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SCSL-04-14-T
(13173-13205)

13173

SPECIAL COURT FOR SIERRA LEONE

In Trial Chamber I

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

Registrar: Robin Vincent

Date: 29 June 2005

THE PROSECUTOR

-against-

SAMUEL HINGA NORMAN, MOININA FOFANA, and ALLIEU KONDEWA

SCSL-2004-14-T

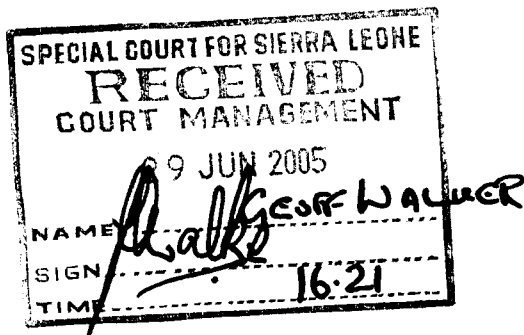
**JOINT DEFENCE OBJECTIONS TO PROSECUTION'S
CONSEQUENTIAL REQUEST TO ADMIT INTO EVIDENCE
CERTAIN DOCUMENTS PURSUANT TO RULES 92BIS AND 89(C)**

Office of the Prosecutor:

Mr Luc Côté
Mr James C. Johnson
Mr Kevin Tavener

Counsel for Moinina Fofana:

Mr Victor Koppe
Mr Arrow Bockarie
Mr Michiel Pestman
Mr Andrew Ianuzzi



Counsel for Samuel Hinga Norman:

Mr John Wesley Hall
Dr Bu-Buakei Jabbi
Mr Ibrahim Yillah
Ms Clare DaSilva

Counsel for Allieu Kondewa:

Mr Charles Margai
Mr Yada Williams
Mr Ansu Lansana
Mr Martin Michael

SCSL-2004-14-T

INTRODUCTION

1. On 14 June 2005, the Prosecution served counsel for the Accused with three sets of documents, each styled as follows: (i) 'Rule 92*bis* and 89(C) submissions of certain documents received in the Judicial Notice Decision, 2 June 2004, for Existence and Authenticity' (the "First Bundle"); (ii) 'Rule 92*bis* 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' (the "Second Bundle"); and (iii) 'Rule 92*bis* and 89(C) submissions of certain documents for admission from exhibits list not otherwise tendered at trial' (the "Third Bundle")¹.
2. On 22 June 2005, the Chamber directed the Prosecution to file written submissions advancing the legal support for the admission of the proposed evidence under Rule 92*bis* as well as identifying the specific portions of each document sought to be admitted and that portion's putative evidentiary objective².
3. The Prosecution filed its 'Consequential Request to Admit Into Evidence Certain Documents Pursuant to Rules 92*bis* and 89(C)' (the "Request")³ on Friday, 24 June 2005, citing general principles of admissibility and certain portions of the Appeals Chamber's 'Decision on Appeal Against Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence' (the "Judicial Notice Decision")⁴.
4. Counsel for the First, Second, and Third Accused (the "Defence") hereby jointly submits its objections to the Request.
5. The Defence objects generally to the admission the documents contained in the Request on the following grounds: (i) none of the proposed evidence is of the type contemplated by Rule 92*bis* and is therefore inadmissible under that rule; (ii) with respect to all documents contained in the Third Bundle, the Prosecution has failed to comply with the requirements of Rule 66 for admission of evidence under Rule 92*bis*, and its request is therefore untimely; and (iii) the Prosecution has failed to advance reasons as to why any of the proposed evidence is admissible under Rule 93. More specifically, much, if not all, of the proposed evidence either (i) is irrelevant to any portion of the indictment, (ii) is incapable of

¹ The documents contained in the First Bundle were included in Annex B of the Prosecution's Motion for Judicial Notice filed on 1 April 2004. Those contained in the Second Bundle were included in Annex A of the same submission. Those contained in the Third Bundle were listed on the exhibit list filed on 26 April 2004. With respect to twelve of the proposed documents in the Third Bundle, the Prosecution has expanded the scope of relevance stated in its previous submissions.

² See Trial Transcript of 22 June 2005 at 12:23-29-13:1-6, 17:19.

³ SCSL-04-14-T-439, 24 June 2005.

⁴ SCSL-2004-14AR73, 16 May 2005. Specifically, the Prosecution makes reference to ¶¶ 26, 27, and 46 of the Judicial Notice Decision and to ¶¶ 13, 14, and 32 of the Separate Opinion of Justice Robertson (the "Robertson Opinion").

corroboration in due course, (iii) amounts to the assertion of opinions, (iv) goes to the acts or conduct of the Accused, or (iv) lacks *prima facie* indicia of reliability. The Defence asserts these specific objections under Rule 92*bis*—the *lex specialis* and, in the alternative, under Rule 89(C).

SUBMISSIONS

Applicable Law

The Principle of Orality and the Rights of the Accused

6. It must be noted at the outset that, while international tribunals favour a policy of “extensive admissibility of evidence”, the notion that “the traditional preference for oral testimony” has somehow been dispensed with, as the Prosecution submits⁵, is unfounded. Indeed, this Chamber has repeatedly articulated its own preference of hewing to a “principle of orality”. Of course, documentary evidence will inevitably form an important part of any international criminal trial. However, the Chamber must be mindful of the dangers of a “paper trial”⁶ and should always carefully weigh the utility of admitting documents against the potential for prejudice so as not to offend “the bedrock principles of a fair trial”⁷.
7. Furthermore, while the Defence is mindful of “the competence of the professional judges to receive evidence and to subsequently evaluate it”⁸, certain procedural safeguards—which have been put in place to protect the interests and rights of the accused from overly unreliable or prejudicial⁹ evidence—cannot be ignored in the calculus of admissibility¹⁰.

Rule 92bis

⁵ Request, ¶ 4.

⁶ Patricia M. Wald, *To ‘Establish Incredible Events by Credible Evidence’: The Use of Affidavit Testimony in Yugoslavia War Crimes Tribunal Proceedings*, 42 Harv. Int’l L.J. 535, 552 (2001) (“A paper trail is one thing, a paper trial quite another”).

⁷ *Id.* at 537.

⁸ Request, ¶ 4.

⁹ “Prejudicial evidence ... is evidence which, if adduced, has the potential of staining the mind of the Judge with an impression that adversely affects his clean conscience towards all parties ... [leaving] an indelible scar of bias...” *Prosecutor v. Norman et al.*, SCSL-04-14-T, Trial Chamber, Separate Concurring Opinion of Hon. Justice Benjamin Mutanga Itoe, Presiding Judge, on the Chamber Majority Decision on Prosecution Motion for a Ruling on the Admissibility of Evidence, 24 May 2005, ¶ 64.

¹⁰ E.g., Article 17(4)(e) of the Statute of the Special Court for Sierra Leone (the “Statute”), which provides the Accused with the express right “[t]o examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her”; Rule 66, which provides that potential Rule 92*bis* evidence be disclosed at the beginning of the trial; and, as conceded by the Prosecution (Request, ¶ 7) the rule that a chamber should not admit documentary evidence under Rule 92*bis* that directly implicates the Accused in the perpetration of a crime.

8. Rule 92bis of the SCSL Rules of Procedure and Evidence (the “Rules”) provides, with respect to alternative proof of facts, in pertinent part:

(A) A Chamber may admit as evidence, in whole or in part, information in lieu of oral testimony.

(B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.

Burden and Standard of Proof

9. As noted by the Prosecution, the burden of proof rests squarely on the party seeking to rely on the proposed evidence. Under Rule 92bis, the Prosecution must demonstrate that the information provided is both relevant¹¹ and “capable of corroboration in due course”¹², the latter requirement being essentially a question of timing and reliability.

Timing of Corroboration

10. The requirement of “corroboration in due course” must mean that each piece of proposed evidence submitted under Rule 92bis will be, at some point during the presentation of the Prosecution’s case, substantiated by an additional piece of evidence¹³. With respect to the proposed evidence, the Prosecution has failed to point out where and how this has been accomplished, if at all. Given this failure and that we have now reached the end of the presentation of the Prosecution’s evidence, the Defence submits there is no longer a “due course” within which to corroborate the proposed evidence. The Defence certainly does not intend to “complete the process”.

11. Additionally, it appears that many of the proposed documents could have been admitted or corroborated through *viva voce* testimony¹⁴, affording the Defence the opportunity to cross-examine the Prosecution’s witnesses with respect to those documents. The Prosecution has failed to explain why it chose instead to submit the documents at the end of its case. The Accused should not be made to suffer for this lapse.

¹¹ “Relevant evidence can be defined as evidence that tends to prove or disprove a material issue; in other words, evidence is relevant ‘if its effect is to make more or less probable the existence of any fact which is in issue, i.e., upon which guilt or innocence depends.’” Richard May and Mariëka Wierda, INTERNATIONAL CRIMINAL EVIDENCE (Transnational 2002), § 4.23 (citing Richard May, CRIMINAL EVIDENCE (Sweet & Maxwell 1999), ¶ 1-13.

¹² Judicial Notice Decision, ¶ 26.

¹³ With respect to corroboration, an item of evidence can only be considered proved if more than one source has testified to it or substantiated it. Jones & Powles, INTERNATIONAL CRIMINAL PRACTICE, 3RD ED. (Oxford 2003) at 727, 734.

¹⁴ For example, the UNICEF documents and many of the documents related to child soldiers could have been tendered during the testimony of TF2-EW2 or TF2-218. The alleged CDF documents could have been tendered through any number of insider witnesses, e.g. proposed exhibit no. 129 (the Third Bundle) was purportedly delivered to TF2-082.

Reliability

12. Contrary to the Prosecution's assertions regarding the evaluation of documentary evidence¹⁵, the Defence submits that reliability cannot be divorced from considerations of relevance and probative value, especially with respect to a Rule such as 92*bis*, which specifically mandates a preliminary assessment of reliability¹⁶.
13. The Defence acknowledges that Rule 89(C) sets the general standard for admissibility of evidence before the Special Court. However, this standard has its limits and, like any rule of general application, is subject to exceptions and *lex specialis*¹⁷. In the context of Rule 92*bis*, the Chamber must be guided by the fact that the standard defence mechanism for testing reliability—cross-examination—is unavailable. Accordingly, Rule 92*bis* contains a built-in safeguard, namely the second prong of its subsection (B), which requires an assessment of reliability.
14. The Prosecution presents a strained and contradictory¹⁸ reading of the relationship between reliability and admissibility. Whether reliability is “an implicit component of admissibility” or “a separate prerequisite for admissibility”¹⁹ is a distinction without a difference. To ignore considerations of reliability, at any stage of a trial, would be tantamount to an abuse of discretion. Simply put, the better view is to consider reliability as being relevant to admissibility²⁰.

¹⁵ Request, ¶¶ 12-13.

¹⁶ The Prosecution's assertion that the “[r]eliability 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” is by no means a settled proposition. See *Prosecutor v. Delalic et al.*, IT-96-21, Trial Chamber, Decision on the Prosecutor's Oral 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 January 1998, ¶ 32 (where the Trial Chamber confirmed that evidence can only be considered relevant and probative if it is also reliable).

¹⁷ The Chamber is, of course, guided at all times by Rule 89(B) which provides that “a Chamber shall apply rules of evidence 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”.

¹⁸ The Prosecution asserts that proof of “reliability is not a condition of admission under Rule 92*bis*”, Request, ¶ 15, yet then states that evidence must contain “some indicia of reliability to be admissible.” Request, ¶ 16.

¹⁹ Request, ¶ 9.

²⁰ See May & Wierda, *supra* at n.12, § 4.37 (“[W]hether seen as a separate or an inherent component, there can be no doubt that reliability is currently regarded as relevant to admissibility.”); Dixon et al., eds., ARCHBOLD INTERNATIONAL CRIMINAL COURTS: PRACTICE, PROCEDURE & EVIDENCE (Sweet & Maxwell 2003), § 9-31 (“The Chamber must be satisfied of its reliability given the context and character of the evidence for it to be admitted.”); *Prosecutor v. Kordic and Cerkez*, IT-95-14/2, Appeals Chamber, Decision on Appeal Regarding Statement of a Deceased Witness, 21 July 2000, ¶¶ 24-28 (where the Appeals Chamber considered the reliability of a statement to be relevant to admissibility, not just to weight, and found the statement in question to be “so lacking in reliability that it should have been excluded as without probative value under Rule 89(C).”); *Prosecutor v. Delalic et al.*, IT-96-21, Trial Chamber, Decision on Motion of Prosecution for Admissibility of Evidence, 19 January 1998, ¶ 20 (it is “an implicit requirement ... that the Trial Chamber give due consideration to indicia of reliability” at the admissibility stage) and ¶ 32 (where the Trial Chamber referred to reliability as the “golden thread, which runs through all the components of admissibility”); *Prosecutor v. Brdjanin and Talic*, IT-99-36, Trial Chamber, Order on the Standards Governing the Admission of Evidence and Identification, 25 February 2002 (where the Trial Chamber stated that a party “may be required to provide a minimum of

General Objections

The Proposed Evidence is Inadmissible Under Rule 92bis

15. Although less rigorous in terms of procedural prerequisites than its ICTY/ICTR counterparts²¹, Rule 92bis serves the same purpose as its sister rules, namely the admission of “information *in lieu* of oral testimony”²².
16. The Appeals Chamber has explained the rationale behind the deliberately streamlined nature of Rule 92bis as follows:

The judges of this court, at one of their first plenary meetings, recognized a need to amend ICTR Rule 92bis in order to simplify this provision for a court operating in what was hoped would be a short time-span in the country where the crimes had been committed and where a Truth and Reconciliation Commission and other authoritative bodies were generating testimony and other information about the recently concluded hostilities²³.

17. Both the language of the Rule and the Appeals Chamber’s gloss support a restricted reading of Rule 92bis, that is to say—notwithstanding its slightly relaxed approach—the Rule is designed for a very limited purpose: the admission, *in lieu of oral testimony*, of information of a testimonial nature which can be linked to a particular source²⁴. It is worth noting that,

proof sufficient to constitute prima facie indicia of reliability); see also *Prosecutor v. Musema*, ICTR-96-13, Trial Chamber, Judgement and Sentence, 27 January 2000, ¶¶ 35-38.

²¹ Certain important limitations restrict the admissibility of documentary evidence under the ICTY/ICTR formulations of Rule 92bis. For example, such evidence cannot be admitted to prove the “acts and conduct of the accused”. ICTY and ICTR Rules 92bis(A). While not specifically stated in the text of SCSL Rule 92bis, the Prosecution concedes that such proscription is implicit. Request, ¶ 7. The use of evidence in lieu of oral testimony therefore should be limited to providing necessary background information or to corroborating the testimony of witnesses who have already testified. Additionally, the ICTY/ICTR formulations provide for a two-week notice period after which the opposing side has seven days in order to accept the document, challenge its admission, or request the witness be required to appear for cross-examination. Although, the SCSL Rule shortens the time notice and response periods and dispenses with the possibility of cross-examination, the underlying concerns are the same. Finally—and this is so under all three iterations of the Rule—admission of the documents is always discretionary. The Chamber is charged with balancing the evidentiary benefits of admission with countervailing factors such as the prejudicial effect on the accused, the unreliability of the testimony, and the public interest in oral testimony.

²² Emphasis added.

²³ Judicial Notice Decision, ¶ 26. *N.B.*, The Defence attempted to obtain a complete transcript of the plenary proceedings where the changes to Rule 92bis were discussed. However, we were denied access to these materials by the Registry. A review of these minutes could prove highly instructive with respect to the analysis of Rule 92bis.

²⁴ *E.g.*, the statement of an individual who gave testimony before the TRC, an article by a reporter who covered the conflict first-hand, or a document produced by an authoritative body like the UN which lists its specific sources. Justice Robertson noted the importance of the reliability assessment so as to protect defendants from the “dangers of malice and media ‘demonisation’ and the risks of fabrication or exaggeration in reports from unidentified sources” and further noted that “[s]uch risks might be reduced if the court has oral evidence from the reporter or compiler/editor of the report or details about the care with which it has been compiled”. Robertson Opinion, ¶ 14. Only “recurrent and reliable factual statements in documents are admissible under Rule 92bis”. *Id.*, ¶ 6. Further support comes from a close reading of Rule 66, which requires timely disclosure of both proposed live witness statements and Rule 92bis material. This bolsters the proposition that Rule 92bis contemplates evidence similar in kind to live witness testimony, that is, evidence from an identifiable source. The source of evidence, of course, is fundamental to its reliability. See *Prosecutor v. Delalic et al.*, IT-96-21, Trial Chamber, Decision on Motion for the Exclusion of Evidence, 2 September 1997, ¶¶ 41-42.

- under ICTR Rule 92*bis*, our rule's predecessor, no trial chamber has accepted any evidence other than witness statements, trial transcripts, and exhibits previously admitted—in other words, evidence whose reliability was subject to corroboration²⁵.
18. While the drafters of the revised Rule recognized the need to streamline the *procedural requirements* of the equivalent ICTY/ICTR Rules, they did not intend, as evidenced by the language at subsection (B), to jettison the *procedural safeguards* whose purpose is to protect the Defence from unreliable evidence untested by cross-examination. Accordingly, the safeguards—albeit not the requirements—provided to the Defence by the ICTY/ICTR rules are encapsulated in Rule 92*bis*'s requirement that the Trial Chamber satisfy itself that the proposed information is “susceptible of confirmation”²⁶.
19. The danger of prejudice to the accused arises from the fact that the opportunity for cross-examination is eliminated with respect to documentary evidence. This danger is further exacerbated when such proposed evidence is clearly un-sourced²⁷, goes to the acts of the accused²⁸, is related to command responsibility or joint criminal enterprise²⁹, or comes in the form of unnecessary or cumulative background evidence³⁰. Rule 92*bis*(B)'s reliability assessment is, therefore, imposed on the Chamber as a kind of surrogate cross-examination³¹.
20. Accordingly, to the extent the proposed evidence is not of a testimonial nature with an identifiable source, it is inadmissible under Rule 92*bis*³². Should the Chamber be inclined to admit any of the proposed evidence, the Defence requests the opportunity to cross-

²⁵ See Annex B.

²⁶ Rule 92*bis*(B).

²⁷ *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Trial Chamber, Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole, 13 September 2004.

²⁸ See *Prosecutor v. Simba*, ICTR-01-76-T, Trial Chamber, Decision on the Admission of a Written Statement, 25 January 2005; *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Trial Chamber, Decision of Admission of Statements of Deceased Witnesses, 19 January 2005.

²⁹ *Bagosora*, *supra* at n.27; *Prosecutor v. Galic*, IT-98-29-AR, Appeals Chamber, Decision on Interlocutory Appeal Concerning Rule 92*bis* (C), 7 June 2002, ¶¶ 28, 31.

³⁰ *Prosecutor v. Simba*, ICTR-01-76-I, Trial Chamber, Decision on Prosecutor's Motion for Admission of Testimony for an Expert Witness, 14 July 2004; *Prosecutor v. Nahimana et al.*, ICTR-99-52-T, Trial Chamber, Decision on the Nahimana Defence's Motion to Admit into Evidence Certain Materials and the Prosecution Objection Thereto, 5 June 2003.

³¹ “[I]t is clear that the provisions of Rule 89(C) do not provide an avenue whereby evidence can be introduced without according the Accused the right to test it through cross-examination. Rule 92*bis* was clearly not intended to derogate from that right.” *Prosecutor v. Muhimana*, ICTR-95-1B-T, Trial Chamber, Decision on the Prosecution Motion for Admission of Witness Statements, 20 May 2004.

³² The Appeals Chamber's *obiter dictum* that certain documents may be admissible under Rule 92*bis* is just that—a suggestion rather than a decision on the admissibility of the proposed evidence. To view it otherwise would effectively pre-empt the Trial Chamber's discretion and review as mandated by the Rule as well as the rights of the Defence to oppose such submissions.

examine the documents' sources, which the Chamber should order the Prosecution to disclose prior to the close of its case³³.

21. Nor should the proposed evidence come before the Chamber under Rule 89(C)³⁴, as the principal of *lex specialis derogat generali* precludes such method of entry. Rule 89(C) applies *in addition to, not instead of*, the more specific provision of Rule 92bis³⁵. Accordingly, to the extent the proposed evidence fails under Rule 92bis, it is *a fortiori* inadmissible under Rule 89(C).
22. Finally, the Prosecution seems to assume that the documents contained in the First Bundle have somehow already been accepted under Rule 92bis because the Trial Chamber has taken judicial notice of their existence and authenticity under Rule 94³⁶. This assumption is unfounded—Rules 92bis and 94 serve distinct purposes and each has its own discrete requirements for admissibility. While the formal tender of the documents may arguably “complete the process” under Rule 94, it fails even to initiate the process under Rule 92bis, let alone complete it.

The Prosecution Has Failed to Comply with Rule 66 with Respect to the Documents Contained in the Third Bundle

23. With respect to the disclosure of proposed evidence, Rule 66 requires the Prosecutor to, “[w]ithin 30 days of the initial appearance of an accused, disclose to the Defence copies of ... all evidence to be presented pursuant to Rule 92bis at trial”³⁷.
24. A chart of the Prosecution’s proposed documentary evidence was appended to its supplemental pre-trial brief submitted on 22 April 2004³⁸, and copies of the proposed documents were filed with the court on 26 April 2004³⁹. However, these documents—now presented in the Third Bundle—were neither referenced vis-à-vis Rule 92bis, nor were they

³³ *Prosecutor v. Muvunyi*, ICTR-2000-55A-T, Trial Chamber, Decision on the Prosecutor’s Motion for Admission of Testimony of Expert Witness, 24 March 2005, (permitting the admission of expert witness transcripts and related exhibits from another trial, but ordering cross-examination of the expert witness).

³⁴ The Prosecution seeks admission of the First and Third Bundles under both Rule 92bis and Rule 89(C).

³⁵ *Prosecutor v. Muhimana*, *supra* at n.31, ¶ 28 (noting the Milosevic Appeals Chamber’s holding that where Rule 92bis is applicable, its requirements must be met by the Prosecutor in order for the Trial Chamber to admit the evidence, pursuant to Rule 89). *Prosecutor v. Milosevic*, IT-02-54, Appeals Chamber, Decision on Admissibility of Prosecution Investigator’s Evidence, 30 September 2002, ¶ 18 (Because of the seriousness of the reliability issue, “a party cannot be permitted to tender [evidence] under Rule 89(C) in order to avoid the stringency of Rule 92bis ... although the general propositions which are implicit in Rule 89(C)—that evidence is admissible only if it is relevant and that it is relevant only if it has probative value—remain applicable to Rule 92bis”).

³⁶ See Request, ¶ 18.

³⁷ Rule 66(A)(i).

³⁸ Document No. SCSL-04-14-PT-63, Annex B.

³⁹ Document No. SCSL-04-14-PT-65.

appended to the Judicial Notice Motion⁴⁰. In short, they were not disclosed as potential Rule 92bis material, as such, until 14 June 2005⁴¹, well beyond the time limit mandated by Rule 66.

25. Rule 66 is designed to ensure the timely disclosure of the Prosecution's proposed evidence in order to provide the Accused with adequate time to prepare a meaningful defence. With respect to potential Rule 92bis evidence, prompt and precise disclosure is mandated because of the highly sensitive nature of Rule 92bis evidence which, when appropriate, comes before the Chamber as hearsay evidence untested by cross-examination.
26. The Prosecution cannot satisfy its disclosure obligations under Rule 66 by simply referring to a mass of proposed evidence disclosed as part of its General List of Exhibits⁴². Rather, it must comply with the strictures of the Rule in order to provide the Defence with a meaningful opportunity to vigorously test the relevance and reliability of the proposed Rule 92bis evidence⁴³. Coming as it does, in the eleventh hour of what has been an almost year-long Prosecution case⁴⁴, the Defence submits that acceptance of any of the documents contained in the Third Bundle at this stage would greatly prejudice the Defence case⁴⁵ and call into question the integrity of the proceedings in violation of Rule 95⁴⁶.

⁴⁰ The documents listed in the First and Second Bundles formed part of the Prosecution's Motion for Judicial Notice, filed on 2 April 2004. SCSL-04-14-PT-50, ¶ 8 and Annexes A and B. Because the Prosecution sought, in the alternative, admission of the documents under Rules 92bis and 89(C), the requirements of Rule 66 arguably have been met with respect to the First and Second Bundles. However, for the reasons stated at ¶¶ 15-22, *supra*, these documents are otherwise inadmissible.

⁴¹ On that day, the Defence was served with the documents under the heading "Rule 92bis and 89(C) submissions of certain documents for admission from exhibits list not otherwise tendered at trial".

⁴² See Request, ¶ 3.

⁴³ The mere mention by the Appeals Chamber, in *obiter dictum*, of the utility of Rule 92bis as an alternative method for admitting evidence rejected under Rule 94 cannot vitiate the Prosecution's burden of complying with the Rules.

⁴⁴ Attempts to use Rule 92bis to admit evidence have been rejected as untimely when the request to introduce the information came at the final stage of proceedings without warning or explanation. In *Prosecutor v. Kajelijeli*, the Trial Chamber rejected a request to introduce evidence under Rule 92bis where "[t]he Defence clearly had access to all of this information during the presentation of its case, and chose not to make it available to the Chamber at that time. It offers no explanation why these affidavits, all dated in June 2002, are only placed before this Chamber almost one year after they were made, after the Defence case has closed, and just days before the Prosecution is due to file its closing brief. This placed the Prosecution under a level of uncertainty at a critical time, which the Chamber finds unacceptable." ICTR-98-44A-T, Trial Chamber, Decision on Kajelijeli's Motion to Admit Into Evidence Affidavits Pursuant to Rule 92bis(B), 1 July 2003, ¶ 6. The Chamber further noted: "as these affidavits deal with issues central to the Prosecution case, it would have been necessary to allow the Prosecution the opportunity to cross-examine the makers of these affidavits. Thus, the application is made too late." *Id.*, ¶ 7. Finally, the Chamber chastised the Defence for its untimely submission: "The Chamber does not approve of the conduct of Defence Counsel in attempting to introduce this information at this final stage in the proceedings." *Id.*, ¶ 8.

⁴⁵ It must be noted that the Defence is now in the process of preparing detailed and lengthy submissions pursuant to Rule 98. The instant attempt by the Prosecution to adduce unexpected, voluminous evidentiary material at this stage of the proceedings has had the collateral effect of diverting precious Defence resources away from our Rule 98 endeavour. Accordingly, despite remarks from the Chamber to the effect that the parties should be willing to adjust the existing Rule 98 timetable in order to avoid cutting into the judicial recess, see Trial Transcript of 22 June 2005 at 16:19-26, the Defence is not willing, at this point, to concede the three-week period allotted for this purpose.

⁴⁶ Rule 95 provides: "No evidence shall be admitted if its admission would bring the administration of justice into serious disrepute".

27. Accordingly, because the disclosure requirements of Rule 66 have not been met with respect to the documents included in the Third Bundle, they should be excluded as a matter of procedural regularity and so as not to unduly prejudice the Defence⁴⁷.

Specific Objections

28. Additionally, the Defence submits that the proposed evidence may be excluded under Rules 92*bis* and 89(C) on one or more of the following grounds, namely that it (i) is irrelevant to any portion of the indictment⁴⁸, (ii) is incapable of corroboration in due course⁴⁹, (iii) amounts to the assertion of an opinion⁵⁰, (iv) goes to the acts or conduct of the Accused, including alleged command responsibility or joint criminal enterprise⁵¹, or (v) lacks *prima facie* indicia of reliability⁵².

29. In keeping with the format utilised by the Prosecution, the Defence's specific objections are noted with respect to each document at Annex A.

CONCLUSION

30. For the reasons stated above and listed at Annex A, the Chamber should reject the proposed evidence in its entirety pursuant to Rules 66, 89(C), 92*bis*, 93, and 95 and Article 17 of the Statute. In the alternative, should the Chamber decide to admit any of the proposed evidence, the Defence requests the opportunity to cross-examine the documents' sources, which the Chamber should order the Prosecution to disclose prior to the close of its case.

⁴⁷ Furthermore, the proposed evidence is not admissible under Rule 93. In its Request, the Prosecution mentions the possibility of admitting evidence pursuant to Rule 93. Request, ¶ 6. However, it advances no specific argument as to why any of the proposed evidence should be admissible under that Rule. Furthermore, compliance with Rule 66, as required by Rule 93, has not been demonstrated. Accordingly, the Prosecution has failed to meet its burden of proof as to admission under Rule 93, if indeed that was its intention.

⁴⁸ See Rule 89(C).

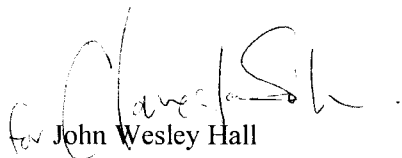
⁴⁹ See Rule 92*bis*(B) and Judicial Notice Decision, ¶ 26.

⁵⁰ See Judicial Notice Decision, ¶ 26. The Defence submits that opinions include legal conclusions, such as assertions that international humanitarian law has been violated. See generally *Prosecutor v. Milosevic*, IT-02-54-AR, Appeals Chamber, Decision on Admissibility of Prosecution Investigator's Evidence, 30 September 2002, ¶ 3(ii) (noting the Trial Chamber's authority "to decide which evidence it will accept and which it will reject, and what conclusions should be drawn from the evidence" and that "such evidence is normally excluded").

⁵¹ See n.25, *supra*.

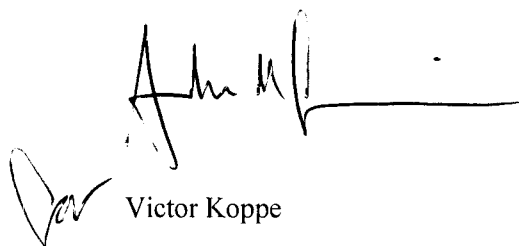
⁵² See, e.g., *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Trial Chamber, Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole, 13 September 2004.

COUNSEL FOR SAMUEL HINGA NORMAN



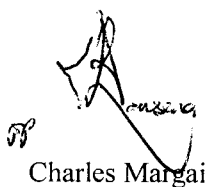
for John Wesley Hall

COUNSEL FOR MOININA FOFANA



Victor Koppe

COUNSEL FOR ALLIEU KONDEWA



Charles Margai

ANNEX A

SPECIFIC OBJECTIONS

With respect to the documents contained in the First Bundle, the Defence specifically objects as follows:

NO.	TITLE	DATE	SOURCE	AUTHOR	BASIS FOR OBJECTION
11	'Third Report of the Secretary General on the Situation in Sierra Leone'	05/02/98	UN Security Council	[None]	<ul style="list-style-type: none"> • General Relevance: "Existence of an armed conflict during the relevant period" has already been judicially noticed; • General Reliability: This document has no author and lists no sources; • Para. 10, 11, 18, 25 provide no relevant background; • Para. 10, 11 refers to the "CDU" – questionable reliability; • Para. 18 refers to junta activity – irrelevant; • Para. 25 refers to ECOMOG activity – irrelevant.
13	'Fifth Report of the Secretary General on the Situation in Sierra Leone'	09/06/98	UN Security Council	[None]	<ul style="list-style-type: none"> • General Relevance: "Existence of an armed conflict during the relevant period" has already been judicially noticed; • General Reliability: This document has no author and lists no sources; • Para. 23 and 38 provide no relevant background; • Para. 23 refers to the recruitment of children under 18 years – this is irrelevant to Count 8 which speaks of recruitment of children under 15 years; further, this goes to the acts/conducts of the Accused (command responsibility) • Para. 38 is unduly vague and makes no reference to CDF or to any of the Accused – irrelevant.
14	'First Report of the Secretary General on the Progress of the United Nations Observer Mission in Sierra Leone'	12/08/98	UN Security Council	[None]	<ul style="list-style-type: none"> • General Relevance: "Existence of an armed conflict during the relevant period" has already been judicially noticed; • General Reliability: This document has no author and lists no sources; • Para. 16, 43, 59 provide no relevant background information; • Para. 16, 43, 59 go to the acts/conducts of the Accused (command responsibility);

NO.	TITLE	DATE	SOURCE	AUTHOR	BASIS FOR OBJECTION
15	'Second Report of the Secretary General on the United Nations Observer Mission in Sierra Leone'	16/10/98	UN Security Council	[None]	<ul style="list-style-type: none"> • Para. 16 contains legal conclusions (e.g., "criminal behaviour", "human rights violations", "summary killings") that should be excluded as opinions rather than facts; the information regarding recruitment of child soldiers is unduly vague, making no reference to age or status, "child soldier" is not defined – irrelevant. • Para. 43 is unduly vague (e.g., "poor discipline", "various locations"), contains legal conclusions ("extortion"), and refers to initiation of children between the ages of 15 and 17 – this is irrelevant to Count 8 which speaks of recruitment of children under 15 years; • Para. 59 refers to the recruitment of children under 18 years – this is irrelevant to Count 8 which speaks of recruitment of children under 15 years; furthermore, this is not a statement of fact, but rather an expression of hope on the part of the Secretary General (presumably). • General Relevance: "Existence of an armed conflict during the relevant period" has already been judicially noticed; • General Reliability: This document has no author and lists no sources; • Para. 5 and 23 provide no relevant background information; • Para. 23 is unduly vague and refers to deployment of "under-age boys" – this is irrelevant to Count 8 which speaks of recruitment of children under 15 years; further, this goes to the acts/conducts of the Accused (command responsibility).
16	'Third Report of the Secretary General on the United Nations Observer Mission in Sierra Leone'	16/12/98	UN Security Council	[None]	<ul style="list-style-type: none"> • General Relevance: "Existence of an armed conflict during the relevant period" has already been judicially noticed; • General Reliability: This document has no author and lists no sources; • Para. 39 provides no relevant background information; • Para. 39 is unduly vague and refers to "children" and "under-age CDF combatants" – this is irrelevant to Count 8 which speaks of recruitment of children under 15 years; further, this goes to the acts/conducts of the Accused

NO.	TITLE	DATE	SOURCE	AUTHOR	BASIS FOR OBJECTION
18	'Sixth Progress Report of the Secretary General on the United Nations Observer Mission in Sierra Leone'	04/06/99	UN Security Council	[None]	(command responsibility). <ul style="list-style-type: none"> General Relevance: "Existence of an armed conflict during the relevant period" has already been judicially noticed; General Reliability: This document has no author and lists no sources; Para. 35 and 36 provide no relevant background information; Para. 35 refers to areas (Freetown) outside the geographic scope of the Indictment; Para. 36 is unduly vague and refers to "children" – this is irrelevant to Count 8 which speaks of recruitment of children under 15 years; Para. 35 and 36 go to the acts/conducts of the Accused (command responsibility).
31	'Stop using child soldiers, Sierra Leone told'	19/06/97	UNICEF	[None]	<ul style="list-style-type: none"> General Relevance: "Existence of an armed conflict during the relevant period" has already been judicially noticed; General Reliability: This document has no author and lists no sources; Para. 4 provides no relevant background information; Para. 4 refers to RUF, not CDF, activity and is therefore irrelevant.
32	'Sierra Leone Monthly Report'	31/07/99	UNICEF	[None]	<ul style="list-style-type: none"> General Relevance: "Existence of an armed conflict during the relevant period" has already been judicially noticed; General Reliability: This document has no author and lists no sources; Page 3 goes to the acts/conducts of the Accused (command responsibility); Page 3 is unduly vague and refers to "children" – this is irrelevant to Count 8 which speaks of recruitment of children under 15 years.

With respect to the Second Bundle, the Defence objects as follows:

42	"Sowing Terror"	Jul 1999	Human Rights Watch	Scott Campbell and Jane Lowicki	<ul style="list-style-type: none"> • Not capable of "corroboration in due course" • Assertion of opinion and general statements without specifying the sources of information • Not relevant: describes events outside geographic scope of indictment (e.g., p. 24 relates 2 accounts of events in Koidu) • Goes to acts and conduct of Accused • Makes conclusory statements about "child soldiers" (p. 25) without identifying activities performed, etc. The Trial Chamber should make the legal determination of what constitutes a "child soldier" (i.e., fits the description in the Indictment). • Description of child soldiers is too broad: refers to children under 18 years
54	"Sierra Leone: Time for a New Military and Political Strategy"	11 Apr 2001	International Crisis Group	[None]	<ul style="list-style-type: none"> • No objections (the Prosecution only references pg. 6.)
57	Mazurana and Carlson, "From Combat Community: Women and Girls of Sierra Leone"	Jan 2004	Women Waging Peace	Dyan Mazurana and Khristopher Carlson	<ul style="list-style-type: none"> • Goes to acts and conducts of First Accused • Not capable of "corroboration in due course" • Assertion of opinion • Not relevant: RUF and SLA info included, describes activities outside of indictment (sexual violence, etc. on p. 13) • Vague/too broad: not clear whether "girls" (p. 12) refers to age 18 and under, or whether events occurred within geographic and temporal scope of Indictment • Not relevant, • Not Reliable – Document is a draft and marked "Draft for review only: Not for Distribution" • Goes to acts and conducts of Accused
58	"Sierra Leone Conflict Mapping Program" Draft Copy	9 Mar 2004	No Peace Without Justice	[None]	<ul style="list-style-type: none"> • Not Reliable – Document is a draft and marked "Draft for review only: Not for Distribution" • Goes to acts and conducts of Accused

					<ul style="list-style-type: none"> • Not capable of "corroboration in due course" • Report contains many assertions of opinion
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NO.	TITLE	DATE	SOURCE	AUTHOR	BASIS FOR OBJECTION
61	CDF Statement of FM 98.1	22 Dec 1997	[None]	[None]	<ul style="list-style-type: none"> • Lacks <i>prima facie</i> indicia of reliability – no indication of this being a transcript from the radio, no indication of record of broadcast, no information as to radio station FM98.1(D) (ie its location) • Cannot be “corroborated in due course” • Goes to acts and conducts of the Accused (command responsibility)
62	Kamajor Press Release	23 Dec 1997	[None]	[None]	<ul style="list-style-type: none"> • Lacks <i>prima facie</i> indicia of reliability – no indication as to the source of the press release, document is not signed, nothing to verify that it is what it purports to be (a Press Release) – it is typed on plain paper with no letterhead, no stamp, and no signature, no indication if and when it was released or where • Goes to acts and conducts of the First Accused • Cannot be “corroborated in due course”
63	Summary of Conversation with Hinga Norman	10 Jan 1998	[None]	Alfred Sam Foray	<ul style="list-style-type: none"> • Lacks <i>prima facie</i> indicia of reliability – no indication as to who the author is, document is not signed, nothing to verify that it is what it purports to be – it is typed on plain paper with no letterhead, no stamp, and no signature, not indication as to the source or origins of the document • Goes to acts and conducts of the First Accused (Command responsibility) • Cannot be “corroborated in due course” • If admitted, Defence requests cross examination of Report’s author (Sam Foray)
66	Report of Unacceptable	8 Aug 2000	Regional Reconciliation	Simon Arthy	<ul style="list-style-type: none"> • Document is a duplicate of #162 submitted in Bundle #3 • Lacks <i>prima facie</i> indicia of reliability – nothing to verify it

NO.	TITLE	DATE	SOURCE	AUTHOR	BASIS FOR OBJECTION
	Behaviour of CDF in the Southern Region		Committee Southern Region		<p>as a true copy of the original, no mention of source of information, unidentified hearsay of allegations and opinions of CDF involvement in various activities, most or which are not corroborated</p> <ul style="list-style-type: none"> • No indication as to who the "Regional Reconciliation Committee" is. • Cannot be "corroborated in due course" • Outside the temporal and geographic scope of the Indictment • If admitted, Defence requests cross examination of Report's author (Simon Arthy) • Goes directly to the acts and conduct of the Three Accused • Relevance - 21 July 2000 Gbangbatok alleged incident (p 5) is post-Indictment • Relevance – alleged Mandu Incident and Mongeri Incident (both pg 6) are not within the location and time frame of the Indictment • Relevance – Incidents at checkpoints (pg 10) do not specify time period and location so not clear whether these incidents are within the scope of the indictment
68	CDF Calendar 2001	[None]	Sierra Leone Action Movement	[None]	<ul style="list-style-type: none"> • Lacks <i>prima facie</i> indicia of reliability – no indication what Sierra Leone Action Movement is and its relationship to CDF or the three accused • Relevance – Calendar is for 2001 so outside temporal scope of the indictment • Cannot be "corroborated in due course"

With respect to the Third Bundle, the Defence specifically objects as follows:

NO.	TITLE	DATE	SOURCE	AUTHOR	BASIS FOR OBJECTION
23	Curriculum Vitae of Hinga Norman	[None]	[None]	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Lacks <i>prima facie</i> indicia of reliability – not dated, not clear who wrote it, not clear where it was sourced from
38	Hinga Norman passport	[None]	Republic of Sierra Leon	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Not relevant • Lacks <i>prima facie</i> indicia of reliability – nothing testifying to it being a true copy of the original
85	Daily Front Line report	2 Oct 97	[None]	Alpha K Siaka and Andrew Harding	<ul style="list-style-type: none"> • Rule 66 requirements not met • Cannot be “corroborated in due course” • Goes to the “acts and conduct” of the First Accused • Relevance - Refers to geographic areas outside of the Indictment (Tuasu Village and Jendema Base and Zimmi) • If admitted, Defence requests cross examination of Report’s author
96(b)	Registered CDF children on CAW program List	[None]	[None]	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Lacks <i>prima facie</i> indicia of reliability: not signed, not dated, no source, unclear origins of the documents, not clear who put the list together, appears to be a random list of names without any connection to it being a “CAW” document, no indication what CAW is. • Cannot be “corroborated in due course”
101	Daily Front Line Report, Pujehun District	19 June 97	[None]	Compiled by Baimba Adam Zorokong; Submitted by Hinga Norman	<ul style="list-style-type: none"> • Rule 66 requirements not met • Cannot be “corroborated in due course” • Goes to acts and conducts of First Accused (especially command responsibility) • Not relevant: not within temporal or geographic jurisdiction of the Indictment • If admitted, Defence requests cross examination of Report’s author
102	Daily Front Line Report, Pujehun District	20 June 97	[None]	Compiled by Baimba Adam Zorokong;	<ul style="list-style-type: none"> • Rule 66 requirements not met • Cannot be “corroborated in due course” • Goes to acts and conducts of First Accused

NO.	TITLE	DATE	SOURCE	AUTHOR	BASIS FOR OBJECTION
104	Communiqué from Joint Committee of Disarmament Demobilization and Reintegration meeting	15 May 2001	Government of Sierra Leone, RUF, UNAMSIL	Submitted by Hinga Norman [None]	<ul style="list-style-type: none"> • Not relevant: not within temporal or geographic jurisdiction of the Indictment • If admitted, Defence requests cross examination of Report's author • Rule 66 requirements not met • Cannot be "corroborated in due course" • Goes directly to acts and conducts of First Accused • Lacks <i>prima facie</i> indicia of reliability – Communiqué is not copy of the original but sourced from website, nothing to indicate that "UNAMSIL NEWS 10" document is a true copy of the original • Not relevant – does not mention anything about the conscripting or enlisting or active use of child soldiers as per the indictment
107	Minutes of meeting between Hinga Norman and Kamajor delegation from Bo	26 July 97	[None]	Signed by Hinga Norman	<ul style="list-style-type: none"> • Rule 66 requirements not met • Cannot be "corroborated in due course" • Goes directly to acts and conducts of First Accused (especially command responsibility) • Lacks <i>prima facie</i> indicia of reliability – no information regarding the source of the document • Not relevant: not within temporal or geographic jurisdiction of the Indictment
109	Very Urgent Front Line Request – Arms request and # of men	27 Aug 1997	[None]	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Cannot be "corroborated in due course" • Goes directly to acts and conducts of First Accused (especially command responsibility) • Lacks <i>prima facie</i> indicia of reliability – no information regarding the source of the document, document is not signed • Not relevant: not within temporal or geographic jurisdiction of the Indictment
112	Letter to ECOMOG, Emergency Front Line Reports, Requisition for	26 Aug 1997	[None]	Letter by Hinga Norman;	<ul style="list-style-type: none"> • Rule 66 requirements not met • Cannot be "corroborated in due course" • Goes directly to acts and conducts of First Accused (especially

NO.	TITLE	DATE	SOURCE	AUTHOR	BASIS FOR OBJECTION
	Arms			Front Line Reports by ML Kallon; Requisition by Andrew Harding	<ul style="list-style-type: none"> • command responsibility) • Lacks <i>prima facie</i> indicia of reliability – no information regarding the origins of the document • Not relevant: not within temporal or geographic jurisdiction of the Indictment • If admitted, Defence requests cross examination of Report's author (ML Kallon)
113	Letter to ECOMOG, Emergency Front Line Requests	17 Sep 1997	[None]	Letter by Hinga Norman; Front Line Report by ML Kallon	<ul style="list-style-type: none"> • Rule 66 requirements not met • Cannot be "corroborated in due course" • Goes directly to acts and conducts of First Accused (especially command responsibility) • Lacks <i>prima facie</i> indicia of reliability – no information regarding the origins of the document • Not relevant: not within temporal or geographic jurisdiction of the Indictment • If admitted, Defence requests cross examination of Report's author (ML Kallon)
114	Letter to ECOMOG, Front Line Report	29 Sep 1997	[None]	Letter by Norman to ECOMOG with attached document by Andrew Harding	<ul style="list-style-type: none"> • Rule 66 requirements not met • Cannot be "corroborated in due course" • Goes directly to acts and conducts of First Accused (especially command responsibility) • Lacks <i>prima facie</i> indicia of reliability – no information regarding the origins of the document • Not relevant: not within temporal or geographic jurisdiction of the Indictment • If admitted, Defence requests cross examination of Report's author (Andrew Harding)
118	Letter to ECOMOG, Front Line Report	14 Nov 1997, 21	[None]	Letter by Hinga	<ul style="list-style-type: none"> • Rule 66 requirements not met • Cannot be "corroborated in due course"

NO.	TITLE	DATE	SOURCE	AUTHOR	BASIS FOR OBJECTION
		Nov 1997		Norman; Front Line Request by Fofana	<ul style="list-style-type: none"> Goes directly to acts and conducts of First and Second Accused (especially command responsibility) Lacks <i>prima facie</i> indicia of reliability – no information regarding the origins of the document Lacks indicia of reliability: discrepancy in dates between two document (attached document by Fofana written one week later than covering sheet letter by Norman), document not signed by Fofana himself
125	Bonthe District pass	14 Nov 1997	[None]	Unknown	<ul style="list-style-type: none"> Rule 66 requirements not met Cannot be “corroborated in due course” Goes directly to acts and conducts of Third Accused Lacks <i>prima facie</i> indicia of reliability – no information regarding the origins of the document, nothing to verify it as a true copy, date discrepancy within documents If admitted, Defence requests cross examination of Report’s author (Mustapha Sensi)
128	Letter to Battalion Commanders	15 May 1998	[None]	Moinina Fofana	<ul style="list-style-type: none"> Rule 66 requirements not met Cannot be “corroborated in due course” Goes directly to acts and conducts of Second Accused Lacks <i>prima facie</i> indicia of reliability – no information regarding the origins of the document, nothing to verify it as a true copy
129	Letter from War Council representatives to Joe Temnde,	18 Feb 1998	[None]	Representatives of the War Council	<ul style="list-style-type: none"> Recipient of letter appeared as a witness – prosecution could have corroborated document during his oral testimony and did not – cannot now be corroborated in due course Rule 66 requirements not met Lacks <i>prima facie</i> indicia of reliability – no information regarding the origins of the document, nothing to verify it as a true copy, nothing to indicate that Timide received the letter. If admitted, Defence requests cross examination of Report’s author (War Council reps in Dassamu Village) and recipient (J Timide)
160	Declaration of commitment to release child combatant	Mar 2000	[None]	Signed by Hinga Norman,	<ul style="list-style-type: none"> Rule 66 requirements not met Lacks <i>prima facie</i> indicia of reliability – nothing to verify it as a true copy of the original

NO.	TITLE	DATE	SOURCE	AUTHOR	BASIS FOR OBJECTION
162	Report on Unacceptable CDF Behaviour	Aug 2000	Regional Reconciliation Committee Southern Region (RRCSSR)	[None]	<ul style="list-style-type: none"> • Cannot be “corroborated in due course” • Goes directly to acts and conducts of First Accused (command responsibility) • Outside temporal scope of the indictment • Document is a duplicate of #66 submitted in Bundle #2 • Rule 66 requirements not met • Lacks <i>prima facie</i> indicia of reliability – nothing to verify it as a true copy of the original, no mention of source of information, unidentified hearsay of allegations and opinions of CDF involvement in various activities, most of which are not corroborated • No indication as to who the “Regional Reconciliation Committee” is. • Cannot be “corroborated in due course” • Outside the temporal and geographic scope of the Indictment • If admitted, Defence requests cross examination of Report’s author (the RRCSSR) • Goes directly to the acts and conduct of the Three Accused • Relevance - 21 July 2000 Gbangbatok alleged incident (p 4321, 4331) is post-Indictment • Relevance – alleged Mandu Incident and Mongeri Incident (both pg 4322) are not within the location and time frame of the Indictment • Relevance – Incidents at checkpoints (pg 4326) do not specify time period and location so not clear whether these incidents are within the scope of the indictment
168	Sierra Leone Humanitarian Situation Report,	15 June 1998	www.relie fweb.int	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Cannot be “corroborated in due course” • Outside the temporal scope of the Indictment • Gives an opinion – refers to “child combatants” without mention of activities performed – meaning of a child combatant/child soldier is a legal determination for the Trial Chamber to make
172	Sierra Leone Humanitarian Situation	7 Aug 2000	www.relie fweb.int	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Cannot be “corroborated in due course”

NO.	TITLE	DATE	SOURCE	AUTHOR	BASIS FOR OBJECTION
	Report,				<ul style="list-style-type: none"> • Report describes events that fall outside the temporal scope of the Indictment – pg. 2, 11, 12 do not specify times and locations of incidents • Prosecution references only to Pg. 4404 (which is a cover sheet). No specific sections of the report have been highlighted and most of the report is irrelevant as it makes no reference to the CDF. • Relevance - No mention of the accused or their knowledge of incidents •
202	"Sierra Leone – Childhood – A casualty of conflict"	31 Aug 2000	Amnesty International, AFR	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Cannot be "corroborated in due course" • Report describes events that fall outside the temporal scope of the Indictment • Pgs. 3, 9, 18, 22 expresses opinion. Pages 3 and 18 refer to "child combatant" – reaches a legal conclusion. The meaning of "child combatant" is a legal determination for the Trial Chamber to make. • Scope of report too broad as children are under 18 years of age. • Pg 19 – goes directly to the acts and conduct of the First Accused • Pg 22 – Refers to events since May 2000 which is outside temporal scope of the indictment
207	"World Report 1999: Sierra Leone, Human Rights Development"		Human Rights Watch	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Pg 1-2 express opinions and reaches legal conclusions on torture and determinations on what constitutes a "child soldier" • Relevance – Pg 1-2 are not within the temporal scope of the indictment. Does not specify locations • Reference to children on pg 2 is too broad (includes children under 18) • Goes directly to the acts and conduct of the First Accused • Contents of the document cannot be "corroborated in due course".

NO.	TITLE	DATE	SOURCE	AUTHOR	BASIS FOR OBJECTION
208	Report 2001: "Sierra Leone: Most Serious Attacks in Months. Human Rights Watch interviews: Victims and Witnesses"	24 July 2001	Human Rights Watch	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Report is essentially a witness statement – the reliability of the contents which the defence is in no position to prove • Cannot be "corroborated in due course" • No prima facie indicia of reliability – such as when where and by whom the interview was taken • No relevance - Refers to a 2001 attack outside of the temporal scope of the indictment
222	"Children – SL: Militia Admits Recruiting Child Soldiers"	29 June 1998	Inter Press Service	Lansana Fofana	<ul style="list-style-type: none"> • Rule 66 requirements not met • Goes to acts and conducts of Accused • Lacks prima facie indicia of reliability: No credential given for Lansana Fofana, InterPress Service is a news clearing house, no method for determining the origins of the document and credibility of the original news source (ie possible article is from a Sierra Leone newspaper) • Cannot be "corroborated in due course"
227	UNICEF calls for the demobilization of child soldiers	2 Oct 1998	BBC News	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Goes to acts and conducts of First Accused • Cannot be "corroborated in due course" • Reliability – no reporter byline
231	News Articles	2 Sept 1997	SL News Archives	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Goes to acts and conducts of Accused • Lacks prima facie indicia of reliability: No indication of author, where the news article first appeared, no reporter byline, not a credible news source • Cannot be "corroborated in due course" • Not relevant – outside the temporal scope of the indictment

NO.	TITLE	DATE	SOURCE	AUTHOR	BASIS FOR OBJECTION
238	News Articles	4 Dec 1997	SL News Archives	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Goes to acts and conducts of Accused • Lacks prima facie indicia of reliability: No indication of author, where the news article first appeared, no reporter byline, not a credible news source • Cannot be "corroborated in due course"
244	News Articles	2 Jan 1998	SL News Archive	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Goes to acts and conducts of Accused • Lacks prima facie indicia of reliability: No indication of author, where the news article first appeared, no reporter byline, not a credible news source • Cannot be "corroborated in due course"
247	News Articles	16 Jan 1998	SL News Archive	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Goes to acts and conducts of Accused • Lacks prima facie indicia of reliability: No indication of author, where the news article first appeared, no reporter byline, not a credible news source • Cannot be "corroborated in due course"
249	News Articles	18 Jan 1998	SL News Archive	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Goes to acts and conducts of Accused • Lacks prima facie indicia of reliability: No indication of author, where the news article first appeared, no reporter byline, not a credible news source • Cannot be "corroborated in due course"
250	News Articles	19 Jan 1998	SL News Archive	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Goes to acts and conducts of Accused • Lacks prima facie indicia of reliability: No indication of author, where the news article first appeared, no reporter byline, not a

NO.	TITLE	DATE	SOURCE	AUTHOR	BASIS FOR OBJECTION
252	News Articles	21 Jan 1998	SL News Archive	[None]	<ul style="list-style-type: none"> • credible news source • Cannot be "corroborated in due course"
262	"To Die or To Live? The Verdict on SL's plotters"	October 1998	Newsweek	[None]	<ul style="list-style-type: none"> • Rule 66 requirements not met • Goes to acts and conducts of Accused • Lacks prima facie indicia of reliability: No indication of author, where the news article first appeared, no reporter byline, not a credible news source • Cannot be "corroborated in due course"
					<ul style="list-style-type: none"> • Rule 66 requirements not met • Goes to acts and conducts of First Accused • Lacks prima facie indicia of reliability: No indication of credibility of the news source • Cannot be "corroborated in due course"

ANNEX B

ICTR RULE 92BIS CASELAW

1. *Prosecutor v. Muvunyi*, ICTR-2000-55A, Decision on the Prosecutor's Motion for Admission of Testimony of Expert Witness Rules 92bis of the Rules, Trial Chamber II, March 24, 2005.
2. *Prosecutor v. Simba*, ICTR-01-76-T, Decision on the Admission of a Written Statement, Trial Chamber I, 25 January 2005.
3. *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision of Admission of Statements of Deceased Witnesses, Trial Chamber I, 19 January 2005.
4. *Prosecutor v. Bizimungu et al.*, ICTR-99-50-T, Decision on the Prosecutor's Motion and Notice Pursuant to Rule 92bis(E), Trial Chamber II, 17 November 2004.
5. *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Prosecution Request for Testimony of Witness BT Via Video-Link, Trial Chamber I, 8 October 2004.
6. *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Prosecution Request for Deposition of Witness BT, Trial Chamber I, 4 October 2004.
7. *Prosecutor v. Nyiramasuhuko*, ICTR-97-21-T and ICTR-98-42-T, Decision on Prosecutor's Motion for Verification of the Authenticity of Evidence Obtained Out of Court, Namely the Alleged Diary of Pauline Nyiramasuhuko (Rules 89(C) and 89(D) of the Rules of Procedure and Evidence), Trial Chamber II, 1 October 2004.
8. *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Admission of Tab 19 of Binder Produced in Connection with Appearance of Witness Maxwell Nkole, Trial Chamber I, 13 September 2004.
9. *Prosecutor v. Simba*, ICTR-01-76-I, Decision on Prosecutor's Request for Certification to Appeal Decision Dated 14 July 2004 Denying Admission of Testimony of an Expert Witness, Trial Chamber I, 16 August 2004.
10. *Prosecutor v. Ndindabahizi*, ICTR-2001-71-I, Judgement and Sentence, Trial Chamber I, 15 July 2004.
11. *Prosecutor v. Simba*, ICTR-01-76-I, Decision on Prosecutor's Motion for Admission of Testimony for an Expert Witness, Trial Chamber I, 14 July 2004.
12. *Prosecutor v. Gacumbtsi*, ICTR-2001-64-T, Judgment, Trial Chamber III, 17 June 2004.
13. *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Motion to Compel the Prosecution to Comply with the Chamber's Decision of 1 March 2004, Trial Chamber I, 21 May 2004.

14. *Prosecutor v. Muhimana*, ICTR-95-1B-T, Decision on the Prosecution Motion for Admission of Witness Statements (Rules 89(C) and 92 *bis*), Trial Chamber III, 20 May 2004.
15. *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Decision on Prosecutor's Motion for the Admission of Written Witness Statements under Rule 92*bis*, Trial Chamber I, 9 March 2004.
16. *Prosecutor v. Ntagerura et al.*, ICTR-99-46-T, Judgement and Sentence, Trial Chamber III, 25 February 2004.
17. *Prosecutor v. Kamuhanda*, ICTR-95-54A-T, Trial Chamber II, 22 January 2004.
18. *Prosecutor v. Kajelijeli*, ICTR-98-44A-T, Judgment and Sentence, Trial Chamber II, 1 December 2003.
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