SPECIAL COURT FOR SIERRA LEONE
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THE TRIAL CHAMBER

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

Registrar: Robin Vincent

Date: 16 July 2004

PROSECUTOR **Against** **SAM HINGA NORMAN**
MOININA FOFANA
ALLIEU KONDEWA
(Case No.SCSL-04-14-PT)

DECISION ON DISCLOSURE OF WITNESS STATEMENTS AND CROSS-EXAMINATION

Office of the Prosecutor:
Luc Côté
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Defence Counsel for Sam Hinga Norman:
Sam Hinga Norman

Defence Counsel for Moinina Fofana:
Michiel Pestman
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THE TRIAL CHAMBER ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court") composed of Hon. Judge Benjamin Mutanga Itoe, Presiding Judge, Hon. Judge Bankole Thompson, and Hon. Judge Pierre Boutet;

SEIZED of an Objection taken by Defence Counsel for Kondewa and Norman ("Defence") and their supporting grounds and submissions during the trial proceedings on the 15th, 18th and 21st

of June 2004, as to the admissibility of the portion of the oral testimony of Prosecution witness TF2-198, and the Prosecution's submissions in response;

NOTING the submissions of the Prosecution and Defence made in closed session, during the Status Conference held on 1 June 2004, relating to the form of witness statements disclosed to the Defence pursuant to Rule 66 of the Rules of Procedure and Evidence of the Special Court for Sierra Leone ("Rules");

NOTING the Prosecution Submission of Case Law in Support of its Position, filed on 21 June 2004;

CONSIDERING Rule 66 of the Rules and Article 17 of the Statute of the Special Court for Sierra Leone ("Special Court");

HEREBY ISSUES THE FOLLOWING RULING:

I. THE SUBMISSIONS OF THE PARTIES

Defence Submissions

1. The facts that gave rise to this oral Motion by the Defence are that in the course of his examination-in-chief, the 1st Prosecution witness, TF2-198, testified on facts that were not contained in his statement, that was disclosed to the Defence prior to his oral testimony. This witness in effect, orally testified to the fact that his back was burnt by a lit plastic bag that was placed by Kamajors on his back around his shoulders. He alleged that he had been tied and beaten in the process. However, the fact of the burns which he testified to does not appear in his disclosed witness statement. Counsel for the Defence submits that this evidence be expunged from the records on the grounds of a violation of Rule 66(A)(i) of the Rules in that the Prosecution did not disclose this evidence to the Defence prior to the witness's oral testimony in Court.

2. It is these initial facts that sparked off a chain of objections by the Defence which, in addition to the above, include the following:

(i) That the Prosecution are in possession of a signed witness statement for Witness TF2-176, that has not been disclosed to them, and that the Prosecution have statements for all three

witnesses that testified during the trial session on the 15th, 16th, 17th and 18th of June 2004, that have not been disclosed to the Defence.

(ii) That no witness statements have been disclosed to them for the witnesses who testified on the 15th, 16th, 17th and 18th of June 2004, as they only received interview notes prepared by the Prosecution with respect to each witness, and that interview notes do not constitute witness statements within the meaning of Rule 66(A)(i).

(iii) That by failing to disclose the statements of these witnesses whose oral testimony is already on the record or doing so later than prescribed under Rule 66, the Defence submits that the Prosecution is carrying out a trial 'by ambush' because the Defence has not been given enough time to prepare for their defence as provided for in Article 17(4)(b) of the Statute.

(iv) That the Defence be allowed to cross-examine witnesses on inconsistencies between their oral testimony and prior witness statements and to tender such statements as Court exhibits.

Prosecution Submissions

3. In reply to these arguments put forward by the Defence in support of this oral Motion, the Prosecution advanced the following submissions:

(i) That witness statements that are disclosed by the Prosecution to the Defence in accordance with Rule 66A(i) of the Rules, will not cover all areas that may be testified to by a witness at trial, nor is it to be expected that they should cover all those areas.

(ii) That the contents and nature of witness statements disclosed by the Prosecution have been discussed previously between the parties and before the Trial Chamber at the Status Conference on 1 June 2004, where the Prosecution explained that witness statements are prepared in various forms. They assert that the Prosecution are fully in compliance with their disclosure obligations under Rule 66 of the Rules. The Prosecution further points out that there is no requirement in the Rules that a witness statement must be signed.

(iii) That having disclosed all witness statements in their possession relating to the witnesses who have testified, they have fully fulfilled their disclosure obligations under Rule 66 of the Rules, and that arguments by the Defence of non-disclosure are unsubstantiated and baseless.

(iv) That a witness may be cross-examined on a matter of inconsistency between a prior witness statement and their testimony in court, but asserts that it is unnecessary to tender the witness statement in Court as an exhibit.

II. **THE APPLICABLE LAW**

A. Disclosure Obligations

4. The law governing the disclosure of materials by the Prosecution and the Defence is embodied in Rules 66, 67 and 68 of the Rules of Procedure and Evidence of the Special Court ("Rules"). Rule 66 provides as follows:

Rule 66: Disclosure of materials by the Prosecutor

(A) Subject to the provisions of Rules 50, 53, 69 and 75, the Prosecutor shall:

(i) Within 30 days of the initial appearance of an accused, disclose to the Defence copies of the statements of all witnesses whom the Prosecutor intends to call to testify and all evidence to be presented pursuant to Rule 92 *bis* at trial.

(ii) Continuously disclose to the Defence copies of the statements of all additional prosecution witnesses whom the Prosecutor intends to call to testify, but not later than 60 days before the date for trial, or as otherwise ordered by a Judge of the Trial Chamber either before or after the commencement of the trial, upon good clause being shown by the Prosecution. Upon good cause being shown by the Defence, a Judge of the Trial Chamber may order that copies of the statements of additional prosecution witnesses that the Prosecutor does not intend to call be made available to the defence within a prescribed time.

(iii) At the request of the defence, subject to Sub-Rule (B), permit the defence to inspect any books, documents, photographs and tangible objects in his custody or control, which are material to the preparation of the defence, upon a showing by the defence of categories of, or specific, books, documents, photographs and tangible objects which the defence considers to be material to the preparation of a defence, or to inspect any books, documents, photographs and tangible objects in his custody or control which are intended for use by the Prosecutor as evidence at trial or were obtained from or belonged to the accused.

(B) Where information or materials are in the possession of the Prosecutor, the disclosure of which may prejudice further ongoing investigations, or for any other reasons may be contrary to the public interest or affect the security interests of any State, the Prosecutor may apply to a Judge designated by the President sitting *ex parte* and *in camera*, but with notice to the Defence, to be relieved from the obligation to disclose pursuant to Sub-Rule (A). When making such an application the Prosecutor shall provide, only to such Judge, the information or materials that are sought to be kept confidential.

5. As a matter of statutory interpretation, it is the Chamber's opinion that Rule 66 requires, *inter alia*, that the Prosecution disclose to the Defence copies of the statements of all witnesses which it intends to call to testify and all evidence to be presented pursuant to Rule 92*bis*, within 30 days of the initial appearance of the Accused. In addition, the Prosecution is required to continuously disclose to the Defence, the statements of all additional Prosecution witnesses it intends to call, not later than 60 days before the date of trial, or otherwise ordered by the Trial Chamber, upon good cause being shown by the Prosecution. Rule 67 also requires reciprocal disclosure of evidence, from the Prosecution and the Defence. The Chamber opines that the Prosecution is required to disclose the names of the witnesses that it intends to call as early as reasonably practicable, prior to commencement of trial. The Defence is required to notify the Prosecutor of

its intent to enter the defence of alibi or any special defence. Rule 68 also requires the Prosecutor to disclose exculpatory evidence within 30 days of the initial appearance of the Accused, and thereafter to be under a continuing obligation to disclose exculpatory material.

6. The Chamber finds that these provisions clearly require more disclosure from the Prosecutor, than from the Defence, which is more in line with the civil law system than the common law tradition. The Prosecutor is obliged to continuously disclose evidence under Rule 66, which is limited to new developments in the investigation, and under Rule 68, to further exculpatory material. Rule 67(D) enunciates continuous disclosure obligations and provides as follows:

If either party discovers additional evidence or information or materials which should have been produced earlier pursuant to the Rules, that party shall promptly notify the other party and the Trial Chamber of the existence of the additional evidence or information or materials.

7. It is evident that the premise underlying the disclosure obligations is that the parties should act *bona fides* at all times. [1] There is authority from the evolving jurisprudence of the International Criminal Tribunals that any allegation by the Defence as to a violation of the disclosure rules by the Prosecution should be substantiated with *prima facie* proof of such a violation. This Chamber in recent decisions has indeed ruled that the Defence must "make a *prima facie* showing of materiality and that the requested evidence is in the custody or control of the Prosecution".[2] It is of course the role of the Trial Chamber to enforce disclosure obligations in the interests of a fair trial, and to ensure that the rights of the Accused, as provided in Article 17(4)(e) of the Statute, to examine or have examined, the witnesses against him or her, are respected and where evidence has not been disclosed or is disclosed so late as to prejudice the fairness of the trial, the Trial Chamber will apply appropriate remedies which may include the exclusion of such evidence.[3]

B. Meaning of a Witness Statement

8. We note that the Defence raised the issue of what constitutes witness statements within the meaning of Rule 66. The Defence has strenuously argued that a statement made or recorded in the third person rather than in the first person cannot properly be classified as a witness statement, and further, that interview notes do not amount to statements within the meaning of Rule 66 of the Rules.

9. In this regard, the Chamber would like to refer to the definition of a statement in Black's Law Dictionary,[4] which defines a statement as:

1. *Evidence.* A verbal assertion or non-verbal conduct intended as an assertion. 2. A formal and exact presentation of facts. 3. *Criminal Procedure.* An account of a person's (usu. a suspect's) knowledge of a crime, taken by the police pursuant to their investigation of the offence.

10. Indeed, the Chamber observes that nowhere in the rules is a witness statement defined. It is worth noting that the Appeals Chamber of the ICTY has considered that the usual meaning to be ascribed to a witness statement is "an account of a person's knowledge of a crime, which is recorded through due procedure in the course of an investigation into the crime".[5] (emphasis

added) The Tribunals have also considered that transcribed trial testimony,[6] radio interviews,[7] unsigned witness declarations[8] and records of questions put to witnesses and answers given, constitute witness statements.[9]

11. The Trial Chambers of the ICTY have interpreted Rule 66 of the Rules to require disclosure of all witness statements in the possession of the Prosecution, regardless of their form or source. For instance, the Trial Chamber of the ICTY in the *Blaskic* case, stated that:

The same interpretation of Sub-rule 66(A) leads the Trial Chamber to draw no distinction between the form or forms which these statements may have. Moreover, nothing in the text permits the introduction of the distinctions suggested by the Prosecution between "the official statements taken under oath or signed and recognised by the accused" and the others.[10]

12. In addition, that Trial Chamber decided that all documents in the Prosecution's file should be disclosed, regardless of their source and making an analogy between the criteria for prior statements of the accused person and those in respect of witnesses, observed as follows:

[t]he principles [...] in support of the interpretation of Sub-rule 66(A) lead the Trial Chamber to the decision that all the previous statements of the accused which appear in the Prosecutor's file, whether collected by the Prosecution or originating from any other source, must be disclosed to the Defence immediately. [...] furthermore, the Trial Chamber considers that the same criteria as those identified in respect of the accused's previous statements must apply mutatis mutandis to the previous statements of the witnesses also indicated in Sub-rule 66(A).[11] (emphasis added)

13. The ICTY Trial Chamber in the *Kordic[12]* case, considering a motion to compel the compliance of the Prosecution with Rule 66(A) and 68, ruled that:

[a]ny undisclosed prior statements of [co]Accused in the possession of the Prosecution made in any type of judicial proceedings, and whether collected by the Prosecution or originating from any other source, save for any material covered by Rule 70(A) of the Rules which have not been disclosed.

14. In its recent Judgement, the Appeals Chamber of the ICTR in the *Niyitegeka* case, observed that the Prosecution is required to make available to the Defence, the witness statement in the form in which it has been recorded.[13] Setting out the standard for recording interviews with witnesses, the Appeals Chamber, however, stated that the mere fact that a particular witness statement does not correspond to this standard, does not relieve a party from its obligation to disclose it pursuant to Rule 66(A)(ii) of the Rules. The said Chamber stated furthermore, that a statement not fulfilling the ideal standard is not inadmissible as such and that any inconsistency of a witness statement with that standard would be taken into consideration when assessing the probative value of the statement, if necessary.[14]

15. The Trial Chamber of the ICTR in the *Akayesu* case, determined that statements by witnesses that were not made under solemn declaration and not taken by judicial officers were still admissible. However, the probative value attached to them was considerably less than direct

sworn testimony before the Chamber. The Chamber approached the issue of inconsistencies and contradictions between these statements and testimony at trial with caution.[15]

C. Cross-Examination on Prior Inconsistent Statements

16. Black's Law Dictionary defines a prior inconsistent statement as:

A witness's earlier statement that conflicts with the witness's testimony at trial. In federal practice, extrinsic evidence of an unsworn prior inconsistent statement is admissible – if the witness is given an opportunity to explain or deny the statement for impeachment purposes only.[16]

17. The adversarial criminal system requires certain safeguards to be met before a witness can be cross-examined on a prior inconsistent statement or have that statement admitted into evidence.[17] This is a feature of the common law tradition and the practice of the International Criminal Tribunals. A cursory review of the applicable legislation in the United Kingdom,[18] Canada,[19] Australia,[20] and Sierra Leone,[21] reveals that in all of these systems a certain standard and procedure is followed when dealing with prior inconsistent statements. Generally, a witness may be asked whether he or she made a statement and be cross-examined upon the general nature of the statement's contents without being shown the statement. However, if the prior statement is made in writing, the witness will be shown this statement before he can be asked about any alleged inconsistency, and if the statement is proved, the statement is admitted into the record as evidence. This requirement is consistent with the ruling in *The Queen's Case[22]* that a witness is not compelled to answer any questions on a statement until the statement is shown to him or her and is tendered. Such documents must therefore be capable of being admitted into evidence.

18. In the opinion of the Chamber, prior inconsistent statements are generally admissible in international criminal trials, as a means to impeach the credibility of a witness.[23] In the *Akayesu[24]* case, the ICTR Trial Chamber was confronted with a similar problem of alleged inconsistencies between the oral testimonies of witnesses and pre-trial statements that were composed of interview notes not made in English and had to be translated from the indigenous language spoken by the witness. The Chamber decided that the issue was one of probative value and not of admissibility. As far as admissibility of evidence is concerned, due to its *sui generis* mixture of common and civil law procedural and evidentiary rules, this Court does not necessarily conform to any specific legal system or tradition. Indeed, as enshrined in Rule 89(B) of the Rules, it will be guided by the will to "favour a fair determination of the matter before it".

19. The ICTR Trial Chamber in the *Ruzindana*,*[25]* case ruled that whenever Counsel for the Prosecution or the Defence perceives that there is a contradiction between the written and oral statement of a witness, they should raise this issue formally by:

[p]utting to the witness the exact portion in issue to enable the witness to explain the discrepancy, inconsistency or contradictions, if any, before the Tribunal. Counsels should then mark the relevant portion of such a written statement and formally exhibit it so as to form part of the record of the Tribunal.

20. During the *Kunarac* trial, the ICTY Trial Chamber ruled that a prior statement may be tendered in evidence as an exhibit, after an inconsistency with the trial testimony has been established.[26]

21. Considering this analysis and the applicable jurisprudence, this Trial Chamber, as a matter of law, is of the opinion, and rules accordingly, that:

(i) A witness may be cross-examined as to previous statements made by him or her in writing, or reduced into writing, or recorded on audio tape, or video tape or otherwise, relative to the subject matter of the case, in circumstances where an inconsistency has emerged during the course of *viva voce* testimony, between a prior statement and this testimony;
(ii) In conducting cross-examination on inconsistencies between *viva voce* testimony and a previous statement, the witness should first be asked whether or not he or she made the statement being referred to. The circumstances of the making of the statement, sufficient to designate the situation, must be put to the witness when asking this question;
(iii) Should the witness disclaim making the statement, evidence may be provided in support of the allegation that he or she did in fact make it;
(iv) That a witness may be cross-examined as to previous statements made by him or her, relative to the subject matter of the case, without the statement being shown to him or her. However, where it is intended to contradict such witness with the statement, his or her attention must, before the contradictory proof can be given, be directed to those parts of the statement alleged to be contradictory;
(v) That the Trial Chamber may direct that the portion of the witness statement that is the subject of cross-examination and alleged contradiction with the *viva voce* testimony, be admitted into the Court record and marked as an exhibit;

III. **THE MERITS OF THE APPLICATION**

Disclosure of Witness Statements

22. In the light of the foregoing analysis, the Trial Chamber finds no merit in the Defence contention that the Prosecution interview notes, prepared from oral statements of witnesses, do not in law constitute witness statements. *The fact that a witness statement is not, grammatically or, from the point of view of syntax, is not in the 'first person' but in the 'third person' goes more to* ***form*** *than to* ***substance,*** and does not deprive the materials in question of the core quality of a statement. The Trial Chamber agrees with the assertion given by the Prosecution at the 1 June 2004 Status Conference that a statement can be, "anything that comes from the mouth of the witness" regardless of the format. By parity of reasoning, the fact that a statement does not contain a signature, or is not witnessed does not detract from its substantive validity.

23. In this regard, we are of the opinion and we so hold, that any statement or declaration made by a witness in relation to an event he witnessed and recorded in any form by an official in the course of an investigation, falls within the meaning of a 'witness statement' under Rule 66(A)(i) of the Rules. When confronted with matters of legal characterization, this Chamber must also take cognisance of the socio-cultural dynamics at work in the context of the legal culture in which it functions, for example, the limited language abilities and capabilities of potential prosecution witnesses, and their level of educational literacy. In addition, and in the particular

circumstances of this case, the witness who we have on record as an illiterate, certainly depended largely on the investigator to record all the information that he disclosed to him during his interrogation.

24. We find that the facts contained in the interview notes, which, in the final analysis, are far from being statements of the investigator who is only the recorder, in fact constitute and are indeed, statements made by the witness in the course of an investigation and consequently, come within the purview, context, and meaning, of 'witness statements' under the provisions of Rule 66(A)(i) of the Rules.

25. The contention that Witness TF2-198 testified at trial about matters not included in his witness statement does not find support from the evolving jurisprudence as invalidating his oral testimony. The Defence argument is that the witness testified about burning plastic being placed on his back and to suffering serious burns, evidence which was not part of his witness statement disclosed prior to trial. The fact that burns to the witness' shoulders were not in the brief interview notes, does not amount to a breach by the Prosecution of it's Rule 66 disclosure obligations. The Trial Chamber considers that it may not be possible to include every matter that a witness will testify about at trial in a witness statement. *The Special Court adheres to the principle of orality, whereby witnesses shall, in principle, be heard directly by the Court*. While there is a duty for the Prosecution to diligently disclose witness statements that identify matters that witnesses will testify about at trial, thereby providing the Defence with essential information for the preparation of its case, it is foreseeable that witnesses, by the very nature of oral testimony, will expand on matters mentioned in their witness statements, and respond more comprehensively to questions asked at trial. The Trial Chamber notes that where a witness has testified to matters not expressly contained in his or her witness statement, the cross-examining party may wish to highlight this discrepancy and further examine on this point.

26. Accordingly, the Trial Chamber finds that there is no evidence that the Prosecution has breached Rule 66(A)(i) as regards the disclosure of witness statements. In effect, there is no *prima facie* showing of materiality by the Defence that the allegedly objectionable evidence sought to be suppressed as inadmissible, was in the possession or in control of the Prosecution and that it withheld disclosure of the same.

27. The Trial Chamber recalls that on 26 April 2004, the Prosecution disclosed to the Defence copies of all witness statements for witnesses they intended to call at the trial, that had not already been disclosed. The Prosecution, in keeping with its continuing obligation to disclose additional materials, have continued to disclose such materials prior to and during trial, in some instances up to a day before the witness is due to testify. The Trial Chamber does not have any evidence before it, at this time, that the continued disclosure of witness statements by the Prosecution has violated the disclosure rules. Rule 67(D) provides that if either party discovers additional evidence that should have been produced earlier pursuant to the Rules, that party should notify the other party and the Trial Chamber of the existence of such material. In circumstances where the Prosecution obtains additional evidence from a witness that is subject to disclosure, then the Prosecution is required, pursuant to this Rule, to continuously disclose this material. Should there be evidence, however, that the Prosecution has failed in its duty to prepare and disclose witness statements in accordance with these Rules, the Defence should provide

concrete evidence of this violation. As previously stated, there is no material before the Trial Chamber from which it may be concluded that the Prosecution is in breach of its disclosure obligations.

Cross-Examination on Prior Inconsistent Statements

28. The Trial Chamber reiterates that cross-examination on prior inconsistent statements is permissible, in accordance with the requirements outlined in the paragraph 21 of this Decision.

FOR ALL THE ABOVE-STATED REASONS,

The Trial Chamber allows, in part, the request of the Defence to cross-examine witnesses on prior inconsistent statements, in accordance with the requirements outlined in paragraph 21 of this Decision, and dismisses the other objections, applications and submissions made in support of the other aspects of this oral Motion.

Done in Freetown, Sierra Leone, this 16th day of July 2004

Hon. Judge Pierre Boutet	Hon. Judge Benjamin Mutanga Itoe Presiding Judge, Trial Chamber	Hon. Judge Bankole Thompson

[Seal of the Special Court for Sierra Leone]

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[1] *Prosecutor v. Delalic,* Decision on the Applications Filed by the Defense for the Accused Zejnil Delalic and Esad Landzo, 14 February 1997 and 18 February 1997, 21 February 1997, para 14.
[2] *Prosecutor v. Sesay,* Decision on Defence Motion for Disclosure Pursuant to Rules 66 and 68 of the Rules, Para. 27. See also *Prosecutor v. Kondewa,* Decision on Motion to Compel the Production of Exculpatory Witness Statements, Witness Summaries and materials Pursuant to Rule 68, 8 July 2004.
[3] See *Prosecutor v. Furundzija,* Scheduling Order, 29 April 1998.
[4] Black's Law Dictionary, Seventh Edition, 1999, page 1416.
[5] *Prosecutor v. Blaskic,* Decision on the Appellant's Motion for the Production of Material, Suspension or Extension of the Briefing Schedule, and Additional Filings, 26 September 2000, paras 15-16.
[6] *Prosecutor v. Blaskic,* Decision on the Defence Motion for Sanctions for the Prosecutor's Failure to Comply with Sub-Rule 66(A) of the Rules and the Decision of 27 January 1997 Compelling the Production of All Statements of the Accused, 15 July 1998; *Prosecutor v.*

Kupreskic, Decision on the Prosecutor's Request to Release Testimony Pursuant to Rule 66 of the Rules of Procedure and Evidence Given in Closed Session Under Rule 79 of the Rules, 29 July 1998.
[7] *Prosecutor v. Musema*, Judgment, 27 January 2000, para. 85.
[8] *Prosecutor v. Musema*, Judgment, 27 January 2000, para. 85; *Prosecutor v. Akayesu*, Trial Judgment, 2 September 1998, para. 137.
[9] *Prosecutor v. Niyitegeka*, Appeals Judgment, 9 July 2004, para. 34.
[10] *Prosecutor v. Blaskic*, Decision on the Production of Discovery Materials, 27 January 1997, paras 37.
[11] *Prosecutor v. Blaskic*, Decision on Motion to Compel the Production of Discovery Materials, 27 January 1997, paras 37-38.
[12] *Prosecutor v. Kordic*, Order on Motion to Compel the Compliance by the Prosecutor with Rule 66(A) and 68, 26 February 1999.
[13] *Prosecutor v. Niyitegeka*, Appeals Judgement, 9 July 2004, para. 35.
[14] *Id*, para. 36.
[15] *Prosecutor v. Akayesu*, Trial Judgement, 2 September 1998, para. 137.
[16] Black's Law Dictionary, Seventh Edition, 1999, page 1416,
[17] An important Rule of Common Law practice is that known in *Browne v Dunn* (1984) 6 R 67 (HL), where Hunt J stated:

It has in my experience always been a rule of professional practice that, unless notice has already clearly been given of the cross-examiner's intention to rely upon such matters, it is necessary to put to an opponent's witness in cross-examination the nature of the case upon which it is proposed to rely in contradiction of his evidence, particularly where that case relies upon inferences to be drawn from other evidence in the proceedings. Such a rule of practice is necessary both to give the witness the opportunity to deal with that other evidence, or the inferences to be drawn from it, and to allow the other party the opportunity to call evidence either to corroborate that explanation or to contradict the inference sought to be drawn.
[18] Sections 4 and 5 of the United Kingdom Criminal Procedure Act 1865, cited in Peter Murphy, Murphy on Evidence (2000) Blackstone Press Limited, 524.
[19] Sections 10 and 11, Canada Evidence Act, Revised Statutes of Canada, 1985, as amended in 1994.
[20] Section 36, Evidence Act 1958, Victoria, Australia.
[21] Sierra Leone Criminal Procedure Act 1965 (as amended).
[22] *The Queen's Case*, 4 Wigmore, para. 1259.
[23] See *Prosecutor v. Musema*, Judgement and Sentence, 27 January 2000, para. 86; *Prosecutor v. Akayesu*, Judgment, 2 September 1998, para. 137; *Prosecutor v. Tadic*, Decision on Prosecutor's Motion for Production of Defense Witness Statements (Separate Opinion of Judge McDonald), 27 November 1996, para. 46.
[24] *Prosecutor v. Akayesu*, Judgment, 2 September 1998, para. 137.
[25] *Prosecutor v. Ruzindana*, Order on the Probative Value of Alleged Contradiction Between the Oral and Written Statement of a Witness During Examination, 17 April 1997.
[26] *Prosecutor v. Kunarac*, Transcript, 24 July 2000, T.5189-5190. See also *Prosecutor v. Kayishema*, Decision on the Prosecution Motion Request to Rule Inadmissible the Evidence of Defence Expert Witness, Dr. Pouget, 29 June 1998.