



**TRIAL CHAMBER I** (“Trial Chamber I”) of the Special Court for Sierra Leone (“Special Court”) composed of Hon. Justice Bankole Thompson, Presiding Judge, Hon. Justice Pierre Boutet, and Hon. Justice Benjamin Muranga Itoe;

**SEIZED** of the *Prosecution Notice Pursuant to Rule 92bis to Admit Information into Evidence* filed by the Office of the Prosecutor (“Prosecution”) on the 30<sup>th</sup> of May 2006 which seeks to admit portions of a series of documents into evidence (“Application”);

**NOTING** the Prosecution Corrigendum to *Prosecution Notice Pursuant to Rule 92bis to Admit Information into Evidence* filed by the Prosecution on the 25<sup>th</sup> of July 2006 which contains the authentic version of the report of the non-governmental organisation No Peace Without Justice Conflict Mapping Programme entitled “Conflict Mapping in Sierra Leone: Violations of International Humanitarian Law from 1991 to 2002”;

**NOTING** the Sesay and Gbao Joint Response to Prosecution Notice Pursuant to Rule 92bis to Admit Information in Evidence filed by Counsel for the Accused Issa Hassan Sesay and Augustine Gbao (“Defence”) on the 5<sup>th</sup> of June 2006 (“Response”);

**CONSIDERING** that Defence object to the admission of the documents on the following grounds:

- Information admitted pursuant to Rule 92bis must be connected with “identifiable witnesses who could otherwise be called” who are required to be able to confirm the reliability of the evidence;<sup>1</sup>
- Since this issue has not been argued before, none of this Court’s jurisprudence on Rule 92bis should be followed;<sup>2</sup>
- Documentary evidence should be admitted under Rule 89(C) and not Rule 92bis;<sup>3</sup>
- The five-day time limit to file an objection under Rule 92bis is inadequate given the volume of material and if its primary argument is rejected, the Defence request a reasonable period of

<sup>1</sup> Response, paras 4-6.

<sup>2</sup> *Id.*, para. 8.

<sup>3</sup> *Id.*, paras 9-11.

time to be granted in order to allow them to consider their position on the admissibility of the evidence before any final decision on admissibility is made;<sup>4</sup>

MINDFUL of the Trial Chamber's *Consequential Order Regarding Decision On Prosecution's Motion for Judicial Notice and Admission of Evidence* in this case in which the Trial Chamber took judicial notice of the existence and authenticity of some documents and judicial notice of the existence, authenticity and contents of some others<sup>5</sup>;

MINDFUL of the provisions of Rule 89 and Rule 92bis of the Rules of Procedure and Evidence ("Rules") which read as follows:

**Rule 89: General Provisions** (*amended 7 March 2003*)

- (A) The rules of evidence set forth in this Section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence.
- (B) In cases not otherwise provided for in this Section, 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.
- (C) A Chamber may admit any relevant evidence.

**Rule 92bis Alternative Proof of Facts** (*amended 14 March 2004*)

- (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.
- (C) A party wishing to submit information as evidence shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.

REITERATING, as this Court has frequently noted, "the Rules favour a flexible approach to the issue of admissibility of evidence, leaving the issue of weight to be determined when assessing probative value of the totality of the evidence."<sup>6</sup>

<sup>4</sup> *Id.*, paras 12-13.

<sup>5</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL04-15-T, *Consequential Order Regarding Decision On Prosecution's Motion for Judicial Notice and Admission of Evidence*, 24 May 2005. The documents are listed in Annex I, with Part I listing those documents for which judicial notice has been taken of the existence and authenticity and with Part II listing those documents for which judicial notice has been taken of their existence, authenticity and contents.

<sup>6</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL04-15-T, *Ruling on Gbao Application to Exclude Evidence of Prosecution Witness Mr. Koker*, 23 May 2005, para 4. See also, *Prosecutor v. Norman, Kondewa and Fofana*, SCSL04-14-AR65, *Fofana*

CONSIDERING that the Appeals Chamber has emphasised that Rule 92bis is deliberately different from the corresponding Rule in the ICTY and the ICTR:

The judges of this Court, at one of their first plenary meetings, recognised 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 hostilities. The effect of the SCSL Rule is to permit the reception of "information" – assertions of fact (but not opinion) made in documents or electronic communications – if such facts are relevant and their reliability is "susceptible of confirmation". This phraseology was chosen to make clear that proof of reliability is not a condition of admission: all that is required is that the information should be capable of corroboration in due course.<sup>7</sup>

MINDFUL of this Chamber's *Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C)* in the case of *Prosecutor v. Norman, Fofana and Kondewa*, in which it held that at the stage of admission, the Chamber must determine whether documents admitted under Rule 92bis are relevant, whether they possess sufficient indicia of reliability and whether their admission would not prejudice unfairly the Defence, such as in situations where documents pertaining to the acts and conduct of the Accused are admitted into evidence without giving the Defence the opportunity of cross-examination;<sup>8</sup>

CONSIDERING that this Chamber has already allowed the admission of transcripts of witnesses testimony from other trial proceedings and the exhibits admitted during their testimony in *Prosecutor v. Sesay, Kallon and Gbao* on many occasions<sup>9</sup> and has also allowed the admission of a solemn declaration<sup>10</sup>;

– Appeal Against Decision Refusing Bail, 11 March 2005, paras 22-24 and *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Ruling on the Identification of Signatures by Witness TF1-360, 14 October 2006 para. 4.

<sup>7</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-2004-14-AR73, Fofana – Decision on Appeal Against 'Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence, 16 May 2005, para. 26.

<sup>8</sup> *Prosecutor v. Norman, Fofana and Kondewa*, SCSL-04-14-T, Decision on Prosecution's Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C), 15 July 2005, p. 4.

<sup>9</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on the Prosecution Confidential Notice Under 92bis to Admit the Transcripts of Testimony of TF1-023, TF1-104 and TF1-169, 9 November 2005; Decision on the Prosecution Confidential Notice Under 92bis to Admit the Transcripts of Testimony of TF1-081, 21 February 2006; Decision on the Prosecution Confidential Notice Under 92bis to Admit the Transcripts of Testimony of TF1-156 and TF1-179, 3 April 2006; Confidential Decision on the Prosecution Confidential Notice Under 92bis to Admit the Transcripts of Testimony of TF1-369, 23 May 2006; Decision on the Prosecution Notice Under 92bis to Admit the Transcripts of Testimony of TF1-256, 23 May 2006; and Decision on the Prosecution Notice Under 92bis to Admit the Transcripts of Testimony of TF1-334, 24 May 2006.

<sup>10</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Decision on Prosecution Request for Leave to Call An Additional Witness and Notice to Admit Witness' Solemn Declaration Pursuant to Rules 73bis(E) and 92bis, 5 April 2006.

**MINDFUL** that this type of documentary evidence, and in fact in some cases these identical documents, have already been admitted in the other trials before the Special Court, *Prosecutor v. Norman, Fofana and Kondewa*<sup>11</sup> and *Prosecutor v. Brima, Kamara and Kanu*<sup>12</sup>;

**NOTING** that all of the documents filed in this Application were previously disclosed to the Defence and filed with the Court as a part of the Prosecution's Motion for Judicial Notice filed on the 2<sup>nd</sup> of April 2004<sup>13</sup> and/or part of the proposed exhibit list filed on the 26<sup>th</sup> of April 2004<sup>14</sup>;

**SATISFIED** that the proper interpretation of Rule 92bis is that already elaborated in the jurisprudence of this Court and that Rule 92bis is clearly flexible enough to allow the admission of documentary evidence;

**MINDFUL** that the Appeals Chamber also emphasised that the "weight and reliability of such 'information' admitted via Rule 92bis will have to be assessed in light of all the evidence in the case";<sup>15</sup>

**REMINDING** the Defence that this Trial Chamber has already shown its willingness to grant extensions of the time limitation for filing objections to Rule 92bis notices when they are properly sought;<sup>16</sup>

**FINDING** that the Defence should have filed an application for an extension of the time limitation if they felt that they did not have sufficient time to analyse the documentary evidence instead of filing an objection that did not address the obviously relevant issue of the admissibility of the individual documents;

**DISAPPROVING** of the Defence's attempts to split this Response and place the burden on the Chamber to grant a belated extension of time and **REFUSING** to allow any further time to the Defence to address the admissibility of the documents;

<sup>11</sup> *Prosecutor v. Norman, Fofana and Kondewa*, supra note 8.

<sup>12</sup> *Prosecutor v. Brima, Kamara and Kanu*, SCSL-04-16-T, Decision on Prosecution Tender for Admission into Evidence of Information Contained in Notice Pursuant to Rule 92bis, 18 November 2005.

<sup>13</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Prosecution's Motion for Judicial Notice and Admission of Evidence, 2 April 2004.

<sup>14</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-PT, Materials Filed Pursuant to Order to the Prosecution to File Disclosure Materials and Other Materials in Preparation for the Commencement of Trial of 1 April 2004, 26 April 2004.

<sup>15</sup> *Prosecutor v. Norman, Fofana and Kondewa*, supra note 7, para. 27.

<sup>16</sup> *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Order for Extension of Time [for Counsel for Sesay] to Respond to the Prosecution Confidential Notice Under 92bis to Admit the Transcripts of Testimony of TF1-023, TF1-104 and TF1-

CONSIDERING that the documents for which judicial notice has already been taken with regard to their existence, authenticity and contents<sup>17</sup> are already in evidence and that no purpose will be served by admitting these documents again under Rule 92bis;

REITERATING that this Trial Chamber has already ruled in its Decision on Rule 92bis in *Prosecutor v. Norman, Fofana and Kondewa*<sup>18</sup> that:

CONSIDERING that the international tribunals admit documentary evidence in various forms, when such evidence is: "(a) "crime-base" evidence; (b) whether there was a widespread and systematic attack on a civilian population; (c) issues of command structure (leaving aside, however, whether a particular accused exercised the role of a commander); and (d) whether crimes occurred in the context of an international armed conflict";<sup>19</sup>

CONSIDERING that in the jurisprudence of the international tribunals "newspaper articles generally are not considered a reliable source of evidence and are often excluded for lack of probative value";<sup>20</sup>

CONSIDERING that admissibility of books, journals and newspapers "will depend on the circumstances of the particular occasion and the significance of the evidence" and such evidence will not be admitted "if it [is] related to some crucial issue in the case" but more likely will be admitted "if it deals with matters by way of background";<sup>21</sup>

SATISFIED that the identified portions of the documents listed in Annex I to this Decision are relevant to the purpose for which they are sought to be admitted, that their reliability is susceptible of confirmation and that their admission would not unfairly prejudice the Defence;

FOR THE ABOVE REASONS, the Trial Chamber **PARTIALLY GRANTS** the Prosecution application:

**THE CHAMBER ORDERS** that the identified portions of the documents listed in Annex I to this Decision shall be admitted into evidence;

169, 27 October 2005; Order for Extension of Time [for Counsel for Gbao] to Respond to the Prosecution Notice Under Rule 92bis to Admit the Transcripts of Testimony of Witness TF1-369, 8 May 2006.

<sup>17</sup> See Annex II, Part II of the Consequential Order Regarding Decision On Prosecution's Motion for Judicial Notice and Admission of Evidence, *supra* note 5.

<sup>18</sup> *Prosecutor v. Norman, Fofana and Kondewa*, *supra* note 8, pp. 4-5.

<sup>19</sup> Judge Richard May and Marieke Wierda, *International Criminal Evidence* (Transnational Publishers, New York: 2002), para. 10.59, p. 346.

<sup>20</sup> *Id.*, para. 7.105, p. 248. See also *Prosecutor v. Kvočka et al.*, Decision on Zoran Zigic's Motion for Rescinding Confidentiality of Schedules Attached to the Indictment Decision on Exhibits, 19 July 2001.

<sup>21</sup> May and Wierda, *supra* note 19.

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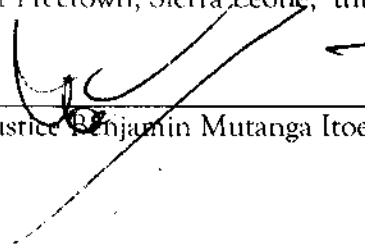
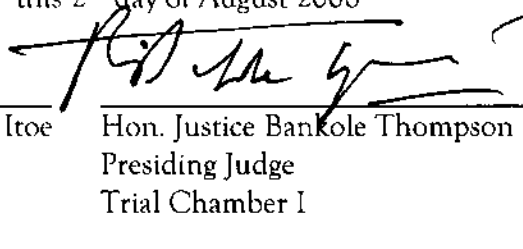
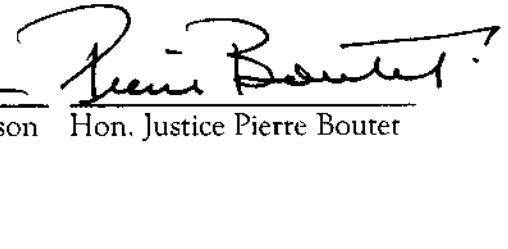
ORDERS Court Management to allocate Exhibit numbers to the admitted portions of the documents as listed in Annex I to this Decision and that each admitted portion should be preceded by the relevant cover page submitted by the Prosecution for ease of reference;

FURTHER ORDERS the Prosecution to file a complete copy of page 2 [Court Management Page 19100] of the Joint Communiqué, Meeting between the Special Representative of the UN Secretary General to Sierra Leone and the Delegation of the Revolutionary United Front, Abidjan, 19-21 February 1999;

FURTHER ORDERS the Prosecution to file a better quality recording of the video entitled "Cry Freetown";

AND ORDERS that the other documents contained in the Prosecution Application are not to be admitted into evidence.

Done at Freetown, Sierra Leone, this 2<sup>nd</sup> day of August 2006

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



ANNEX

Original Exhibit Number	Document Type and Date	Name/Description of Document	Information Admitted in Evidence	Exhibit Number to be Assigned
23	UN Document Jan-Feb 1999	UNOMSIL – Human Rights Assessment Mission to Freetown, 25 January 1999 and 1 to 4 February 1999, Findings and Recommendations	Pages 3-9 [19043-19049]	147
42	Radio Broadcast 18 June 1997	Revolutionary United Front's Apology to the Nation, delivered on SLBS, 18 June 1997	Entire document [19055-19056]	148
43	Sierra Leone Official Document 28 May 1997	Proclamation of the Administration of Sierra Leone (Armed Forces Revolutionary Council) Proclamation, 1997	Entire document [19058-19061]	149
45	Sierra Leone Official Document 4 Sept 1997	Sierra Leone Gazette No. 52, Armed Forces Revolutionary Council Secretariat, Govt. Notice No. 215, dated 3 September 1997	Pages 1-2 [19063-19064]	150
48	Transcript of address 1 June 1997	Address by Major Johnny Paul Koroma, Head of State and Chairman of the Armed Forces Revolutionary Council, Freetown, 1 June 1997	Entire document [19070-19072]	151
49	Public document 3 Oct 1999	Statement on the historic return to Freetown, Sierra Leone, of the Leaders of the Alliance of the Revolutionary United Front of Sierra Leone and the Armed Forces Revolutionary Council, 3 October 1999	Entire document [19074-19075]	152
54	UN Document 8 Oct 1998	Security Council Resolution 1132 (8 October 1997) Concerning Sierra Leone and the AFRC	Entire document [19077-19080]	153
55	UN Document 13 July 1998	Security Council Resolution 1181 (13 July 1998) Concerning Sierra Leone and the ongoing conflict	Entire document [19082-19085]	154

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Original Exhibit Number	Document Type and Date	Name/Description of Document	Information Admitted in Evidence	Exhibit Number to be Assigned
56	UN Document 18 Mar 1998	Fourth Report of the Secretary General on the Situation in Sierra Leone, 18 March 1998 (S/1998/249)	Paragraphs 6 [19088], 20 and 28 [19091-19093]	155
57	Communiqué 19-21 Feb 1999	Joint Communiqué, Meeting between the Special Representative of the UN Secretary General to Sierra Leone and the Delegation of the Revolutionary United Front, Abidjan, 19-21 February 1999	Entire document [19099-19102]	156
58	UN Document 5 June 1997	UN Officer for the Coordination of Humanitarian Affairs, Sierra Leone Humanitarian Situation Report, 5 June 1997	Paragraph 5 [19105]	157
60	UN Document 9 Oct 1999	Sierra Leone Humanitarian Situation Report 3-9 October, 1999	Paragraph headed "Child Protection" in section 3 [19112]	158
61	UN Document 12 Aug 1998	Report of the United Nations Observer Mission in Sierra Leone (UNOMSIL), First Progress Report, 12 August 1998 (S/1998/750)	Paragraphs 10, 12-14 [19117-19118] and 33-38 [19122-19123]	159
62	UN Document 16 Oct 1998	Second Progress Report of the Secretary General on the United Nations Observer Mission in Sierra Leone, 16 October 1998 (S/1998/960) para. 21	Paragraph 21 [19135-19136]	160
63	UN Document 16 Dec 1998	Report of the United Nations Observer Mission in Sierra Leone (UNOMSIL), Third Progress Report, 16 December 1998 (S/1998/1176)	Paragraphs 18 [19150], 32 and 36-37 [19153-19154]	161
64	UN Document 4 June 1999	Report of the United Nations Observer Mission in Sierra Leone (UNOMSIL), Sixth Report, 4 June 1999 (S/1999/645)	Paragraphs 19-20 and 28-33 [19170-19173]	162
65	UN Document	UNOMSIL Human Rights	Pages 1-4 [19185-	163

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Original Exhibit Number	Document Type and Date	Name/Description of Document	Information Admitted in Evidence	Exhibit Number to be Assigned
	19 July 1998	Situation Report and Preliminary Technical Assistance Needs Assessment	19188]	
66	UN Document 14 July 1997	Sierra Leone Humanitarian Situation Report, 14 July 1997 prepared by the UN Humanitarian Coordinator for Sierra Leone	Paragraphs 1-5 [19201-19202]	164
68	UN Document 26 Oct 2001	Report of the Panel of Experts Appointed Pursuant to UN Security Council Resolution 1343 (2001), paragraph 19, concerning Liberia (S/2001/1015)	Paragraphs 41-49 [19222-19224], 78-92 [19228-19231], 112-123 [19234-19236], 160-165 [19243-19244] and 370-379 [19287-19289]	165
69	UN Document 17 July 2000	Statement By The President of the Security Council	Entire document [19325-19326]	166
70	UN Document 4 May 2000	Statement By The President of the Security Council	Entire document [19328]	167
71	UN Document 7 Feb 2000	Security Council Resolution 1289 (2000)	Paragraphs 4 and 9-11 [19331-19332]	168
73	UN Document 30 Mar 2001	Security Council Resolution 1346 (2001)	Paragraphs 1-2 [19335]	169
74	UN Document 4 Aug 2000	Security Council Resolution 1313 (2000)	Entire document [19339-19340]	170
76	UN Document 19 May 2000	Security Council Resolution 1299 (2000)	Entire document [19342-19343]	171
77	UN Document 12 Jan 1999	Security Council Resolution 1220 (1999)	Entire document [19345]	172
80	UN Document 19 May 2000	Security Council, Fourth Report of the Secretary-General on the United Nations Mission in Sierra	Paragraphs 49-51 and 56-68 [19353-19356]	173

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Original Exhibit Number	Document Type and Date	Name/Description of Document	Information Admitted in Evidence	Exhibit Number to be Assigned
		Leone		
83	NGO Report June 1999	Human Rights Watch, "Getting Away with Murder, Mutilation and Rape", Vol. 11, No. 3 (A), June 1999	Highlighted portions at pages 7-9 [19375-19377], section entitled "Systematic Targeting of Civilians" at pages 10-11 [19378-19379], section entitled "Mutilation and Amputation" at page 29 [19397], and section entitled "Rape and Sexual Assault" at pages 33-34 [19401-19402]	174
84	NGO Report July 1998	Human Rights Watch, "Sowing Terror, Atrocities against civilians in Sierra Leone", Vol. 10, No.3 (A) July 1998.	Page 4 [19437] and section entitled "Killings, Mutilations, Sexual Abuse, and Enslavement by the AFRC/RUF" at pages 15-23 [19448-19456]	175
85	NGO Report 1998	Amnesty International, "Sierra Leone 1998 - a year of atrocities against civilians".	Pages 14-16 [19492-19494] and highlighted portions at pages 18-27 [19496-19505]	176
88	NGO Report 31 Aug 2000	Amnesty International, "Sierra Leone: Childhood - a casualty of conflict", AI Index: AFR 51/69/00, 31 August 2000,	Highlighted portions at pages 3-7 [19542-19546] and 15-18 [19554-19557]	177
90	Government Report 30 Jan 1998	United States Department of State, "Sierra Leone Country Report on Human Rights Practices for 1997", Released by the Bureau of	Pages 1-11 [19581-19591]	178

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Original Exhibit Number	Document Type and Date	Name/Description of Document	Information Admitted in Evidence	Exhibit Number to be Assigned
		Democracy, Human Rights, and Labor, January 30, 1998.		
101	NGO Report 2002	War-Related Sexual Violence in Sierra Leone, Report by Physicians for Human Rights, published 2002.	Pages 2-4 [19620-19622] to title of Methods of Investigation at page 4, pages 41-50 [19659-19668] starting from section entitled "Definitions", pages 56-59 [19674-19677] starting from "Comments on Survey Findings" to end of second paragraph on page 59, and pages 75-78 [19701-19704] to the end of the sections entitled "Why Did Respondents Think Combatants Attacked Women?"	179
106	NGO Report Jan 2004	Women Waging Peace and the Policy Commission, "From Combat to Community: Women and Girls of Sierra Leone", Dyan Mazurana and Khristopher Carlson	Pages 12-14 [19782-19784]	180
107	NGO Report 10 March 2004	Report of Non-Governmental Organization No Peace Without Justice, Conflict Mapping in Sierra Leone: Violations of International Humanitarian Law from 1991 to 2002, 10 March 2004  Letter of author certifying report	Preface: pages 1-3 [24215-24217], Overview: pages 20-41 [24234-24255] and 44-47 [24258-24261] Bombali District: pages 132-147 [24346-24361], Kambia District:	181

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Original Exhibit Number	Document Type and Date	Name/Description of Document	Information Admitted in Evidence	Exhibit Number to be Assigned
			pages 153-161 [24367-24375], Koinadugu District: pages 169-182 [24383-24396], Port Loko District: pages 194-211 [24408-24425], Tonkolili District: pages 231-245 [24445-24459], Kailahun District: pages 277-285 [24491-24499], Kenema District: pages 317-326 [24531-24540], Kono District: pages 353-373 [24567-24587]	
144 (one part)	Video	Video, "Cry Freetown"	Entire video	182
153	Radio broadcast 30 May 1997	SLBS Transcriptions: SLBS Radio Broadcast of RUF spokesman Lt. David Collins	Entire document [20455]	183
167	Sierra Leone Official Document 23 Jan 1998	Minutes dated 23 January 1998 of meeting of AFRC Supreme Council held on 9 December, 1997	Entire document [20457-20458]	184

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