

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 Mutanga Itoe;

SEIZED of the Prosecution Motion to Admit into Evidence a Document Referred to in Cross-Examination filed by the Office of the Prosecutor (“Prosecution”) on the 11th of July 2006 (“Motion”);

CONSIDERING that the Prosecution is seeking to have the “Report of UNAMSIL Headquarters Board of Inquiry No. 00/19” that was referred to by Counsel for Augustine Gbao during the cross-examination of Prosecution Witness Major Jaganathan (“Witness”) admitted into evidence pursuant to Rule 89(C) of the Rules of Procedure and Evidence (“Rules”) in order to “ensure that the Trial Chamber is provided with a complete understanding of the issues and evidence referred to”¹ in their full context²;

NOTING that the Prosecution is not seeking the admission of the annexes to the Report which contain individual witness statements that are approximately 350 pages in length in total given that they were not referred to by the Defence;

NOTING the Defence Joint Response to Prosecution Motion to Admit into Evidence a Document Referred to in Cross-Examination jointly filed by Counsel for Issa Hassan Sesay, Counsel for Morris Kallon and Court Appointed Counsel for Augustine Gbao (“Defence”) on the 21st of July 2006 (“Response”);

CONSIDERING that the Defence have consented to the admission of those paragraphs specifically referred to by Counsel for Gbao but object to the admission of the entire Report on the basis that the Witness did not acknowledge the particular statements, that the Prosecution should have re-examined the Witness on the Report if it wanted to introduce it as evidence and that the evidence would prejudice the Defence as 1) it contains untested hearsay evidence, 2) the Prosecution should have sought to introduce the Report through a witness and 3) the Prosecution is in breach of its disclosure obligations regarding this Report;

NOTING the Prosecution Reply to the Defence Joint Response filed on the 27th of July 2006 (“Reply”);

MINDFUL of Rule 89 of the Rules which reads 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.

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."³

MINDFUL that we have also stated that the object and purpose of Rule 89(C) is to vest the Trial Chamber with discretionary power to admit any relevant evidence and to exclude evidence that is not relevant;⁴

NOTING that the Prosecution submits that this Report became relevant since the Witness was asked questions about the content of the Report during cross-examination by the Defence;

MINDFUL, however, that when the Witness was cross-examined on the Report by Counsel for Sesay and Counsel for Gbao, he did not acknowledge that he was familiar with its contents or the statements put to him by the Defence;

NOTING further that the Prosecution did not seek to tender this evidence as an exhibit during the re-examination of the Witness;

CONSIDERING that there is no requirement in international criminal law to produce documents through a witness;⁵

¹ Motion, para. 1.

² Reply, paras 5 and 10.

³ *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 - Appeal Against Decision Refusing Bail, 11 March 2005, paras 22-24 and *Prosecutor v. Sesay, Kallon and Gbao*, SCSL04-15-T, Ruling on the Identification of Signatures by Witness TF1-360, 14 October 2006 para. 4.

⁴ *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. 6.

⁵ See Judge Richard May and Marieke Wierda, *International Criminal Evidence* (Transnational Publishers, Inc., New York: 2002), para. 7.97. See also *Prosecutor v. Norman, Fofana and Kondewa*, SCSL04-14-T, Decision on Prosecution's

FINDING that the Defence has not demonstrated that the Prosecution is in breach of its disclosure obligations given that it obtained permission from the United Nations to disclose the Report only on the 9th of May 2006 and could not disclose it before then pursuant to Rule 70;

CONSIDERING that the Report is relevant for the purpose for which the Prosecution is seeking its admission, that is, to fully understand the context of the Defence cross-examination;

REITERATING that this Chamber is composed of professional judges who are certainly capable of not drawing inferences without proper evidentiary basis or foundation⁶ and that the matter of weight to be given to any piece of evidence will be determined at the appropriate time in light of all of the evidence adduced in this trial;

SATISFIED that the admission of this evidence for the purpose outlined above will not cause any prejudice to the Defence;

PURSUANT to Rule 89(C) of the Rules:

THE CHAMBER THEREFORE GRANTS the Prosecution Motion to admit the Report into evidence; and

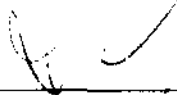
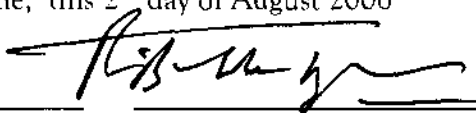
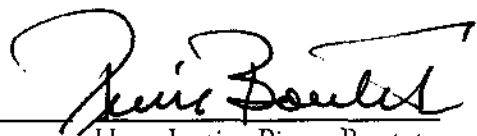
ORDERS that the Report of UNAMSIL Headquarters Board of Inquiry No. 00/19 be admitted as an exhibit for the sole purpose of understanding the full context of the Defence cross-examination;

Request to Admit into Evidence Certain Documents Pursuant to Rules 92bis and 89(C), 15 July 2005 and Prosecutor v. Sesay, Kallon and Gbao, SCSL-04-15-T, Prosecution Notice Pursuant to Rule 92bis to Admit Information into Evidence, 2 August 2006.

⁶ *Prosecutor v. Sesay, Kallon and Gbao*, *supra* note 3, para. 11, *Prosecutor v. Gbao*, SCSL-2003-09-I, Order on the Urgent Request for Direction on the Time to Respond to and/or an Extension on Time for the Filing of a Response to the Prosecution Motions And The Suspension of any Ruling on the Issue of Protective Measures that may be Pending before other Proceedings before the Special court as a Result of Similar Motions Filed to those that have been Filed by the Prosecution in this Case, 16 May 2003 at p. 2. See also *International Criminal Evidence*, *supra* note 5, para. 4.09.

AND ORDERS that paragraphs 13 and 14 which make specific reference to the Accused Morris Kallon will be redacted.

Done at Freetown, Sierra Leone, this 2nd day of August 2006

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

