



**TRIAL CHAMBER II** (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”), composed of Justice Richard Lussick, Presiding Judge, Justice Teresa Doherty and Justice Julia Sebutinde;

**SEISED** of the Prosecution’s Confidential Motion for Leave to Call Evidence in Rebuttal, filed on 16 October 2006 (“Motion”);

**NOTING** the Confidential Kanu Defence Response to Prosecution Motion for Leave to Call Evidence in Rebuttal, filed on 19 October 2006 (“Kanu Response”);

**NOTING** the Confidential Brima Response to Prosecution Motion for Leave to Call Evidence in Rebuttal, filed on 20 October 2006 (“Brima Response”);

**NOTING** the Confidential Prosecution Reply to Kanu Response to Prosecution Motion for Leave to Call Evidence in Rebuttal, filed on 25 October 2006 (“Reply to Kanu Response”);

**NOTING** the Confidential Prosecution Reply to Brima Response to Prosecution Motion for Leave to Call Evidence in Rebuttal, filed on 25 October 2006 (“Reply to Brima Response”);

**RECALLING** the Decision on Prosecution Motion for relief in Respect of Violations of Rule 67;<sup>1</sup>

**RECALLING** also the Order For Expedited Filing, dated 17 October 2006<sup>2</sup> (“Order For Expedited Filing”) wherein the Trial Chamber ordered that

- (1) Any Response to the Motion shall be filed on or before 4 p.m. on Monday, 23 October 2006; and
- (2) Any Reply to the said Response shall be filed on or before 4 p.m. on Wednesday, 25 October 2006;

**COGNISANT** of Article 17(4)(c) of the Statute of the Special Court for Sierra Leone and of Rules 26bis, 67(A)(ii)(a), 67(B), 73, 75 and 85(A) of the Rules of Procedure and Evidence (“Rules”);

**HEREBY DECIDES AS FOLLOWS** based solely on the written submissions of the parties pursuant to Rule 73(A) of the Rules of Procedure and Evidence of the Special Court (“Rules”).

## I. INTRODUCTION

1. This is a Motion filed by the Prosecution pursuant to Rules 73 and 85(A) of the Rules for leave to call evidence to rebut the evidence given by the First Accused Brima and certain other Defence witnesses and for immediate protective measures for any Prosecution witnesses called in rebuttal.<sup>3</sup>

2. Summaries of the proposed rebuttal evidence are tabulated in Annex A to the Motion, alongside corresponding summaries of the evidence to be rebutted. The proposed rebuttal witnesses fall into two categories. The first category concerns witnesses to rebut the alibi evidence of the First

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<sup>1</sup> SCSL04-16-T-521.

<sup>2</sup> SCSL04-16-T-571.

<sup>3</sup> Motion, paras. 1, 24.

Accused Brima in relation to Kailahun (February 1998 – July 1998), Yarya (July 1998 – September 1998) and Freetown Invasion (October 1998 – January 1999).

3. The second category concerns witnesses to rebut evidence presented in the Defence case that could not have been anticipated by the Prosecution, namely:

- (a) The evidence of First Accused Alex Tamba Brima and of Witness DAB 059 that the First Accused was too ill to carry out his duties as Principal Liaison Officer II (PLO2) during the AFRC regime (May 1997 – February 1998);
- (b) The evidence of First Accused Alex Tamba Brima that he never oversaw diamond mining and never mined diamonds himself in Kono District during the AFRC regime (May 1997 – February 1998);
- (c) The evidence of First Accused Alex Tamba Brima that throughout his military career he was never promoted above the rank of corporal, a rank that carries no command authority;
- (d) The evidence of First Accused Alex Tamba Brima that while under arrest at the Operational Support Department (OSD) Headquarters his belongings were taken from him, and that later whilst detained at the Criminal Investigations Department (CID) he was roughed up and forced to sign a ledger entitled “Tamba Brima Gullit”;
- (e) The evidence of First Accused Alex Tamba Brima that while in detention at Pademba Road Prison he was offered money to testify against Johnny Paul Koroma.

4. The core rebuttal witness list is comprised of 8 witnesses, with another 4 witnesses in the back up rebuttal witness list.<sup>4</sup>

5. The specific evidence to be rebutted and the proposed rebuttal evidence relating thereto are discussed in more detail below under the heading “Deliberations”.

## II. PRELIMINARY MATTERS

6. It is appropriate to address two preliminary matters at this stage.

7. The first such matter concerns a document entitled “Confidential Kamara Response to Prosecution Motion for Leave to Call Evidence in Rebuttal” was filed by the Defence for the Second Accused Kamara at 16.10 hours on Tuesday, 24 October 2006.

8. The Trial Chamber, in its “Order for Expedited Filing” ordered that any Response to the Motion was to be filed on or before 4 pm on Monday, 23 October 2006. Subsequent to that order, the Registrar, on 19 October 2006, declared that Monday, 23 October 2006 was to be observed as an official holiday of the Special Court, (Eid-Ul-Fitr).<sup>5</sup> This meant that, by virtue of Rule 7(B), the time for filing a Response was extended to the next working day, i.e. to 4 pm on Tuesday, 24 October

<sup>4</sup> See Annex B to the Motion.

<sup>5</sup> See Registrar’s Information Circular SCSL/IC/2006/025, 19 October 2006.



2006. Thus, despite the fact that the Kamara Defence had virtually been given an extra day in which to prepare its Response, it still filed the document out of time in contravention of the order of the Trial Chamber.

9. No explanation has been put forward by the Kamara Defence for the late filing. In the circumstances, granting an extension of time is not warranted and, accordingly, we rule that the document is inadmissible and shall be disregarded.

10. We note that the Brima Response recites that the Second Accused Kamara "associates with this response and adopts the arguments in so far as it affects the Second Accused",<sup>6</sup> although that document has not been signed by the Second Accused or his counsel.

11. The second preliminary matter relates to the question of the confidentiality or otherwise of this Decision. All submissions filed by the parties were marked "CONFIDENTIAL" in order to protect the identities of witnesses in respect of whom protective measures have been ordered. However, we are mindful of the provisions of Rule 78 which states: "All proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided." Moreover, we have stated in the past that all documents filed before the Special Court should be public, as a matter of general principle, unless there is a convincing reason offered to the contrary.<sup>7</sup> This Decision has therefore been worded in such a way that the identities of protected witnesses have not been put in jeopardy and, accordingly, the Decision shall be classified as "public".

### III. SUBMISSIONS OF THE PARTIES

#### *Prosecution*

12. In relation to the first category of rebuttal evidence, the Prosecution acknowledges that the First Accused gave limited notice of an alibi "or partial alibi" in his Pre-Trial Brief of 17 February 2005.<sup>8</sup> However, the Prosecution claims that details of a more extensive alibi emerged during his testimony, which was completed on 7 July 2006. The Prosecution points out that the Trial Chamber has already ruled that the notification in the Pre-Trial Brief did not comply with Rule 67(A)(ii)(a)<sup>9</sup> and that no notification as required by that Rule has ever been provided.<sup>10</sup>

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<sup>6</sup> Brima Response, para. I. 4.

<sup>7</sup> See the *Prosecution v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, Decision on the Confidential Joint Defence Application for Withdrawal by Counsel for Brima and Kamara and on the Request for Further Representation by Counsel for Kanu, 20 May 2005, para. 22 citing *The Prosecutor v. Issan H. Sesay et al*, Case No. SCSL-04-15-PT, Decision on the Motion by Morris Kallon for Bail, 23 February 2004, para. 19.

<sup>8</sup> SCSL-04-16-PT-145, Defence Pre-Trial Brief for Alex Tamba Brima, 17 February 2005.

<sup>9</sup> For the purposes of this Decision, the relevant parts of Rule 67 are as follows: "Rule 67 (A): As early as reasonably practicable and in any event prior to the commencement of the trial: [...] (ii) The Defence shall notify the Prosecutor of its intent to enter: (a) The defence of alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names and addresses of witnesses and any other evidence upon which the accused intends to rely to establish the alibi."

<sup>10</sup> Motion, para. 7; see also *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-T, Decision on Prosecution Motion for Relief in Respect of Violations of Rule 67, 26 July 2006, para. 22.



13. According to the Prosecution, it did not have notice of the alibis of the First Accused during the presentation of the Prosecution evidence-in-chief, and could not have reasonably anticipated this aspect of the Defence case. The Prosecution claims that its proposed rebuttal evidence relates to an issue central to the determination of the guilt or innocence of the First Accused and is of probative value.<sup>11</sup>

14. As regards the second category of rebuttal evidence, the Prosecution seeks to call evidence to rebut the Defence evidence that: (1) the First Accused was suffering from an illness that prevented him from fulfilling his role as PLO2 during the junta period; (2) the health condition of the First Accused prevented him from being involved in diamond mining in Kono; (3) the First Accused was never promoted above the rank of corporal; (4) the First Accused was forced to sign a ledger and was offered money to testify while at Pademba Road Prison. The Prosecution submits that such Defence evidence could not have been anticipated.<sup>12</sup>

15. In the event that the Trial Chamber allows the presentation of rebuttal evidence, the Prosecution moves that protective measures be put in place for the remaining rebuttal witnesses (with the exception of John Berry) in accordance with Rule 75.<sup>13</sup>

*Kanu Defence*

16. The Kanu Defence cites ICTR case law for the proposition that two legal criteria must be met to admit rebuttal evidence. The first is that the evidence to be rebutted must have arisen directly *ex improviso* during the Defence case-in-chief and could not have been foreseen, despite the exercise of due diligence. The second is that the proposed rebuttal evidence must have significant probative value to the determination of the guilt or innocence of the Accused.<sup>14</sup>

17. The Kanu Defence submits that the proposed rebuttal evidence of witnesses TF1 360 and TF1 376 that “the First Accused, the Second Accused, the Third Accused and Woyo were not under arrest the whole time at Col. Eddie Town” did not arise directly *ex improviso* during the Defence case in an unforeseeable manner. The issue of the house arrest of the three Accused was in fact raised by Prosecution witness TF1 167. The Kanu Defence therefore submits that the suggested evidence fails to meet the first criterion and also fails to meet the second criterion, since any dispute about the length of the house arrest falls outside the scope of that criterion in that it has no significant probative value as to the guilt or innocence of the Accused.<sup>15</sup>

18. As to the second category of rebuttal evidence, the Kanu Defence submits that the entire evidence under this category fails to meet the legal criteria for rebuttal. According to the Kanu Defence, the four elements that the Prosecution seeks to rebut<sup>16</sup> fail to meet the “significant probative

<sup>11</sup> Motion, para. 8.

<sup>12</sup> Motion, para. 12.

<sup>13</sup> Motion, para. 16 to 21.

<sup>14</sup> See Kanu Response para. 9 and also *the Prosecutor v. Ntagerura et al.*, Case No. ICTR-99-46-T, Decision on the Prosecutor’s Motion for Leave to Call Evidence in Rebuttal Pursuant to Rules 54, 73, and 85(A)(iii) of the Rules of Procedure and Evidence, 21 May 2003, para. 34

<sup>15</sup> Kanu Response, para. 11.

<sup>16</sup> See para. 14 above.



value test”, since none of the four elements goes to the determination of the guilt or innocence of the Accused, nor is there any attempt by the Prosecution to prove that they do.<sup>17</sup>

19. The Kanu Defence argues that Annexure A to the Motion “is merely an attempt by the Prosecution to either reinforce its case or to contradict the evidence that was led by the defence, especially the First Accused. The whole rebuttal evidence in that respect is merely designed to discredit the First Accused. That, it is submitted, is an abuse of the rebuttal process”.<sup>18</sup> The Kanu Defence submits that, in the circumstances, expediency requires that rebuttal be denied where the legal requirements have not been met.<sup>19</sup>

20. In conclusion, the Kanu Defence submits that the Motion should be denied in the case of the Third Accused on the basis that it only intends to rebut evidence led by the First Accused in his own testimony. Alternatively, the Motion should be denied in that it does not meet the requisite legal criteria.<sup>20</sup>

***Brima Defence***

21. The Brima Defence adopts the legal arguments contained in the Kanu Response.<sup>21</sup>

22. As regards the first category of proposed rebuttal evidence, the Brima Defence submits that such evidence cannot be said to have arisen directly out of Defence evidence which could not reasonably have been anticipated. The Brima Defence claims that the Defence case was extensively made during cross-examination of Prosecution witnesses, which included a complete denial of the version of events, put forward by the Prosecution. Moreover, the proposed rebuttal evidence appears merely to buttress the Prosecution evidence or to address inconsistencies between Prosecution witnesses.<sup>22</sup>

23. Although the Brima Defence does not admit that the alibi evidence was not foreseen, it points out that the Prosecution has already led evidence from a variety of witnesses which puts the First Accused elsewhere at the relevant time, so that the Trial Chamber has sufficient evidence upon which to decide the question of alibi.<sup>23</sup>

24. As regards the second category of proposed rebuttal evidence, the Brima Defence submits that the issues raised by the Prosecution are not central to the issue of the determination of guilt or innocence. Further, the proposed rebuttal evidence would only serve to prolong the trial and buttress evidence already given.<sup>24</sup>

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<sup>17</sup> Kanu Response, para. 12, 13.  
<sup>18</sup> Kanu Response, para. 15.  
<sup>19</sup> Kanu Response, para. 16.  
<sup>20</sup> Kanu Response, para. 17.  
<sup>21</sup> Brima Response, para. II. 1.  
<sup>22</sup> Brima Response, para. II. 2.  
<sup>23</sup> Brima Response, para. II. 3.  
<sup>24</sup> Brima Response, para. II. 5.

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25. The Prosecution agrees that it did cover some of the facts sought to be rebutted in its case-in-chief. However, the Prosecution submits that it was not aware of the particulars of the alibis at the time the evidence was presented, and that much of the proposed rebuttal evidence goes to the central issue of the alibis as presented by the Accused Brima. The Prosecution claims that its case and the testimony of many witnesses were not presented in such a way as to rebut the evidence called by the Defence.

26. In regard to the second category of proposed rebuttal evidence, the Prosecution argues that such evidence has significant probative value in relation to the health of Brima and whether he was able to play a significant role in the AFRC Government. Further, the proposed rebuttal evidence will go to the credibility of Brima and is therefore significant.<sup>25</sup>

*Prosecution Reply to Kanu Response*

27. The Prosecution argues that the submissions of the Kanu Defence should be rejected. In particular, there is no basis to the argument that the case against the Third Accused should be "severed" in the sense that any rebuttal evidence should only be applied to the First Accused, since the Trial Chamber should consider all of the evidence in a case in relation to all of the accused in the case, so far as it is relevant.<sup>26</sup>

28. In relation to the detention of the three Accused and Woyo in Colonel Eddie Town, the Prosecution claims that the Kanu Defence argument is disingenuous, since the evidence of Prosecution Witness TF1-167 was that they were under arrest for a certain period of time, not the whole time. The alibi that they were under arrest for the whole time was never put to the Witness in cross-examination and the Trial Chamber has already held that the First Accused was in violation of his obligations under Rule 67(A)(ii)(a) of the Rules in failing to disclose this alibi defence within the prescribed time.<sup>27</sup>

29. The Prosecution submits furthermore that the second category of proposed rebuttal evidence is of significant probative value.<sup>28</sup>

**IV. DELIBERATIONS**

**A. The Applicable Law**

30. Rule 85(A), which governs the order of presentation of evidence in a trial, provides as follows:

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<sup>25</sup> Prosecution Reply Brima, paras. 20-23.

<sup>26</sup> Prosecution Reply Kanu, paras. 2-4.

<sup>27</sup> Prosecution Reply Kanu, para. 6.

<sup>28</sup> Prosecution Reply Kanu, para. 7.



- (A) Each party is entitled to call witnesses and present evidence. Unless otherwise directed by the Trial Chamber in the interests of justice, evidence at the trial shall be presented in the following sequence:
  - (i) Evidence for the Prosecution;
  - (ii) Evidence for the Defence;
  - (iii) Prosecution evidence in rebuttal, with leave of the Trial Chamber;
  - (iv) Evidence ordered by the Trial Chamber.

31. It can be seen that Rule 85(A) does not create any entitlement for the Prosecution to present evidence in rebuttal. Rebuttal evidence can only be presented with leave of the Trial Chamber. In deciding an application for leave, the Trial Chamber has a wide discretion to limit or preclude the presentation of rebuttal evidence in order to ensure that the trial proceeds expeditiously, without unfairness and needless consumption of time.<sup>29</sup>

**B. Criteria for Admission of Rebuttal Evidence**

32. Rebuttal evidence is characterised as “evidence to refute a particular piece of evidence which has been adduced by the defence,” and is thus “limited to matters that arise directly and specifically out of defence evidence.”<sup>30</sup> Rebuttal evidence must relate to a significant issue arising directly out of defence evidence which could not reasonably have been anticipated.<sup>31</sup>

33. Rebuttal evidence may not be called by the Prosecution merely because its case has been met by certain evidence contradicting it. Only highly probative evidence on a significant issue in response to Defence evidence may be led as rebuttal evidence and not evidence which merely reinforces or fills gaps in the Prosecution case-in-chief<sup>32</sup>

34. The Prosecution therefore bears the burden of establishing the following two elements:
- (i) that the evidence sought to be rebutted arose directly *ex improviso* during the presentation of the Defence case in-chief and could not, despite the exercise of reasonable diligence, have been foreseen; and
  - (ii) that the proposed rebuttal evidence has significant probative value to the determination of an issue central to the determination of the guilt or innocence of the Accused.<sup>33</sup>

35. Evidence which goes to a matter that forms a fundamental part of the case which the Prosecution is required to prove in relation to the charges brought in the Indictment<sup>34</sup> should be

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<sup>29</sup> See *Prosecutor v. Ntagerura et al.*, supra note 14, para. 31.  
<sup>30</sup> *Prosecutor v. Delalic et al.*, Case No. IT-96-21-A, Judgment, 20 February 2001, para. 273. (“Celebici Appeal Judgment”).  
<sup>31</sup> *Ibid.*  
<sup>32</sup> *Prosecutor v. Kordic and Cerkez*, Case No. IT-95-14/2, Oral Decision of 18 October 2000, T26647; see also *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, Decision on Prosecution’s Motion to Admit Rebuttal Statements via Rule 92bis, 7 July 2005, para. 6; Celebici Appeal Judgement, para. 275.  
<sup>33</sup> *Prosecutor v. Ntagerura et al.*, supra note 14, para. 34.

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brought as part of the Prosecution case-in-chief and not in rebuttal.<sup>35</sup> The Prosecution is under a duty to adduce all the evidence critical to proving the guilt of an accused in its case-in-chief, and only if a new issue is raised in the course of the Defence case may the Prosecution lead evidence in rebuttal.<sup>36</sup>

36. We turn now to consider the Motion with regard to the specific Defence evidence sought to be rebutted by the Prosecution.

C. First Category: Proposed rebuttal evidence to refute the alibi evidence of the First Accused, Alex Tamba Brima.

37. We do not agree with the submission by the Prosecution that it did not have notice of the alibis of the First Accused at all during the presentation of the Prosecution’s evidence-in-chief and that this aspect of the Defence case “arose directly *ex improviso* during the Defence case and could not reasonably have been anticipated”.

38. We note that the Brima Defence gave the following “notice of alibi or partial alibi” in the “Defence Pre-Trial Brief for Tamba Alex Brima” filed on 17 February, 2005:<sup>37</sup>

“The Prosecution has asserted that Tamba Brima was ‘in direct control of AFRC/RUF forces in Kono District’. This is denied by the Accused. For the reasons given elsewhere in this pre-trial brief the Accused could not have been in command of any forces. In any event, the Defence will seek to call evidence, if required, to show that Mr. Brima was held in custody by the RUF between February and July 1998. Accordingly it is submitted that he had an alibi for the period relating to the allegations. It is further specifically denied that the accused person was in command of AFRC/RUF, or any other factional units between 22<sup>nd</sup> December, 1998 and January 1999 as alleged.”<sup>38</sup>

“In relation to Count 14 the Defence will rely on alibi or partial alibi in that it is asserted that the Accused was placed under arrest by the RUF in Kailahun in mid February 1998 and that he was incarcerated until around 8<sup>th</sup> July 1998 whereupon he fled and stayed with family until October 1998. He will assert that he was not engaged in any operations or hostilities during that time”.<sup>39</sup>

39. We note further that during the presentation of the Prosecution’s case-in-chief, Counsel for the First Accused Brima did on more than one occasion, indicate in open court that the First Accused would be putting forward an alibi defence and would be calling evidence in support of thereof.<sup>40</sup>

<sup>34</sup> See Further Amended Consolidated Indictment, paras. 24, 49, 56, 63, 72 and 79.

<sup>35</sup> Celebici Appeal Judgement, para. 275; see also *Prosecutor v. Oric*, Decision on the Prosecution Motion with Addendum and Urgent Addendum to Present Rebuttal Evidence Pursuant to Rule 85(A)(iii), 9 February 2006.

<sup>36</sup> *Prosecutor v. Blagojevic and Jokic*, Case No. IT-02-60-T, Decision on Prosecution’s Motion to Admit Evidence in Rebuttal and Incorporated Motion to Admit Evidence under Rule 92bis in its Case in Rebuttal and to Re-open its Case for a Limited Purpose, 13 September 2004, para. 5; see also *Prosecutor v. Limaj et al.*, supra note 32, para.6; *Prosecutor v. Oric*, supra note 35.

<sup>37</sup> SCSL04-16-PT-145, Defence Pre-Trial Brief for Alex Tamba Brima, 17 February 2005.

<sup>38</sup> *Ibid.*, para. 11.

<sup>39</sup> *Ibid.*, para. 28 (e).

<sup>40</sup> See oral submissions of Mr. Metzger in open court, Transcript 14 March 2005, p. 3, lines 16-24; Transcript 26 April 2005, p. 6, line 8.



40. If the information provided by the said notice of alibi and submissions of Defence Counsel were in the Prosecution's opinion, not sufficient to enable the Prosecution to investigate the alibi in order to present evidence in its case-in-chief (which did not commence until 7 March 2005), then it did nothing to inform the Brima Defence in a timely manner of that fact. It was not until the First Accused Brima gave alibi evidence in the Defence case that the Prosecution applied to the Trial Chamber for an order requiring the Defence to file a formal notice of alibi with the particulars prescribed by Rule 67(A)(ii)(a).<sup>41</sup> The Trial Chamber subsequently held that the First Accused Brima had not provided the notice required by Rule 67(A)(ii)(a) and was therefore in breach of that Rule. The Brima Defence was ordered to make the necessary disclosures in accordance with Rule 67(A)(ii)(a) by 4 pm Monday, 31 July 2006. The Trial Chamber refused to grant similar relief against the Second Accused Kamara and the Third Accused Kanu.<sup>42</sup> The Prosecution was subsequently able to carry out investigations and cross-examine Brima and other Defence witnesses regarding the alibis.

41. Although the "notice of alibi or partial alibi" provided by the First Accused in his Pre-trial brief did not disclose the particulars required under Rule 67(A)(ii)(a), the Prosecution cannot for purposes of an application under Rule 85(A)(iii), argue that it received no notice of the alibis at all or that the Defence evidence in that regard "could not reasonably have been anticipated". In our opinion, that notice was sufficient to put the Prosecution on notice that the First Accused would be raising an alibi defence in relation to crimes committed in Kono District and the north-eastern and central areas of the Republic of Sierra Leone during the period February to July 1998 and between 8 July 1998 and October 1998, and would otherwise deny individual or command responsibility for crimes committed during the period 22 December 1998 to January 1999.<sup>43</sup>

42. Having thus been put on notice the Prosecution could have, through the exercise of due diligence, discovered the evidence it now seeks to submit in rebuttal to the alibis of the First Accused and could have presented it in the Prosecution case-in-chief. We do not need to speculate as to precisely what particulars might have been supplied by the Defence had the Prosecution made a timely request for same. What is significant is that the Prosecution completely ignored the "notice of alibi or partial alibi" given in Brima's Pre-Trial Brief. Had the Prosecution not been satisfied with the information disclosed therein it had the option to request the Defence for further and better particulars under Rule 67(A)(ii)(a) before the start of the Prosecution case. This is because, as mentioned above,<sup>44</sup> the Prosecution is under a duty to lead all the evidence critical to proving the guilt of an accused in its case-in-chief, and only if a new issue that could not reasonably have been anticipated is raised in the course of the Defence case may the Prosecution lead evidence in rebuttal. Instead, the Prosecution opted to seek further and better particulars of the Brima alibi defence on 7 July 2006,<sup>45</sup> well into the Defence case. In those circumstances the Prosecution cannot claim that the alibi evidence given in the Defence case is "a new issue arising directly out of Defence evidence which could not reasonably have been anticipated."

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<sup>41</sup> SCSL04-16-T-508, Prosecution Motion for Relief in Respect of Violations of Rule 67, filed on 7 July 2006, para. 25.  
<sup>42</sup> See *Prosecutor v. Brima Kamara, Kanu*, Case No. SCSL04-16-T, Decision on Prosecution Motion for Relief in Respect of Violations of Rule 67, dated 26 July 2006, paras. 23, 24, 27.  
<sup>43</sup> See Defence Pre-Trial Brief for Tamba Alex Brima, para. 11; see also Further Amended Consolidated Indictment, para. 24.  
<sup>44</sup> See para. 35.  
<sup>45</sup> See SCSL04-16-T-508, Prosecution Motion for Relief in Respect of Violations of Rule 67, filed on 7 July 2006.



43. We hold that, since the Prosecution had sufficient time and opportunity to challenge the alibi defence of the First Accused, it cannot now request to bring evidence in rebuttal to remedy what it omitted to do during its case-in-chief.<sup>46</sup>

44. Furthermore, having examined the summaries of the proposed rebuttal evidence, we find that none of them satisfies the criteria for admission as rebuttal evidence, namely that it must be of "significant probative value to the determination of the guilt or innocence of the Accused" and which "does not merely reinforce or fill gaps in the Prosecution case-in-chief."<sup>47</sup> We set out our reasons in the following analysis of the proposed rebuttal evidence, in the same sequence as the summaries of evidence tabulated in Annex A to the Motion.

Alex Tamba Brima's Alibi that he was under arrest at Kailahun (February 1998 – July 1998)

(a) Evidence relating to Brima's Arrests in Kono and Kailahun

45. Defence evidence to be rebutted: The Prosecution proposes to rebut the evidence of the First Accused Brima that he left Kono District after the ECOMOG Intervention (February 1998), but was arrested and brought to Daru in Kailahun District; that he was released and went to Kailahun Town where he was arrested again by Witness TF1 045; that he was beaten, stripped naked, and almost executed on "Mosquito's" orders, but instead he was locked in a guard room and later released on "Mosquito's" orders.<sup>48</sup>

46. Proposed Rebuttal Evidence: The Prosecution will rebut Brima's evidence of the circumstances of his alleged initial arrest and alleged ill treatment on arrival in Kailahun and witnesses will explain how he was actually treated by the RUF and Sam Bockarie throughout his stay.<sup>49</sup>

47. We note that the Prosecution led evidence during its case-in-chief regarding the treatment of the First Accused in Kono and Kailahun Districts, including Brima's arrest in Kailahun District by members of the RUF;<sup>50</sup> his treatment and arrest by Issa Sesay in Kailahun District.<sup>51</sup> In particular, TF1 045 testified that Brima was arrested at Bedu and that Issa Sesay disarmed him and his security

<sup>46</sup> See *Prosecutor v. Kamuhanda*, ICTR-99-54A-T, Decision on the Prosecutor's Motion for Leave to Call Rebuttal Evidence Pursuant to Rule 85(A)(iii) of the Rules of Procedure and Evidence, dated 13 May 2002, para. 19.

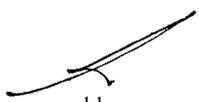
<sup>47</sup> *Prosecutor v. Dario Kordic and Cerkez*, Case No. IT-95-14/2, Oral Decision of 18 October 2000, T26647; see also *Prosecutor v. Limaj et al.*, Case No. IT-03-66-T, Decision on Prosecution's Motion to Admit Rebuttal Statements via Rule 92bis, 7 July 2005, para. 6; Celebici Appeal Judgment, para. 275.

<sup>48</sup> Transcript 8 June 2006, pp. 49-54.

<sup>49</sup> The Prosecution proposes to call three witnesses in this regard.

<sup>50</sup> Witness TF1 045, Transcript 19 July 2005, pp. 98-100; Witness TF1 167, 19 September 2005, pp. 61-62; Witness TF1 334, Transcript 20 June 2005, pp. 14-15.

<sup>51</sup> Witness TF1 045, Transcript 19 July 2005, pp. 98-99.



officers and that he was stripped and that diamonds were taken from him.<sup>52</sup> In addition, several Prosecution witnesses mentioned that Brima was beaten and humiliated by Mosquito.<sup>53</sup>

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48. We find that the proposed rebuttal evidence in this category involves matters already addressed and presented in the Prosecution's case-in-chief. The evidence sought to be rebutted, while in direct contrast to the Prosecution case-in-chief, cannot be said to be "fresh evidence arising directly *ex improviso* during the presentation of the Defence case that could not reasonably have been anticipated." We uphold the Defence submissions that the proposed rebuttal evidence does not satisfy the criteria required for admission.

(b) Evidence relating to Brima's Arrest at Baillu Crossing Point and move to Buedu

49. Defence evidence to be rebutted: The Prosecution proposes to rebut the evidence of the First Accused Brima that he was arrested again by Issa Sesay who took his belongings; that Mosquito ordered Brima's death, but Sesay did not kill him; that Sesay brought Brima to Buedu, and that they met Mike Lamin on the way; and that Sesay handed Brima over to Mike Lamin, who brought Brima to Buedu and locked him in his (Lamin's) house.<sup>54</sup> The Prosecution also proposes to rebut the evidence of defence Witness DAB-059 that upon his arrival in Kailahun Town with Johnny Paul Koroma, the latter ordered that Brima be executed for being a coward; that Mike Lamin went out and arrested Brima; and that Brima was put in the dungeon in Buedu.<sup>55</sup>

50. Proposed rebuttal evidence: The Prosecution will rebut the evidence that Brima was arrested after a "second escape" and will instead prove that Brima was captured with diamonds and brought back to Kailahun. A Prosecution witness will rebut evidence that he and Issa received any orders from Sam Bockarie to kill Brima when he was captured and will explain his involvement with Brima in Kailahun. The proposed rebuttal evidence will explain about Brima's stay in Kailahun and how Brima was treated in Kailahun.<sup>56</sup>

51. We note that the Prosecution led evidence in its case-in-chief regarding the capture of "Gullit" by Issa Sesay in Bendu; his being disarmed and searched for diamonds;<sup>57</sup> and his being brought to Buedu in Kailahun District after his arrest, where Witness TF1-045 gave up his room in "Commander B's" house for "Gullit".<sup>58</sup> There is further Prosecution evidence to the effect that "Gullit" persuaded "Mosquito" to release him from Kailahun to send him to Kono District as an advisor to both the SLA and the RUF.<sup>59</sup>

52. In view of the evidence already on the record, we find that the proposed rebuttal evidence in this category involves matters clearly addressed in the Prosecution's case-in-chief. The Defence evidence sought to be rebutted, while in direct contrast to the Prosecution case-in-chief, cannot be

<sup>52</sup> Witness TF1 045, Transcript 19 July 2005, pp. 98-99.

<sup>53</sup> Witness TF1-334, Transcript 19 May 2005, p. 14; Witness TF1 334, Transcript 20 June 2005, pp. 12-15.

<sup>54</sup> Transcript 8 June 2006, pp. 55-61.

<sup>55</sup> Transcript 27 September 2006, pp. 71-75.

<sup>56</sup> The Prosecution proposes to call two witnesses in this regard.

<sup>57</sup> Witness TF1 045, Transcript 19 July 2005, pp. 98-100.

<sup>58</sup> Witness TF1 045, Transcript 19 July 2005, pp. 99-100.

<sup>59</sup> Witness TF1 334, Transcript 20 June 2005, p. 14.



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said to be “fresh evidence arising directly *ex improviso* during the presentation of the Defence case that could not reasonably have been anticipated”. We uphold the Defence submissions that the proposed rebuttal evidence does not satisfy the criteria required for admission.

(c) Evidence relating to Brima’s Interviews in Buedu

53. Defence evidence to be rebutted: The Prosecution proposes to rebut the evidence of the First Accused Brima that he was removed from Mike Lamin’s house and placed in a dungeon for two weeks, and that during this time Brima was interviewed twice.<sup>60</sup>

54. Proposed rebuttal evidence: The Prosecution will rebut the suggestion that Brima was ever interviewed as he claims and Prosecution witnesses will explain how Brima was treated throughout his stay in Buedu and Kailahun and give evidence of roughly when he left Kailahun.<sup>61</sup>

55. We note that the Prosecution led evidence in its case-in-chief regarding “Gullit’s” stay at “Commander B’s” house in Buedu for some weeks<sup>62</sup>. Prosecution witnesses also testified as to the time Brima left Kailahun District and the time he arrived in Kono District.<sup>63</sup> As regards the proposed rebuttal evidence to disprove the Defence evidence that Brima was placed in a dungeon for two weeks, many Prosecution witnesses who testified in-chief placed Brima at other locations during the relevant time period.<sup>64</sup>

56. In view of the evidence already on the record, we find that the proposed rebuttal evidence in this category involves matters already addressed in the Prosecution’s case-in-chief. The Defence evidence sought to be rebutted, while in direct contrast to the Prosecution case, cannot be said to be “fresh evidence arising directly *ex improviso* during the presentation of the Defence case that could not reasonably have been anticipated.” Furthermore, we do not think that the issue of whether or not Brima was ever interviewed in Buedu is of significant probative value to the determination of his guilt or innocence. Accordingly, we uphold the Defence submissions that the proposed rebuttal evidence does not satisfy the criteria required for admission.

(d) Evidence relating to Brima’s meeting with Johnny Paul Koroma and the latter’s arrest

57. Defence evidence to be rebutted: The Prosecution proposes to rebut the evidence of the First Accused Brima that he was taken to “Mosquito’s” house where he met Johnny Paul Koroma (JPK); that JPK was arrested and that Brima was locked in the dungeon, and later taken to Mike Lamin’s house where he stayed until June 1998.<sup>65</sup> The Prosecution also proposes to rebut the evidence of

<sup>60</sup> Transcript 8 June 2006, pp. 61-64.

<sup>61</sup> The Prosecution proposes to call two witnesses in this regard.

<sup>62</sup> Witness TF1 045, Transcript 19 July 2005, pp. 98-99.

<sup>63</sup> Witness TF1 334, 19 May 2005, pp. 7-10; Witness TF1 167, Transcript 15 September 2005, pp. 39-47.

<sup>64</sup> Witness TF1 334, Transcript 19 May 2005, pp. 7-10, 14-15; Witness TF1 184, Transcript 27 September 2006, pp. 19-21; Witness TF1 167, Transcript 15 September 2005, pp. 39-47; Witness TF1 033, Transcript 11 July 2005, p. 9.

<sup>65</sup> Transcript 8 June 2006, pp. 64-71.

Defence Witness DAB 059 that Mosquito ordered JPK's arrest; that JPK was arrested; and that while in prison, witness DAB 059 heard that Brima was in the dungeon.<sup>66</sup>

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58. Proposed rebuttal evidence: Prosecution witnesses will explain the true treatment of Brima whilst in Buedu and Kailahun and will disprove Brima's version of events surrounding the arrest of JPK and will prove that Brima was not present at this time. The Prosecution will also disprove Brima's assertion that he was detained in a dungeon for two weeks before being taken to Mike Lamin's house.<sup>67</sup>

59. As mentioned above, the Prosecution led evidence in its case-in-chief regarding "Gullit's" stay in the house of "Commander B" in Buedu<sup>68</sup> and his treatment there and at Kailahun.<sup>69</sup> The Prosecution also led evidence about the ill treatment of Johnny Paul Koroma by the RUF in Kailahun District.<sup>70</sup> There was also evidence in the Prosecution case-in-chief that Brima was not present while Johnny Paul Koroma was arrested and humiliated by Sam Bockarie, Issa Sesay and other RUF fighters,<sup>71</sup> but that he had only briefly met the RUF group that arrested Johnny Paul Koroma in Kailahun.<sup>72</sup> Other Prosecution evidence led in its case-in-chief alleges that Brima did not stay in Kailahun as late as June 1998, but returned to Kono District earlier.<sup>73</sup>

60. In view of the evidence already on the record, we find that the proposed rebuttal evidence in this category involves matters already addressed in the Prosecution's case-in-chief. The Defence evidence sought to be rebutted, while in direct contrast to the Prosecution case, cannot be said to be "fresh evidence arising directly *ex improviso* during the presentation of the Defence case that could not reasonably have been anticipated". Accordingly, we uphold the Defence submissions that the proposed rebuttal evidence does not satisfy the criteria required for admission.

(e) **Evidence relating to Brima's transfer to Kailahun Town and escape to Kono**

61. Defence evidence to be rebutted: The Prosecution proposes to rebut the evidence of the First Accused Brima that he was transferred to Kailahun Town and locked in a cell until July 1998; that while there, he learned about Fonti Kanu and Foday Kally being killed by Mike Lamin for escaping to Liberia; and that Brima and Morris Kallon escaped from Kailahun to Kono.<sup>74</sup>

62. Proposed rebuttal evidence: Prosecution witnesses will explain the role that Fonti Kanu was playing with the RUF in Kailahun, and also who later killed him and why. The Prosecution will prove that Brima left Kailahun for Kono voluntarily and with the blessing of the RUF; that Brima was not locked up in a cell from June to July 1998; that the First Accused left Kailahun before July 1998 and was not an escapee; that Brima arrived in Kono a few months after the RUF/ SLA retook Koidu

<sup>66</sup> Transcript 27 September 2006, pp. 78-83.

<sup>67</sup> The Prosecution intends to call three witnesses in this regard.

<sup>68</sup> Witness TF1 045, Transcript 19 July 2005, pp. 98-99.

<sup>69</sup> Witness TF1 334, Transcript 20 June 2005, p. 14.

<sup>70</sup> Witness TF1 167, Transcript 19 September 2005, p. 62; Witness TF1 045, Transcript 19 July 2005, pp. 92-101; Witness 153, Transcript 23 September 2005, pp. 62-63; Witness TF1 334, Transcript, 20 May 2005, pp. 14, 40, 85;

<sup>71</sup> Witness TF1 045, Transcript 19 July 2005, pp. 90-100.

<sup>72</sup> *Ibid.*

<sup>73</sup> Witness TF1 334, 19 May 2005, pp. 7-10; Witness TF1 167, Transcript 15 September 2005, pp. 39-47.

<sup>74</sup> Transcript 8 June 2006, pp. 77-78.

Town at the end of February; that Brima arrived with supplies and was certainly not under arrest; and that Brima then took command of the troops from the Second Accused and they withdrew to Koinadugu where they reported to SAJ Musa.<sup>75</sup>

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63. As noted above, the Prosecution led evidence in its case-in-chief relating to Brima's treatment by the RUF while in Kailahun, as well as the timing and circumstances of his departure from Kailahun to Kono.<sup>76</sup> The Prosecution evidence on record is in direct contrast to that of the Defence, suggesting that during June and July 1998 Brima was not in the location claimed by the Defence but elsewhere.<sup>77</sup> As noted earlier in this Decision, the Prosecution, during its case-in-chief, ought to have reasonably anticipated this alibi defence since it was alluded to in Brima's Pre-Trial Brief. There was also Prosecution evidence that upon the arrival of Brima in Kono District he took command from the Second Accused and that they withdrew to Koinadugu where they reported to SAJ Musa.<sup>78</sup>

64. With the exception of the proposed evidence concerning the role and death of Fonti Kanu, the proposed rebuttal evidence concerns matters in respect of which evidence has already been led in the Prosecution case-in-chief. Regarding the proposed rebuttal evidence pertaining to the role and death of Fonti Kanu, we are of the view that such evidence is not relevant to any of the counts in the Indictment or to the role of the Accused and thus does not have significant probative value to the determination of the guilt or innocence of the Accused.

65. Accordingly, we find that the proposed rebuttal evidence in this category involves matters already addressed in the Prosecution's case-in-chief. The Defence evidence sought to be rebutted, while in direct contrast to the Prosecution case, cannot be said to be "fresh evidence arising directly *ex improviso* during the presentation of the Defence case that could not reasonably have been anticipated". We uphold the Defence submissions that the proposed rebuttal evidence does not satisfy the criteria required for admission.

(f) Evidence relating to Brima's escape to Yarya

66. Defence evidence to be rebutted: The Prosecution proposes to rebut the evidence of the First Accused Brima that while in Kono, Morris Kallon told him that "Mosquito" had ordered Brima's arrest, and that Brima escaped the next morning to Yarya.<sup>79</sup>

67. Proposed rebuttal evidence: The Prosecution will prove that there was no question of Brima escaping from the RUF in Kono, the day after his arrival there, and that in July 1998 Koidu was held by ECOMOG/CDF forces and not the RUF.<sup>80</sup>

68. Again the proposed rebuttal evidence seeks to contradict Brima's alibi defence, first alluded to in his Pre-trial Brief, and expounded upon in his testimony, namely that he fled to Yarya around

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<sup>75</sup> The Prosecution proposes to call five witnesses in this regard.

<sup>76</sup> Witness TF1 334, Transcript 20 June 2005, pp. 14, 15.

<sup>77</sup> Witness TF1 334, Transcript 20 June 2005, pp. 14, 15; TF1 184, Transcript 27 September 2006, pp. 19-21; TF1 167, Transcript 15 September 2005, pp. 39-47.

<sup>78</sup> Witness TF1 167, Transcript 15 September 2005, pp. 39-47; Witness TF1 184, Transcript 27 September 2005, pp. 19-21; Witness TF1 334, Transcript 19 May 2005, pp. 7-10; Witness TF1 033, Transcript 11 July 2005, p. 9.

<sup>79</sup> Transcript 12 June 2006, pp. 17-18.

<sup>80</sup> The Prosecution proposes to call three witnesses in that regard.

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8 July 1998 where he stayed with family until October 1998. There is already evidence led by the Prosecution in its case-in-chief putting the First Accused elsewhere in Kono District and describing his role there, including his retreat with the troops to Yarya.<sup>81</sup> There is further Prosecution evidence as to why Brima left Kono District;<sup>82</sup> and as to the “rebel forces” having to leave Kono District because they lost control over Kono to the ECOMOG in April 1998.<sup>83</sup>

69. Accordingly, we find that the proposed rebuttal evidence in this category involves matters already addressed in the Prosecution’s case-in-chief. The Defence evidence sought to be rebutted, while in direct contrast to the Prosecution case, cannot be said to be “fresh evidence arising directly *ex improviso* during the presentation of the Defence case that could not reasonably have been anticipated”. We uphold the Defence submissions that the proposed rebuttal evidence does not satisfy the criteria required for admission.

**Alex Tamba Brima’s Alibi during the Yarya Period (July 1998 – September 1998)**

**(g) Evidence relating to Brima’s stay at Yarya**

70. Defence evidence to be rebutted: The Prosecution proposes to rebut the evidence of the First Accused Brima that he arrived in Yarya and hid in the bush with his family until September 1998; and that he never went to Mansofinia, Karina, Mateboi, Bornoya, Mayomba, Ndarra, Mandaha, Kambia, or Rosos.<sup>84</sup> The Prosecution also proposes to rebut the evidence of Defence Witness DAB 111 that Brima arrived in the rainy season and stayed for a few months;<sup>85</sup> and of Defence Witness DAB 109 that Brima stayed in Yarya at least a month-and-a-half.<sup>86</sup>

71. Proposed rebuttal evidence: The Prosecution will disprove Brima’s claim that he spent three months in hiding in Yarya. The Prosecution will instead, prove that the First Accused commanded along with the Second Accused and the Third Accused an SLA troop through Bombali District which attacked Karina and other villages en route and set up base camp at Rosos; that further crimes were committed during their stay at Rosos under Brima; that at Rosos Brima was in command; that the troops moved from Rosos when it was subjected to ECOMOG air attack, to Col. Eddie Town; that Brima remained in command of the troops at Col. Eddie Town until SAJ Musa arrived, at which time Brima handed over command to SAJ Musa; that Brima was in Rosos and was in command at Rosos and that there were laws which needed to be obeyed.<sup>87</sup>

72. The Prosecution will prove further that Brima did not stay for a long period in Yarya and only passed through with his troops;<sup>88</sup> and will identify Brima and the Second Accused as two of the commanders who attacked Karina and Bonoya.<sup>89</sup> The Prosecution will prove further that Prosecution

<sup>81</sup> Witness TF1 334, Transcript 20 and 23 May 2005; Witness TF1-033, Transcript 11 July 2005, pp. 13-14.

<sup>82</sup> Witness TF1 334, 19 May 2005, p. 9.

<sup>83</sup> Witness TF1 033, 11 July 2005, p. 13.

<sup>84</sup> Transcript 12 June 2006, pp. 68, 74.

<sup>85</sup> Transcript 27 September 2006, pp. 29-30.

<sup>86</sup> Transcript 28 September 2006, p. 101.

<sup>87</sup> The Prosecution proposes to call one witness in this regard.

<sup>88</sup> The Prosecution proposes to call one witness in this regard.

<sup>89</sup> The Prosecution proposes to call one witness in this regard.

  
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Witness TF1 360 travelled with Commander "O Five" on SAJ Musa's orders from Koinadugu to link up with Brima at Col. Eddie Town; that Commander "O Five" did not go to Yarya and capture Brima; that they did not take Brima with them under arrest; and that when they reached Col. Eddie Town with "O Five", Brima was the commander there.<sup>90</sup>

73. Once again the Prosecution seeks to disprove Brima's alibi defence in relation to crimes committed in various places during the period 8 July to October 1998,<sup>91</sup> by adducing rebuttal evidence showing that the First Accused was in fact criminally responsible for crimes committed in those places during that period, together with the Second and Third Accused. As noted earlier, the Defence evidence that Brima fled to Yarya and hid with his family until September 1998 cannot be said to have arisen for the first time during the Defence case, nor can the Prosecution claim that it could not reasonably have been anticipated, in view of the notice of alibi in the Brima Pre-Trial brief. We note that much of the proposed rebuttal evidence, such as the command responsibility of the three Accused for the crimes committed in Bombali District and on the way to Rosos, the crimes committed while in Rosos, and the attacks on Karina and Bonoya, goes to matters that form a fundamental part of the case which the Prosecution is required to prove as part of its case-in-chief.<sup>92</sup> As earlier stated, evidence of that nature must be brought as part of the Prosecution case-in-chief and not in rebuttal.

74. We note further that the Prosecution in its case-in-chief, has already adduced a substantial amount of evidence relating not only to the period and locations mentioned by Brima and Defence Witnesses DAB 111 and DAB 109 in their respective testimonies, but also to a large extent, the matters alluded to in the proposed rebuttal evidence. For example, the Prosecution led evidence that during the rainy season in 1998 (the period Brima is said to have been in hiding in Yarya) he in fact was commanding troops present in Koinadugu and Bombali District<sup>93</sup> and that before Brima led the troops to Camp Rosos in Bombali District he met with SAJ Musa and that they agreed that Brima should find a base.<sup>94</sup> The Prosecution also led evidence that after that meeting Brima announced to his troops that they would go back to Freetown;<sup>95</sup> and that he led the troops through Koinadugu and Bombali District until they reached Camp Rosos<sup>96</sup> and that the Second and Third Accused were second and third in command respectively.<sup>97</sup> Evidence was also led by the Prosecution that crimes were committed while the troops were based at Camp Rosos under the command of Brima.<sup>98</sup> There was also Prosecution evidence that Commander "O-Five" only arrived at Colonel Eddie Town at a

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<sup>90</sup> The Prosecution proposes to call one witness in this regard.  
<sup>91</sup> Defence Pre-Trial Brief for Alex Tamba Brima, para. 28(e) and Brima's testimony at Transcript 12 June 2006, pp. 68, 74.  
<sup>92</sup> See Further Amended Consolidated Indictment, paras. 24, 27, 30, 38, 48, 54, 62, 70, 78.  
<sup>93</sup> Witness TF1 184, Transcript 27 September 2005, pp. 19-20; Witness TF1 167, Transcript 15 September 2005, pp. 39-48; TF1 153, Transcript 22 September 2005, p. 60.  
<sup>94</sup> Witness TF1 184, Transcript 27 September 2005, pp. 19-20; Witness TF1 167, Transcript 15 September 2005, pp. 39-48; TF1 153, Transcript 22 September 2005, p. 60.  
<sup>95</sup> Witness TF1 033, Transcript 11 July 2005, pp. 14-15.  
<sup>96</sup> Witness TF1 334, Transcript 23 May 2005, pp. 41-110; Witness TF1 334, Transcript 24 May 2005, 1-106; Witness TF1 167, Transcript 15 September 2005, p. 59; Witness TF1 033, Transcript, 11 July 2005, pp. 18-20, 22.  
<sup>97</sup> Witness TF1 334, Transcript 23 May 2005, p. 107; Witness TF1 334, Transcript 24 May 2005, pp. 5, 87.  
<sup>98</sup> Witness TF1 334, Transcript 23 May 2005, pp. 104-105; Witness TF1 334, Transcript 24 May 2005, pp. 3-5; Witness TF1 033, Transcript 11 July 2005, pp. 25, 32.



later time on orders of SAJ Musa<sup>99</sup> and that Brima was commander of the troops at that time<sup>100</sup> and that "O-Five" actually arrested Brima at Colonel Eddie Town.<sup>101</sup> 19297

75. Accordingly, we find that the proposed rebuttal evidence in this category involves matters already addressed in the Prosecution's case-in-chief. The Defence evidence sought to be rebutted, while in direct contrast to the Prosecution case, cannot be said to be "fresh evidence arising directly *ex improviso* during the presentation of the Defence case that could not reasonably have been anticipated". We uphold the Defence submissions that the proposed rebuttal evidence does not satisfy the criteria required for admission.

(h) Evidence relating to Brima's arrest by "O-Five"

76. Defence evidence to be rebutted: The Prosecution proposes to rebut the evidence of the First Accused Brima that "O-Five" came to Yarya from Kurubonla and arrested him; and that Brima was then taken with the troops to Col. Eddie Town.<sup>102</sup> The Prosecution also proposes to rebut the evidence of Defence Witness DAB 111 that he heard of Brima's arrest;<sup>103</sup> of Defence Witness DAB 109 that four people came to Yarya asking for Brima and that they took him along with them;<sup>104</sup> and of Defence Witness DAB 156 that he left Kurubonla with "O-Five's" group; that at Yarya he heard that Brima was arrested, and that they went to Col. Eddie town.<sup>105</sup>

77. Proposed Rebuttal Evidence: The Prosecution will prove that Brima was never arrested by "O-Five" from his village at Yarya.<sup>106</sup>

78. The Prosecution seeks to disprove Brima's defence that while with the troops that went to Col. Eddie Town he was under arrest and consequently not in command or control of those alleged to have committed crimes en route, presumably by adducing rebuttal evidence showing that the First Accused was in fact in command or control of the troops en route to Col. Eddie Town and therefore criminally responsible for crimes committed during that period. In that regard, the Prosecution has already adduced evidence in its case-in-chief that "O-Five" arrested Brima in Colonel Eddie Town and not in Yarya;<sup>107</sup> that SAJ Musa ordered "O-Five" to locate Brima and that it was in Colonel Eddie Town that O-Five met Brima and his troops.<sup>108</sup>

79. Accordingly, we find that the proposed rebuttal evidence in this category involves matters already addressed in the Prosecution's case-in-chief. The Defence evidence sought to be rebutted,

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<sup>99</sup> Witness TF1 033, Transcript 11 July 2005, pp. 34-36; TF1 334, Transcript 25 May 2005, p. 5; Witness TF1 167, Transcript 15 September 2005, p. 74.

<sup>100</sup> Witness TF1 334, Transcript 25 May 2005, p. 448; Witness TF1 167, Transcript 15 September 2005, pp. 72-74; TF1 033, Transcript 11 July 2005, pp. 32-38.

<sup>101</sup> Witness TF1 167, Transcript 15 September 2005, pp. 75-77.

<sup>102</sup> Transcript, 12 June 2006, pp. 46-50.

<sup>103</sup> Transcript, 27 September 2006, p. 29.

<sup>104</sup> Transcript, 28 September 2006, pp. 86-88.

<sup>105</sup> Transcript, 29 September 2006, pp. 50-54.

<sup>106</sup> The Prosecution proposes to call three witnesses in this regard.

<sup>107</sup> Witness TF1 167, Transcript 15 September 2005, pp. 75-77.

<sup>108</sup> Witness TF1 033, Transcript 11 July 2005, pp. 34-36; TF1 334, Transcript 25 May 2005, p. 5; Witness 167, Transcript 15 September 2005, p. 74.

while in direct contrast to the Prosecution case, cannot be said to be “fresh evidence arising directly *ex improviso* during the presentation of the Defence case that could not reasonably have been anticipated”. We uphold the Defence submissions that the proposed rebuttal evidence does not satisfy the criteria required for admission.

Alex Tamba Brima’s Alibi during the Freetown Invasion (October 1998 – January 1999)

(i) Evidence relating to Brima’s detention at Col. Eddie Town and march to Freetown

80. Defence evidence to be rebutted: The Prosecution proposes to rebut the evidence of the First Accused Brima that he and other honourables were under detention in Col. Eddie Town; that they remained under detention as the troops marched from Col. Eddie Town towards Freetown, and that Brima was detained until Goba Water.<sup>109</sup> The Prosecution also proposes to rebut the evidence of Defence Witness DAB 156 that he saw Brima in detention at Col. Eddie Town and that Brima was under detention from Col. Eddie Town to Waterloo.<sup>110</sup>

81. Proposed rebuttal evidence: The Prosecution will prove that the First Accused, the Second Accused, the Third Accused, and Woyo were not under arrest the whole time at Col. Eddie Town; that Brima was not under arrest when the troops left Col. Eddie Town; that he was second in command to SAJ Musa until SAJ Musa’s death. Prosecution witnesses will testify as to who handed over the muster parade to SAJ Musa at Col. Eddie Town; who the prisoners were at that time; what, if anything, SAJ said about them, and who was second in command.<sup>111</sup>

82. The Prosecution seeks to disprove the Defence case that while with the troops at Col. Eddie Town and en route to Freetown, the First Second and Third Accused were under arrest and consequently not in command or control of those alleged to have committed crimes during that period. The proposed rebuttal evidence would prove that the First, Second and Third Accused although briefly detained, were released and were in fact willing participants and in command or control of the troops at Col. Eddie Town and therefore criminally responsible for crimes committed during that period.

83. We note again that much of the proposed rebuttal evidence, such as the command responsibility of the three Accused for the crimes committed in Col. Eddie Town, its environs and en route to Freetown goes to matters that form a fundamental part of the case which the Prosecution is required to prove as part of its case-in-chief, rather than in rebuttal. We note that in this regard, the Prosecution already led substantial evidence in its case-in-chief pertaining to the command structure and control of the troops both at Col. Eddie Town and en route to Freetown. For example, Prosecution witnesses testified that before SAJ Musa arrived at Col. Eddie Town, Brima was in command of the troops there and had himself selected that base;<sup>112</sup> that Brima restructured the troops at Major Eddie Town before the arrival of “O-Five”;<sup>113</sup> that “Junior Lion”, as battalion

<sup>109</sup> Transcript, 13 June 2006, p. 16 and 15 June 2006, p. 15.  
<sup>110</sup> Transcript, 29 September 2006, pp. 55-61 and 84-85.  
<sup>111</sup> The Prosecution proposes to call two witnesses in this regard.  
<sup>112</sup> Witness TF1-153, Transcript 22 September 2005, p. 70.  
<sup>113</sup> Witness TF1 334, Transcript 24 May 2005, pp. 87-89; Witness TF1 334, Transcript 25 May 2006, pp. 5-10.

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commander, reported to Brima;<sup>114</sup> that when “O-Five” joined Brima’s troops, Brima was superior to “O-Five”; that Brima was overall commander and gave orders for specific operations;<sup>115</sup> that “Gullit” was commander when SAJ Musa arrived at Eddie Town; that Brima ordered the arrest of nine persons and of Junior Lion;<sup>116</sup> that after the arrival of SAJ Musa, Brima handed over the command of the troops to him at a Muster Parade;<sup>117</sup> that the troops were subsequently restructured and Brima became second in command,<sup>118</sup> Kamara third in command, while Kanu remained Chief of Staff and reported to Kamara.<sup>119</sup>

84. There was also evidence in the Prosecution case-in-chief relating to the arrest and temporary detention of the Honourables and the senior high command (Alex Tamba Brima, Ibrahim Bazy, Five-Five, Hassan Papa Bangura, Bio, Woyoh, Abdul Sesay) at Col. Eddie Town shortly before the arrival of SAJ Musa as well as their reinstatement into the movement.<sup>120</sup>

85. Accordingly, we find that the proposed rebuttal evidence in this category involves matters already addressed in the Prosecution’s case-in-chief. The Defence evidence sought to be rebutted, while in direct contrast to the Prosecution case, cannot be said to be “fresh evidence arising directly *ex improviso* during the presentation of the Defence case that could not reasonably have been anticipated”. We uphold the Defence submissions that the proposed rebuttal evidence does not satisfy the criteria required for admission.

(j) Evidence relating to Brima’s escape at Goba Water / Freetown Invasion

86. Defence evidence to be rebutted: The Prosecution proposes to rebut the evidence of the First Accused, Brima that after the death of SAJ Musa at Benguema, the detainees (including the three Accused persons) were brought to Goba Water. In the confusion following SAJ Musa’s death, Brima escaped with the Third Accused and Woyoh to Makeni. Brima never went to Freetown during the January 1999 invasion.<sup>121</sup>

87. Proposed rebuttal evidence: The Prosecution will prove that Brima took over command of the SLA troops after SAJ Musa’s death at Benguema and led the attack on Freetown and was in command of the troops during their occupation of Freetown and subsequent withdrawal<sup>122</sup> and that he requested reinforcements from the RUF whilst he was in Freetown.<sup>123</sup> The Prosecution will adduce

<sup>114</sup> Witness TF1 167, Transcript 15 September 2005, p. 72.

<sup>115</sup> Witness TF1-033, Transcript 11 July 2005, pp. 37-38.

<sup>116</sup> Witness TF1-153, Transcript 22 September 2005, pp. 74, 78.

<sup>117</sup> Witness TF1-153, Transcript 22 September 2005, p. 82; Witness TF1 153, Transcript 23 September 2005, pp. 44, 45.

<sup>118</sup> Witness TF1 334, Transcript 25 May 2005, p. 55; TF1-033, 11 July 2005, pp. 15, 41, 107; TF1-033, 12 July 2005, pp. 6, 7.

<sup>119</sup> Witness TF1 334, Transcript 13 June 2005, pp. 4, 5.

<sup>120</sup> Witness TF1 167, Transcript 15 September 2005, pp. 76-79.

<sup>121</sup> Transcript, 13 June 2006, pp.17-31.

<sup>122</sup> The Prosecution proposes to call six witnesses in this regard.

<sup>123</sup> The Prosecution proposes to call two witnesses in this regard.

  
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evidence proving who was responsible for crimes in Freetown, especially in relation to detainees released from Pademba Road Prison and National Stadium.<sup>124</sup>

88. We note that Brima's alibi defence relating to his escape with the Third Accused at Goba Water was not specifically disclosed in any of the Defence Briefs. However, as earlier mentioned, the Defence did state in the Pre-Trial Brief for the First Accused that "it is specifically denied that the accused person was in command of AFRC/RUF, or any other factional units between 22<sup>nd</sup> December, 1998 and January 1999 as alleged."<sup>125</sup> Accordingly, the Prosecution should reasonably have anticipated Brima's denial that he was responsible for alleged crimes committed during the period in question, in order to address the issue during its case-in-chief. We note also, that much of the proposed rebuttal evidence, such as command and control of the troops that invaded Freetown in January 1999, joint criminal enterprise between the AFRC/RUF and responsibility for crimes committed during the invasion of and withdrawal from Freetown, goes to matters that form a fundamental part of the case which the Prosecution is required to prove in relation to the charges brought in the Indictment. As such, it should be adduced as part of the Prosecution case-in-chief rather than in rebuttal. In this regard, we note the proposed rebuttal evidence concerns matters that have already been clearly addressed in the Prosecution's case-in-chief.

89. For example, the Prosecution led evidence that Brima took command of the SLA troops after the death of SAJ Musa;<sup>126</sup> that he ordered an attack on Hastings,<sup>127</sup> and ordered the troops to move towards Freetown;<sup>128</sup> that FAT Sesay said over the radio (BBC) that the Freetown attack was commanded by "Yarya", a nick name that Brima occasionally used as he came from a village by that name.<sup>129</sup>

90. Further evidence adduced during the Prosecution's case-in-chief was to the effect that on the way to Freetown, at York, and while at State House Brima communicated on a radio set with Sam Bockarie of the RUF and asked him for arms and ammunition to reinforce the SLA troops that had invaded Freetown.<sup>130</sup>

91. The Prosecution also led evidence that "Gullit" ordered the troops to Pademba Road Prison and subsequently 4000 persons were released;<sup>131</sup> and that Witness TF1 334 and "Commander B" released the prisoners from the National Stadium.<sup>132</sup> Prosecution Witness TF1 046 stated that the Third Accused Kanu later addressed the released persons from Pademba Road Prison and the National Stadium and told them that they "were all to work together" and that some of them were deployed along with the others.<sup>133</sup>

<sup>124</sup> The Prosecution proposes to call two witnesses in this regard.

<sup>125</sup> See Defence Pre-Trial Brief for Alex Tamba Brima, para. 11.

<sup>126</sup> Witness TF1 334, Transcript 13 June 2005, page 59; Witness TF1 153, Transcript 22 September 2005, p. 95; Witness TF1 184, Transcripts 27 September 2005, p. 56; Witness TF1 167, Transcript 16 September 2005, p. 11; TF1 033, Transcript 11 July 2005, p. 54; Witness TF1 033, Transcript 12 July 2005, p. 42.

<sup>127</sup> Witness TF1 033, Transcript 11 July 2005, p. 57.

<sup>128</sup> Witness TF1 033, Transcript 11 July 2005, p. 57.

<sup>129</sup> Witness TF1 033, Transcript 13 July 2005, p. 56.

<sup>130</sup> Witness TF1 334, Transcript 13 June 2005, p. 89; Witness TF1 334, Transcript 14 June 2005, p. 49; Witness TF1 153, Transcript 23 September 2005, p. 16.

<sup>131</sup> Witness TF1 033, Transcript 11 July 2005, pp. 62-63.

<sup>132</sup> Witness TF1 334, Transcript 14 June 2005, pp. 13, 14.

<sup>133</sup> Witness TF1 046, Transcript 7 October 2005, pp. 113, 114 and 123.

92. Accordingly, we find that the proposed rebuttal evidence in this category involves matters that form a fundamental part of the case which the Prosecution is required to prove in relation to the charges brought in the Indictment. As such, it should be adduced as part of the Prosecution case-in-chief and not in rebuttal. We find in any event, that such issues are already addressed in the Prosecution's case-in-chief. The Defence evidence sought to be rebutted could reasonably have been anticipated as part of the general denial of guilt by the First Accused in his Pre-Trial Brief. We uphold the Defence submissions that the proposed rebuttal evidence does not satisfy the criteria required for admission.

D. Second Category: Proposed rebuttal evidence to refute Defence evidence that could not have been anticipated by the Prosecution

Alex Tamba Brima- AFRC Period: Illness affecting performance of his functions as PLO2 (May 1997 - February 1998)

(a) Evidence relating to Brima's position as Principal Liaison Officer II (PLO2)

93. Defence evidence to be rebutted: The Prosecution proposes to rebut the evidence of the First Accused, Brima that he is suffering from hypertension and high blood pressure; that he started suffering from these illnesses after the coup in 1997 and that although he was appointed as PLO2 in the AFRC Government and assigned to oversee a number of ministries, he never did so because he was too ill to perform his duties.<sup>134</sup> The Prosecution also proposes to rebut the evidence of Defence Witness DAB-059 that he visited Brima in the hospital during the AFRC regime and that Brima told him that he went to Kono to cure himself.<sup>135</sup>

94. Proposed rebuttal evidence: The Prosecution will prove that Brima was not suffering from any chronic illness and was able to fulfil his functions (as PLO2) in the AFRC Government and in the bush.<sup>136</sup>

95. The evidence of the First Accused referred to under this category presumably forms part of the Defence case in answer to specific allegations in the Indictment.<sup>137</sup> We note that the proposed rebuttal evidence seeks, *inter alia*, to disprove the fact that the First Accused ever suffered or suffers from any chronic illness or that he was visited while in hospital during the AFRC period or that he told anyone that he went to Kono to cure himself, all of which matters, in and of themselves, have no significant bearing on the determination of his guilt or innocence. What is relevant is the Prosecution allegation that the First Accused, whatever the state of his health, actually performed the role he is alleged to have performed in the Indictment, and whether by virtue of that role, he assumes the criminal responsibility alleged in the Indictment. In our view, these are matters that form a fundamental part of the case for the Prosecution which it is required to prove in-chief rather than in rebuttal.

<sup>134</sup> Transcript, 6 June 2006, pp. 57-60.

<sup>135</sup> Transcript, 27 September 2006, pp. 63-66.

<sup>136</sup> The Prosecution proposes to call three witnesses in that regard.

<sup>137</sup> See in particular Further Amended Consolidated Indictment, paras. 23, 24 and 25



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96. In this regard, we note that the Prosecution led a substantial amount of evidence in its case-in-chief relating to Brima's position in the AFRC during the Junta period; his position as Council member<sup>138</sup> and functions as PLO 2.<sup>139</sup> For example, the Prosecution presented Exhibit P 34 (Minutes of Emergency Council Meeting of the AFRC) according to which Brima attended an AFRC Council meeting. This document further states that the PLOs should have "effective control" over the Honourables. According to Exhibit P 69, Brima was present at another AFRC Council meeting at which Johnny Paul Koroma, the Chairman of the Council, mentioned the rice business of Brima's wife. The Prosecution also led evidence that as PLO 2, Brima was a Supreme Council Member.<sup>140</sup> According to Prosecution Witness TF1 334, the PLOs were responsible of taking day to day decisions of the Government, made policies for the Government and supervised and monitored the Ministries.<sup>141</sup>

97. With regard to Brima's ability to fulfil his functions in "the bush", the Prosecution led evidence in-chief that the PLO 2 oversaw the mining of diamonds in Kono District. According to Prosecution Witness TF1 153, "Mosquito" and Brima convened a meeting in the Town Hall in Koidu Town where they explained how the witness and others should work as "Mines Monitoring Officers".<sup>142</sup> Witness TF1 153 saw Brima for one week in Kono.<sup>143</sup> The Prosecution led evidence that Witness TF1 -153 was sent to Kono by SAJ Musa and Brima as Mines Monitoring Officer. Brima came to Kono and the witness explained to him about problems in Koidu Town, about the mining and about his outstanding salary.<sup>144</sup> The Prosecution further led evidence that during the AFRC period, diamond mining was ongoing in various provinces, especially Kono District and Tongo Field. SAJ Musa was in overall control of mining but he assigned "Gullit" to oversee the mining in Kono District. "Gullit" was based in Koidu, Kono District and was under the supervision of the Secretary of State East who was Captain Eddy Kanneh.<sup>145</sup>

98. Accordingly, we find that the proposed rebuttal evidence in this category involves matters that form a fundamental part of the case which the Prosecution is required to prove in relation to the charges brought in the Indictment. As such, it should be adduced as part of the Prosecution case-in-chief and not in rebuttal. We find in any event, such issues are already addressed in the Prosecution's case-in-chief. The Defence evidence sought to be rebutted, while in direct contrast to the Prosecution evidence, could reasonably have been anticipated as part of the general denial of guilt by the First Accused. We uphold the Defence submissions that the proposed rebuttal evidence does not satisfy the criteria required for admission.

Alex Tamba Brima – AFRC Period: Illness affecting his involvement in diamond-mining activities (May 1997 – February 1998)

<sup>138</sup> Exhibits P 7 and P 70.

<sup>139</sup> Witness TF1 114, Transcript 14 July 2005, p. 119; Witness TF1 167, 15 September 2005, p. 20; Witness TF1 033, 11 July 2005, p. 4.

<sup>140</sup> Witness TF1 334, Transcript 17 May 2005, pp. 2, 3; Witness TF1 046, Transcript 7 October 2005, pp. 78, 79; TF1 046 testified that as PLO 2 Brima was a Supreme Council Member, and that Brima was present at a Security Council meeting at Cockerill Barracks in August 1997 (p. 83), and at an extraordinary meeting at State House (pp. 93, 94).

<sup>141</sup> Witness TF1 334, Transcript 20 June 2005, pp. 90-93, 100.

<sup>142</sup> Witness TF1-153, Transcript 23 September 2005, p. 60.

<sup>143</sup> Witness TF1-153, Transcript 23 September 2005, p. 61.

<sup>144</sup> Witness TF1-153, Transcript 22 September 2005, pp. 18-20.

<sup>145</sup> Witness TF1-334, Transcripts 17 May 2005, pp. 52, 53.



## (b) Evidence relating to Brima's non-involvement in diamond-mining activities in Kono

99. Defence evidence to be rebutted: The Prosecution proposes to rebut the evidence of the First Accused, Brima that he visited Kono three times during the Junta period, namely in October 1997 to search for his mother; in December 1997 to get married; and in February 1998, to receive traditional medical treatment;<sup>146</sup> and that he never oversaw diamond mining,<sup>147</sup> and never mined diamonds himself.<sup>148</sup>

100. Proposed rebuttal evidence: The Prosecution will prove that Brima was fully engaged in overseeing diamond mining in Kono throughout the AFRC Government period and had no severe illness which prevented him from doing this;<sup>149</sup> that he had full knowledge of the mining operations in Kono throughout the AFRC Government period and had no major health problems.<sup>150</sup>

101. The evidence of the First Accused referred to under this category forms part of the Defence case in answer to specific allegations in the Indictment.<sup>151</sup> The proposed rebuttal evidence seeks, *inter alia*, to disprove the fact that the First Accused "visited Kono three times during the Junta period, namely in October 1997 to search for his mother; in December 1997 to get married; and in February 1998, to receive traditional medical treatment" all of which matters, in and of themselves, have no significant bearing on the determination of his guilt or innocence. What is relevant is the allegation that the First Accused, whatever the state of his health, actually performed the role in relation to diamond mining he is alleged to have performed in the Indictment, and whether by virtue of that role, he assumes the criminal responsibility alleged in the Indictment. In our view, these are matters that form a fundamental part of the case for the Prosecution which it is required to prove in-chief rather than in rebuttal.

102. In this regard, we note that the Prosecution led a substantial amount of evidence regarding Brima's role in relation to mining in Kono as shown above.

103. Accordingly, we find that the proposed rebuttal evidence in this category involves matters that form a fundamental part of the case which the Prosecution is required to prove in relation to the charges brought in the Indictment. As such, it should be adduced as part of the Prosecution case-in-chief and not in rebuttal. We find in any event, that these issues are already addressed in the Prosecution's case-in-chief. The Defence evidence sought to be rebutted, while in direct contrast to the Prosecution evidence, could reasonably have been anticipated as part of the general denial of guilt by the First Accused. We uphold the Defence submissions that the proposed rebuttal evidence does not satisfy the criteria required for admission.

<sup>146</sup> Transcript, 8 June 2006, pp.20-22.

<sup>147</sup> Transcript, 8 June 2006, p. 26.

<sup>148</sup> Transcript, 4 July 2006, p. 56.

<sup>149</sup> The Prosecution proposes to call one witness in this regard.

<sup>150</sup> The Prosecution proposes to call one witness in this regard.

<sup>151</sup> See for example, Further Amended Consolidated Indictment, paras. 33, 34 and paras. under Count 13.

(c) Evidence relating to Brima's rank after the ECOMOG Intervention

104. Defence evidence to be rebutted: The Prosecution proposes to rebut the evidence of the First Accused, Brima that he remained a corporal throughout his military career, and was never promoted; and that as an 'other-ranks' soldier, Brima was unable to command anyone in the bush.<sup>152</sup>

105. Proposed rebuttal evidence: The Prosecution will prove that after the AFRC was removed from power after the (ECOMOG) Intervention the AFRC hierarchy continued when the AFRC transformed itself into a military organisation in the jungle; and that after the Intervention, the PLOs and Honourables retained command positions in the bush.<sup>153</sup>

106. The evidence of the First Accused referred to under this category forms part of the Defence case in answer to specific allegations that he commanded the AFRC/RUF forces alleged to have committed the crimes specified in the Indictment.<sup>154</sup> We refer to the Defence Pre-Trial Brief for Tamba Alex Brima which states that "*Tamba Brima retired from the Army in 2001 having risen to the rank of Corporal and not Staff Sergeant as stated by the Prosecution*"<sup>155</sup> and that "*as a Corporal, a junior rank in the military hierarchy, Tamba Brima could not be said to be one of those who bears the greatest responsibility. It is submitted in the first instance that the Accused therefore falls outside the jurisdiction of the Court.*"<sup>156</sup> In light of the above disclosure, the Prosecution cannot claim that the evidence sought to be rebutted "arose directly *ex improviso* during the presentation of the Defence case-in-chief and could not, despite the exercise of reasonable diligence, have been foreseen."

107. Furthermore, the proposed rebuttal evidence seeks to establish that notwithstanding its removal from power, the AFRC transformed itself into a military organisation in the jungle and that it maintained its military hierarchy, and that the Principal Liaison Officers and 'Honourables', including the three Accused persons, retained command positions. In our view, these are clearly matters that form a fundamental part of the case for the Prosecution which it is required to prove in-chief rather than in rebuttal. We note, in any event, that the Prosecution already led a substantial amount of evidence in this regard. For example, the Prosecution led evidence in its case-in-chief that Brima was a Staff Sergeant in the AFRC government<sup>157</sup> and later promoted himself to the rank of Brigadier;<sup>158</sup> that he became Commander-in-Chief of the troops after the death of SAJ Musa and held the rank of Major General.<sup>159</sup>

108. Accordingly, we find that the proposed rebuttal evidence in this category involves matters that form a fundamental part of the case which the Prosecution is required to prove in relation to the charges brought in the Indictment. As such, it should be adduced as part of the Prosecution case-in-chief and not in rebuttal. We find in any event, that these issues are already addressed in the

<sup>152</sup> Transcript, 8 June 2006, pp.12, 60 and 28 June 2006, p. 57.

<sup>153</sup> The Prosecution proposes to call three witnesses in that regard.

<sup>154</sup> See Further Amended Consolidated Indictment, paras. 2, 22, 23, 24, 27 etc.

<sup>155</sup> Defence Pre-Trial Brief for Alex Tamba Brima, para. 6.

<sup>156</sup> Defence Pre-Trial Brief for Alex Tamba Brima, para. 7.

<sup>157</sup> Exhibits P 7 and P 70.

<sup>158</sup> Witness TF1-033, 12 July 2005, p. 21; Witness TF1 334, Transcript 20 May 2005, p. 88.

<sup>159</sup> Witness TF1 184, Transcript 27 September 2005, p. 56.



Prosecution's case-in-chief. The Defence evidence sought to be rebutted, while in direct contrast to the Prosecution evidence, could reasonably have been anticipated as part of the Defence case. We agree with the Defence submissions that the proposed rebuttal evidence does not satisfy the criteria required for admission.

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Prison Incidents

(d) Evidence relating to Brima being forced to sign a ledger

109. Defence evidence to be rebutted: The Prosecution proposes to rebut the evidence of the First Accused, Brima that at the SSD Headquarters John Petrie took Brima's belongings; that later, while at CID, Brima inquired about the things that were taken; that at CID, Brima met John Petrie and John Berry, and they placed Brima under gunpoint, roughed him up, and forced him to sign the ledger titled "Tamba Brima Gullit."<sup>160</sup>

110. Proposed rebuttal evidence: The Prosecution simply states that it will rebut this version of events.<sup>161</sup>

111. The evidence of the First Accused referred to under this category forms part of the Defence case in as far as it calls into question the identity of the person referred to in the Indictment as "Alex Tamba Brima". We refer to the Defence Pre-Trial Brief for Tamba Alex Brima which states that the First Accused "does not accept the name "Alex" used by the Prosecution as he has never been so named, nor does he accept that he was ever nicknamed "Gullit"."<sup>162</sup> Accordingly, the Prosecution cannot claim that the evidence sought to be rebutted "arose directly *ex improviso* during the presentation of the Defence case and could not, despite the exercise of reasonable diligence, have been foreseen." Moreover, we do not think that issues relating to any personal inquiries that the First Accused might have made while on remand or his treatment whilst on remand are matters that have significant bearing on the determination of his guilt or innocence. In any event, we note that the Prosecution already led evidence in its case-in-chief which is in contrast to the Defence evidence, namely, that Brima was beaten during his arrest in Juba by the Sierra Leone Police;<sup>163</sup> that he complained to John Petrie about the fact that he was beaten at the Operational Services Department (OSD) Headquarters;<sup>164</sup> that "Gullit" gave his identification data voluntarily and gave his name as "Tamba Brima" and responded to his nickname "Gullit".<sup>165</sup>

112. Accordingly, we find that the proposed rebuttal evidence in this category involves matters that are already addressed in the Prosecution's case-in-chief. The Defence evidence sought to be rebutted, while in direct contrast to the Prosecution evidence, could reasonably have been anticipated as part of the Defence case. We agree with the Defence submissions that the proposed rebuttal evidence does not satisfy the criteria required for admission.

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<sup>160</sup> Transcript, 16 June 2006, pp. 36-40.

<sup>161</sup> The Prosecution proposes to call one witness in this regard.

<sup>162</sup> Defence Pre-Trial Brief for Alex Tamba Brima, para. 5.

<sup>163</sup> Witness John Petrie, Transcript 5 October 2005, pp. 70-73.

<sup>164</sup> Witness John Petrie, Transcript 5 October 2005, p. 78.

<sup>165</sup> Witness John Petrie, Transcript 5 October 2005, p. 76.



(e) Evidence relating to the special treatment of detainees willing to testify

113. Defence evidence to be rebutted: The Prosecution proposes to rebut the evidence of the First Accused, Brima that while at Pademba Road Prison, he was taken to a reception where he met with John Berry, John Petrie, and Commissioner Gbekie, who offered him money to testify against Johnny Paul Koroma, but he did not take it.<sup>166</sup>

114. Proposed rebuttal evidence: The Prosecution will rebut this version of events and rebut the fact that the Office of the Prosecutor of the Special Court for Sierra Leone "was not enticing people to lie against the Accused for special treatment" (sic).<sup>167</sup>

115. The evidence of the First Accused referred to in this category presumably forms part of the Defence case in as far as it calls into question the credibility of the Prosecution witnesses and investigators. We note that the proposed rebuttal evidence seeks merely to reinforce the credibility of Mr. John Petrie, a Prosecution witness and Mr. John Berry, a Special Court investigator. As such, we find that the proposed rebuttal evidence in this category does not satisfy the criteria required for admission.

V. CONCLUSION

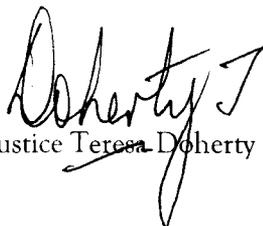
116. It follows from the foregoing that this is an appropriate case for the exercise of our discretion to preclude the presentation of the proposed rebuttal evidence. Consequently, the Prosecution's application for protective measures for its proposed rebuttal witnesses is rendered redundant.

VI. DISPOSITION

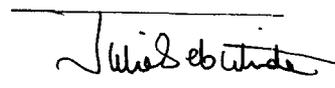
FOR THE ABOVE REASONS,

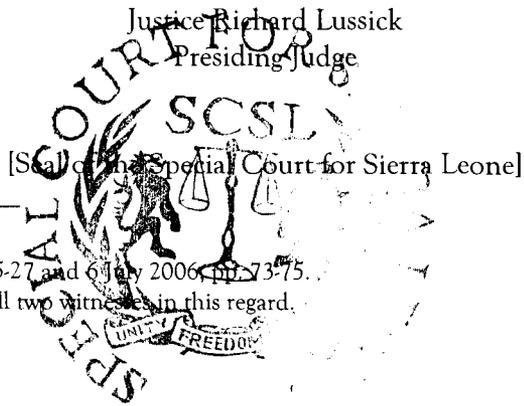
THE TRIAL CHAMBER DISMISSES the Motion in its entirety.

Done at Freetown, Sierra Leone, this 14<sup>th</sup> day of November 2006.

  
Justice Teresa Doherty

  
Justice Richard Lussick  
Presiding Judge

  
Justice Julia Sebutinde



<sup>166</sup> Transcript 16 June 2006, pp. 25-27 and 6 July 2006, pp. 73-75.

<sup>167</sup> The Prosecution proposes to call two witnesses in this regard.