Child Soldiers, Sierra Leone Told," 19 June 1997	Existence of an armed conflict during the relevant period, Background 17, 29	Para.4
United Nations Document	189	1 # 32	UNICEF Monthly Report, "Events Pertaining to Children," 31 July 1999	Child Soldiers. 17, 29	Page 3

Document Name/Type	Exhibit No.	Relevant Bundle of Documents	Description	Relevance to Indictment by paragraph number And General Allocation of Applicability	Reference Page
Report of Non-Governmental Organization	199	2 #42	Human Rights Watch, "Getting Away with Murder, Mutilation and Rape" Vol. 11, No. 3 (A) June 1999.	Background, Individual Criminal Responsibility 4, 5, 10, 23, 24, 27, 28	Pages 24-26
Report of Non-Governmental Organization	202	3	Amnesty International, "Sierra Leone - Childhood - a casualty of conflict," AFR 51/69/00, 31 August 2000.	Child soldiers. 17, 29	Pages 3,9,18,22
Report of Non-Governmental Organization	207	3	Human Rights Watch, "World Report 1999: Sierra Leone, Human Rights Developments".	Reports of killings and inhumane by CDF militia, Background.	5144 at p.1,2
Report of Non-Governmental Organization	208	3	Human Rights Watch Report 2001: Sierra Leone, "Sierra Leone: Most Serious Attacks in Months. Human Rights Watch Interviews: Victims and Witnesses," 24 July 2001.	6, 17, 23, 24, 28, 29	5148
Report of Non-Governmental Organization	211	2 #54	International Crisis Group Africa Report No. 28 "Sierra Leone: Time for a New Military & Political Strategy," 11 April 2001.	Murder and physical violence by CDF. Background 23, 24, 28 Systemic and widespread behaviour, Background 4, 5, 6, 7, 13, 15, 18, 19, 23, 24, 28	pp. 6

Document Name/Type	Exhibit No.	Relevant Bundle of Documents	Description	Relevance to Indictment by paragraph number And General Allocation of Applicability	Reference Page
Report of Non-Governmental Organization	214	2 #57	Mazurana, Dyan and Christopher Carlson, "From Combat to Community: Women and Girls of Sierra Leone" January, 2004	Systemic and widespread behaviour Background 6, 13, 17, 23, 24, 29	pp.11-13
Report of Non-Governmental Organization	215	2 #58	No Peace Without Justice, "Sierra Leone Conflict Mapping Program" Draft Copy, 9 March 2004 (excerpt preface, chapters 1-3, 5).	Systemic and widespread behaviour Background 4, 5, 6, 7, 9, 17, 19, 23, 24, 28, 29	pp. 298, 299, 309, 323, 327, 329, 333, 393, 416-422, 425, 427, 428, 449, 451, 452, 454-461, 464-467, 477, 478, 484-486, 488-495
Press Release - Radio Broadcast Statement	218	2 #61	CDF Statement of FM 98.1, 22 December 1997 from the movement for the restoration of democracy, MRD, civil defence secretariat, Freetown.	Background 19, 20, 23, 24, 25(f), 28	pp.1, Para.18-25 pp. 2. Para.1-9.

Document Name/Type	Exhibit No.	Relevant Bundle of Documents	Description	Relevance to Indictment by paragraph number And General Allocation of Applicability	Reference Page
Press Release	219	2 #62	Kamajor Press Release issued by Samuel Hinga Norman, 23 December 1997	Individual Criminal Responsibility Command Structure 13, 18, 19, 20, 23, 24, 25(f), 28	
Interview	220	2 #63	Summary of Conversations Held with Civil Defence Force Leader Sam Hinga Norman, 10 January 1998 by Alfred Sam Foray	Individual Criminal Responsibility Command Structure 6, 13, 15, 18, 20, 23, 24	
News Report	222	3	Inter Press Service, "Children – Sierra Leone: Militia Admits Recruiting Child Soldiers," Lansana Fofana, 29 June 1998. http://www.sierra-leone.org/slnews.html	Child soldiers. 17, 20, 29	6020-22
News Report	227	3	BBC News, "Unicef calls for the demobilisation of child soldiers", 2 October 1998. http://www.sierra-leone.org/slnews.html	Child soldiers. 13, 17, 20, 29	6031-32
News Report	231	3	Article from SL News Archives, 2 September 1997, published on the Sierra Leone Web http://www.sierra-leone.org/slnews.html	Killings by Kamjors 21, 23, 24, 28	6042-43

Document Name/Type	Exhibit No.	Relevant Bundle of Documents	Description	Relevance to Indictment by paragraph number And General Allocation of Applicability	Reference Page
News Report	238	3	Article from SL News Archives, 4 December 1997, published on the Sierra Leone Web http://www.sierra-leone.org/slnews.html	Systemic and widespread behaviour Killings. 21, 24(f), 28	6058-6060
News Report	244	3	Article from SL News Archives, 2 January 1998, published on the Sierra Leone Web http://www.sierra-leone.org/slnews.html	Systemic and widespread behaviour Killings 21, 23, 24, 28	6072-73
News Report	247	3	Article from SL News Archives, 16 January 1998, published on the Sierra Leone Web http://www.sierra-leone.org/slnews.html	Systemic and widespread behaviour Killings. 4, 5, 21, 24(f), 25(f), 28	6079-80
News Report	249	3	Article from SL News Archives, 18 January 1998, published on the Sierra Leone Web http://www.sierra-leone.org/slnews.html	CDF structure Background. 4, 5, 21, 24(a), 25(a), 28	6083-84
News Report	250	3	Article from SL News Archives, 19 January 1998, published on the Sierra Leone Web http://www.sierra-leone.org/slnews.html	Individual Criminal responsibility, Background 4, 5, 20, 24(a), 25(a), 28	6085-86
News Report	252	3	Article from SL News Archives, 21 January 1998, published on the Sierra Leone Web http://www.sierra-leone.org/slnews.html	Individual Criminal responsibility; Communication by the CDF, Background. 4, 5, 20, 24(a)	6089

Document Name/Type	Exhibit No.	Relevant Bundle of Documents	Description	Relevance to Indictment by paragraph number And General Allocation of Applicability	Reference Page
News Report	262	3	Newswave, "To Die or To Live? The Verdict on Sierra Leone's plotters", October 1998. http://www.sierra-leone.org/slnews.html	Individual Criminal responsibility, Background. 4, 5, 6, 13, 18, 19, 21	6114-6123

ANNEX B

PROSECUTION'S INDEX OF AUTHORITIES

Cases from the ad hoc tribunals

1. *Prosecutor v. Delalić et al.*, IT-96-21-T, "Decision on the Motion of the Prosecutor for the Admissibility of Evidence", 19 January 1998.
<http://www.un.org/icty/celebici/trialc2/decision-e/80119EV21.htm>
2. *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, "Decision on Admissibility of Proposed Testimony of Witness DBY", 18 September 2003.
<http://www.ictr.org/ENGLISH/cases/Bagosora/decisions/180903.htm>
3. *Prosecutor v. Bagilishema*, ICTR-95-I, Trial Judgement, 7 June 2001.
<http://www.ictr.org/ENGLISH/cases/Bagilishema/judgement/index.htm>
4. *Prosecutor v. Kayishema and Prosecutor v. Ruzindana*, ICTR-95-I, Trial Judgement, 21 May 1999.
<http://www.ictr.org/ENGLISH/cases/KayRuz/judgement/index.htm>
5. *Prosecutor v. Galic*, IT-98-29-PT, "Decision on the Defence motion for Indicating that the First and Second Schedule to the Indictment Dated 10th October 2001 Should be Considered as the Amended Indictment", 19 October 2001.
<http://www.un.org/icty/galic/trialc/decision-e/11019FI117058.htm>
6. *Prosecutor v. Kupreškić et al.*, IT-95-16-T, Transcript of 15 February 1999.
<http://www.un.org/icty/transe16/990215ed.htm>
7. *Prosecutor v. Bagosora*, ICTR-98-41-T "Decision on Prosecutor's Interlocutory Appeals Regarding Exclusion of Evidence", 19 December 2003.
<http://www.ictr.org/ENGLISH/cases/Bagosora/decisions/191203.htm>
8. *Prosecutor v. Natelitic*, ICTY-98-34, "Decision on the Prosecutor's Motion to Take Depositions for Use at Trial (Rule 71)", 10 November 2000.
<http://www.un.org/icty/naletilic/trialc/decision-e/001110.htm>
9. *Prosecutor v. Delalić et al.*, IT-96-21-T, "Decision on the Prosecution's Requests for the Admission of Exhibit 155 into Evidence and for an Order to Compel the Accused, Zdravko Mucic, to Provide a Handwriting Sample", 19 Jan. 1998.
<http://www.un.org/icty/celebici/trialc2/decision-e/80119EV2.htm>

10. *Prosecutor v. Musema*, ICTR-96-13-A, Judgement and Sentence, 27 January 2000.
<http://www.ictr.org/ENGLISH/cases/Musema/judgement/index.htm>
11. *Prosecutor v. Delalić et al.*, IT-96-21-T, “Decision on Zdravko Mucic’s Motion for the Exclusion of Evidence”, 2 September 1997.
<http://www.un.org/icty/celebici/trialc2/decision-e/70902732.htm>
12. *Kayishema and Ruzindana*, ICTR-95-I, Appeal Judgement, 1 June 2001.
<http://www.ictr.org/ENGLISH/cases/KayRuz/appeal/index.htm>
13. *Prosecutor v. Kamuhanda*, ICTR-99-54A-T, Judgment, 22 January 2004.
<http://www.ictr.org/ENGLISH/cases/Kamuhanda/judgement/220104.htm>
14. *Prosecutor v. Kordic*, IT-95-14-2, “Decision on Prosecutor’s Submissions concerning “Zagreb Exhibits” and Presidential Transcripts”, 1 December 2000.
<http://www.un.org/icty/kordic/trialc/decision-e/01201AE514292.htm>

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15. *Prosecutor v. Norman et al*, SCSL-04-14-T, Appeals Chamber, “Fofana-Decision on Appeal against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”, 16 May 2004.
16. *Prosecutor v. Norman et al*, SCSL-04-14-T, SCSL-04-14-T, “Materials Filed Pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial of 1 April 2004”, 26 April 2004.
17. *Prosecutor v Norman et al*, SCSL-04-14-T, “Prosecution’s Motion for Judicial Notice and Admission of Evidence”, 1 April 2004.

Doctrine

18. R. May and M. Wierda, *International Criminal Evidence* (NY, 2002).

M. Cherif Bassiouni

President, International Human Rights Law Institute, DePaul University
President, International Institute of Higher Studies in Criminal Sciences, Siracusa,
Italy, President, International Association of Penal Law, DePaul University
Professor of Law, DePaul University, Chicago, IL, USA

Diane Amann

Professor of Law
University of California
School of Law
Davis, CA, USA

Christopher L. Blakesley

J.Y. Sanders Professor of Law
Louisiana State University Law
Center
Baton Rouge, LA, USA

Roger S. Clark

Board of Governors Professor
The State University of New Jersey
School of Law
Camden, NJ, USA

John Dugard

Member, International Law
Commission, Geneva; Emeritus
Professor of Law, University of
Witwatersrand, South Africa; and
Professor of Public International Law,
University of Leiden,
The Netherlands

Albin Eser

Professor of Criminal Law, Albert
Ludwig University; Director, Max-
Planck Institute for International and
Comparative Criminal Law
Freiburg, i. B., Germany

Alfredo Elicheberry

Professor of Criminal Law,
National University of Chile;
President, Chilean Lawyers'
Association, Santiago, Chile

Jordan Paust

Professor of Law
University of Houston Law Center
Houston, TX, USA

Mario Pisani

Professor of Criminal Procedure
Faculty of Law, University of Milan
Milan, Italy

William Michael Reisman

Myers S. McDougal Professor of Law
and Jurisprudence, Yale Law School
New Haven, CT, USA

Leila Sadat

Professor of Law
Washington University in St. Louis
School of Law
St. Louis, MO, USA

Michael P. Scharf

Professor of Law
New England School of Law
Boston, MA, USA

Kuniji Shibahara

Professor Emeritus
University of Tokyo, Faculty of Law
Tokyo, Japan

Brigitte Stern

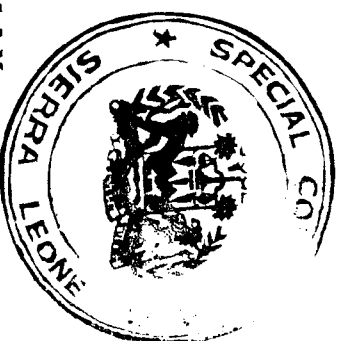
Professor of International Law
University of Paris I
Panthéon, Sorbonne
Paris, France

Otto Triffterer

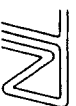
Professor of International Criminal
Law and Procedure, Faculty of Law,
University of Salzburg
Salzburg, Austria

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INTERNATIONAL
CRIMINAL
EVIDENCE



JUDGE RICHARD MAY
MARIEKE WIERDA



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answer but in practice it rarely arises since there is usually much corroborative evidence of such matters. Thus, it may be appropriate for a Trial Chamber to admit transcripts from related cases without recalling the witnesses to testify.⁵⁸

10.59 Documentary evidence may therefore be introduced on topics such as (a) "crime-base" evidence; (b) whether there was a widespread and systematic attack on a civilian population; (c) issues of command structure (leaving aside, however, whether a particular accused exercised the role of a commander); and (d) whether crimes occurred in the context of an international armed conflict. The admission of evidence in such forms gives rise to "the likelihood that [trials] can in fact be expedited significantly by dispensing with live testimony in peripheral aspects of the trial."⁵⁹ The fairness of the trials would not be affected since their focus would be on the hearing of witness testimony specifically on the guilt of particular accused (and these witnesses would be subject to cross-examination).

7 INTERNATIONAL CRIMINAL EVIDENCE IN CONTEXT

10.60 *Other international courts.* In conclusion, it may be noted that the practice of international criminal courts in allowing the parties to present the evidence, and allowing the court flexibility in admitting it, is consistent with the practice of other international courts and tribunals. Thus, Article 48 of the Statute of the International Court of Justice states that the Court "shall make all arrangements connected with the taking of evidence." The ICJ follows a liberal evidentiary regime and there is no hierarchy between different forms of evidence. However, the preponderance of the evidence relied on by the Court has been documentary. Most of the evidence produced forms part of the often voluminous written pleadings. The Statute and the Rules do, however, provide for oral testimony of witnesses and experts, and both have been employed before the Court.

10.61 The explanation for this flexible approach to admissibility of evidence is the Court's ability to ascertain the weight and relevance of particular evidence. The bench is composed of highly qualified and experienced international judges who do not require protection from

because, in order to be convicted of a crime against humanity, the accused must have knowledge that there is an attack on the civilian population and that his or her act is part of the attack." *Id.* at ¶ 12.

58. *Id.*

59. Patricia Wald, *To Establish Incredible Facts by Credible Evidence*, 42 HARV. INT'L L.J. 535 at 548 (2001).

potentially unreliable evidence. The Court has nonetheless, on a few occasions, refused to admit hearsay evidence on the ground that it constituted "allegations falling short of conclusive evidence."⁶⁰

10.62 Other international tribunals have also followed this trend.⁶¹ However, all such tribunals must be distinguished from international criminal trials as such proceedings do not raise issues of the rights of the accused.

10.63 *Domestic courts.* On the other hand, domestic courts must apply their own rules of evidence in trying international cases. However, two trends are interesting to note: one is a trend toward relaxing technical rules of evidence in common law jurisdictions, and the other is a trend toward adopting adversarial rules in civil law jurisdictions (examples of both of these trends have been mentioned above).

10.64 It is also worth noting that certain domestic courts have relaxed strict and technical rules of evidence in trials for war crimes and crimes against humanity committed during World War II, as a result of the difficulties posed by such trials. An example is the Israeli Nazi and Nazi Collaborators (Punishment) Law (1950), which states at s. 15 that "[I]n an action for an offence under this Law, the court may deviate from the rules of evidence if it is satisfied that this will promote the ascertainment of the truth and the just handling of the case." (This law also provides that the court should place on records the reasons for its decision to deviate from ordinary rules of evidence.⁶²) A similar approach, *ie.*, that of relaxing rules of evidence in respect of war crimes trials, was taken by the Canadian Supreme Court in *Finta*.⁶³

10.65 *A look into the future.* It is clear that the trend towards the liberal admission of evidence is likely to be followed in the future. The "internationalized" tribunals of Sierra Leone and East Timor already seem to be following that trend.⁶⁴ For instance, the Statute of the Special Court for Sierra Leone provides in Article 14 (1) that the Rules of Procedure and Evidence of the ICTR will apply *mutatis mutandis* to its proceedings;

60. *Corfu Channel (United Kingdom v. Albania)*, Judgment on Merits, 1949 ICI Rep., at 4.

61. For an analysis of how such tribunals have treated evidence, see DURWARD SANDIFER, EVIDENCE BEFORE INTERNATIONAL TRIBUNALS (University Press of Virginia 1974).

62. Section 15 (b) of the Nazis and Nazi Collaborators (Punishment) Law, 1950.

63. See Ch. VIII (*Equality of Arms*).

64. The internationalized courts have been established to try war crimes and crimes against humanity. They are established under domestic law but have international judges on their benches.