

742)

SCSL-03-01-T
(24342-24359)

24342



SPECIAL COURT FOR SIERRA LEONE

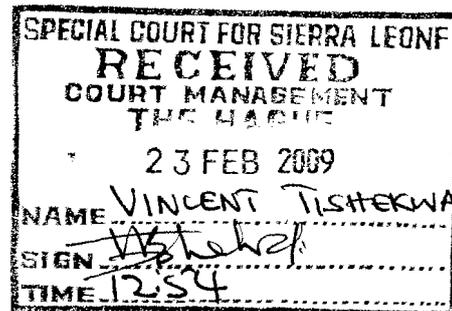
TRIAL CHAMBER II

Before: Justice Richard Lussick, Presiding Judge
Justice Teresa Doherty
Justice Julia Sebutinde
Justice El Hadji Malick Sow, Alternate Judge

Registrar: Herman von Hebel

Case No.: SCSL-03-1-T

Date: 23 February 2009



PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON PROSECUTION MOTION FOR ADMISSION OF DOCUMENTS OF CERTAIN NON-
GOVERNMENTAL ORGANISATIONS AND ASSOCIATED PRESS RELEASES

Office of the Prosecutor:

Brenda J. Hollis
Kathryn Howarth

Defence Counsel for Charles G. Taylor:

Courtenay Griffiths, Q.C.
Terry Munyard
Andrew Cayley
Morris Anyah

TRIAL CHAMBER II (“Trial Chamber”) of the Special Court for Sierra Leone (“Special Court”);

SEISED of the “Prosecution Motion for Admission of Documents of Certain Non-Governmental Organisations and Associated Press Releases”, filed on 12 December 2008, (“Motion”);¹

NOTING the “Defence Response to Prosecution Motion for Admission of Documents of Certain Non-Governmental Organisations and Associated Press Releases”, filed on 5 January 2009, (“Response”);²

NOTING the “Corrigendum to Defence Response to Prosecution Motion for Admission of Documents of Certain Non-Governmental Organisations and Associated Press Releases”, filed on 6 January 2009;³

NOTING ALSO the “Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents of Certain Non-Governmental Organisations and Associated Press Releases”, filed on 12 January 2009 (“Reply”);⁴

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”) and Rules 26bis, 73, 89(C), 92bis 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).

I. SUBMISSIONS

Motion

1. The Prosecution moves the Trial Chamber to admit into evidence certain portions of documents of non-governmental organisations and associated press releases identified in Annex A and provided in Annex B of the Motion (“NGO Documents”) pursuant to Rule 89(C) or, in the alternative, Rules 89(C) and 92bis, should the Trial Chamber find that Rule 92bis is also applicable.⁵

¹ SCSL03-01-T-694.

² SCSL03-01-T-702.

³ SCSL03-01-T-706.

⁴ SCSL03-01-T-709.

⁵ Motion, paras 1, 5.




23 February 2009



2. The Prosecution submits, notwithstanding a decision of the Trial Chamber to the contrary, that the documents are admissible under Rule 89(C) alone because: (i) Rule 89(C) is the general rule of evidence and has been used to tender documents without a witness in other proceedings; (ii) Rule 92bis, as amended, now only applies to witness statements and transcripts; and (iii) Rule 92bis does not apply to documents which were not prepared for the purposes of legal proceedings.⁶

3. In the alternative, the Prosecution submits that if Rule 92bis applies, then the requirements of Rules 89 and 92bis must be satisfied. For evidence comprising public documents to be admitted pursuant to both Rules, it must be relevant, its reliability susceptible of confirmation and its admission not unfairly prejudice the Accused.⁷ In further support of this alternative submission the Prosecution relies on its arguments put forward in an earlier motion.⁸

4. In support of its application for admission of the documents under Rule 89(C), the Prosecution states that the documents relate to: (i) the *chapeau* requirements of the crimes charged; (ii) the several forms of liability alleged by the Prosecution in this case; (iii) the crime base; and (iv) evidence of a consistent pattern of conduct under Rule 93. The Prosecution further states that the documents are also relevant as they corroborate evidence on the court record.⁹ The Prosecution argues that no undue prejudice to the Accused arises from the fact that a document is produced without calling a witness, since the Trial Chamber has discretion under Rule 89(C) to admit any relevant evidence and “the inability of the Defence to cross-examine such witnesses is a matter that goes to the weight of the evidence, not its admissibility”.¹⁰

5. In support of its alternative application for admission of the documents under Rules 89(C) and 92bis, the Prosecution submits that the documents are relevant,¹¹ their reliability is susceptible of confirmation¹² and that their admission would cause no undue prejudice to the Accused.¹³ The Prosecution has also indicated by underlining in Annexes A and B those portions of the documents which go to the acts and conduct of the Accused, assuming that such qualification “is still applicable to documents not prepared for the purposes of legal proceedings”.¹⁴ Further, while the Prosecution acknowledges that the documents “do concern acts and conduct of those who might be considered the Accused’s immediately proximate subordinates”, it claims that “it is in the interests of justice that

⁶ Motion, para. 3.

⁷ Motion, para. 5.

⁸ See *Prosecutor v. Taylor*, Case No. SCSL-03-01-T, Prosecution Motion for Admission of Documents of the United Nations & United Nations Bodies, filed on 29 October 2008, paras 15 - 17.

⁹ Motion, para. 8.

¹⁰ Motion, para. 10.

¹¹ Motion, para. 13.

¹² Motion, para. 14.

¹³ Motion, para. 15.

¹⁴ Motion, paras 7, 16.

this relevant evidence is brought before the Chamber, and that the Chamber be allowed to assess the appropriate weight to be given to it at the conclusion of the case".¹⁵

Response

6. The Defence opposes the Motion on the grounds that the documents are not admissible under Rule 89(C) alone and can only be admissible under Rule 89(C) in conjunction with Rule 92bis, under which rules the documents should be excluded because they go to the acts and conduct of the Accused or to those individuals and/or groups allegedly subordinate to the Accused, "and/or their probative value is outweighed by their prejudicial effect".¹⁶

7. The Defence cites the ICTY Trial Chamber decision in *Milutinovic* that statements taken by NGOs which were not prepared for the purpose of legal proceedings were only potentially admissible under Rule 89(C) if sufficient indicia of reliability was evident in the reports themselves.¹⁷ The Defence submits that in the case of the subject NGO Documents, the persons interviewed are not identified, the writers of the reports did not personally take the statements, and that the Trial Chamber, not having had the opportunity of hearing any of the persons who made the statements, is not in a position to assess the reliability of the "factual contentions contained therein".¹⁸ The Defence further submits that the evidence in the NGO Documents was created to highlight human rights abuses "for the individual needs of the NGOs and not for creating an objective factual account of what actually happened at the time of the event that is being depicted".¹⁹ Further, and alternatively, the Defence submits that the NGO Documents should be viewed as expert evidence and the authors as expert witnesses since the material is of a technical nature and it requires a specific field of knowledge.²⁰

8. The Defence submits in addition that the documents are inadmissible because (i) the documents, in many instances, speak directly about the Accused and his involvement in the Sierra Leone conflict and "it would be highly prejudicial for the Documents to be admitted without a witness who could speak to their contents and authenticity";²¹ (ii) the Prosecution seeks to admit evidence material to command responsibility or joint criminal enterprise without giving the Defence

¹⁵ Motion, para. 17.

¹⁶ Response, paras 2, 29.

¹⁷ Response, para 4, citing *Prosecutor v. Milutinovic et al.*, IT-05-87-T, Decision on Evidence Tendered Through Sandra Mitchell and Frederick Abrahams (1 September 2006) at paras 19, 22; Decision on Evidence Tendered Through Fuat Hazhibeqiri (8 September 2006); Decision Denying Prosecution's Second Motion for Admission Evidence Pursuant to Rule 92bis (13 September 2006).

¹⁸ Response, para. 5.

¹⁹ Response, para. 6.

²⁰ Response, paras 7, 8.

²¹ Response, paras 10, 11.





an opportunity for cross-examination;²² (iii) many of the documents refer to subordinates of the Accused, and where evidence is close to subordinates “it would not be fair to the accused to permit the evidence to be given in written form”;²³ (iv) the very nature of the documents relates to critical and proximate elements of the case against the Accused and that there are additional extracts in the NGO Documents that go to the acts and conduct of the Accused which have not been identified by the Prosecution,²⁴ (v) if the documents are not offered through a witness the Trial Chamber would not be able to decipher their context, and a lack of context can render documents inadmissible as lacking sufficient indicia of reliability;²⁵ and (vi) the documents are produced at such a late stage in the proceedings that witnesses who have previously testified cannot be challenged on the contents or accuracy of the documents, although the Prosecution has already called a number of witness who could have commented on the contents of the documents.²⁶

Reply

9. The Prosecution disputes the objections of the Defence and its interpretation of the jurisprudence relating to Rules 89(C) and 92bis, and recounts the background to the amendment to the latter rule and the jurisprudence of the *ad hoc* tribunals to support their previous submissions.²⁷ In particular, the Prosecution asserts that the Defence is wrong to rely on the case of *Milutinovic* for the proposition that in the absence of sufficient showing of reliability such evidence is inadmissible, since the test for admissibility under Rule 89(C) is relevance only and that issues of reliability and probative value are considered by the Trial Chamber at the end of the trial.²⁸

II. APPLICABLE LAW

10. The general rules of evidence are contained in Rule 89, which provides:

Rule 89: General Provisions

- (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.

²² Response, para. 12.

²³ Response, para. 13.

²⁴ Response, para. 14.

²⁵ Response, para. 17.

²⁶ Response, para. 18.

²⁷ Reply, 2-18.

²⁸ Reply, para. 4.

- (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.

11. Rule 92bis is the specific rule relating to alternative proof of facts, that is, proof of facts other than by oral evidence. Rule 92bis provides:

Rule 92bis: Alternative Proof of Facts (*amended 14 March 2004 and amended 14 May 2007*)

- (A) In addition to the provisions of Rule 92ter, a Chamber may, in lieu of oral testimony, admit as evidence in whole or in part, information including written statements and transcripts, that do not go to proof of the acts and conduct of the accused.
- (B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.
- (C) A party wishing to submit information shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.

12. The recent ruling of the Appeals Chamber, “Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’” dated 6 February 2009²⁹ (“Appeals Chamber Decision”), wherein the Appeals Chamber upheld a decision of the Trial Chamber, confirms that:

By its express terms, Rule 92bis applies to information tendered “*in lieu* of oral testimony”. These words must be given their ordinary meaning. Documentary evidence, by its very nature, it tendered *in lieu* of oral testimony.³⁰ [...]

[...]

The procedural scheme established by Rules 89(C) and 92bis does not allow a party to circumvent the stringency of the latter rule by simply tendering a document under the former.³¹ [...]

²⁹ SCSL-03-01-AR73-721, Decision on ‘Prosecution Notice of Appeal and Submissions Concerning the Decision Regarding the Tender of Documents’, 6 February 2009 (“Appeals Chamber Decision”).

³⁰ Appeals Chamber Decision, para. 30 (original footnotes omitted).

³¹ Appeals Chamber Decision, para. 33(original footnotes omitted).

[...]

The consequence of this is that any information that does not go to proof of the acts and conduct of the accused not tendered through a witness, should be submitted under Rule 92bis if it is sought to be admitted *in lieu* of oral testimony. For these reasons, we find that the Trial Chamber did not err in law in holding that Rule 92bis exclusively controls the admission of a document submitted *in lieu* of oral testimony and that such document must be channelled through a witness in order to be admissible under Rule 89(C).³² [...]

13. The effect of Rule 92bis is to permit the reception of information – assertions of fact (but not opinion) including, but not limited to, written statements and transcripts that do not go to proof of the acts and conduct of the accused – if such facts are relevant and their reliability is “susceptible of confirmation”; proof of reliability is not a condition of admission: all that is required is that the information should be capable of corroboration in due course.³³ This leaves open the possibility for the Trial Chamber to determine the reliability issue at the end of the trial in light of the totality of the evidence by deciding whether the information is indeed corroborated by other evidence presented at trial,³⁴ and what weight, if any, should be attached to it.³⁵ Simply admitting a document into evidence does not amount to a finding that the evidence is credible.³⁶

14. A distinction must be drawn between “the acts and conduct of those others who commit the crimes for which the indictment alleges that the accused is individually responsible” and “the acts and conduct of the accused as charged in the indictment which establish his responsibility for the acts and conduct of others.” Only written statements which go to proof of the latter acts and conduct are excluded by Rule 92bis.³⁷

³² Appeals Chamber Decision, para. 34.

³³ *Prosecutor v. Norman, Fofana, Kondewa*, Case No. SCSL-2004-14-AR73, Fofana – Decision on Appeal Against “Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence”, 16 May 2005, para. 26.

³⁴ *Prosecutor v. Sesay, Kallon & Gbao*, SCSL-04-15-T, Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92bis, 15 May 2008, para. 30.

³⁵ *Prosecutor v. Norman, Fofana & Kondewa*, SCSL-04-14-T, Decision on Prosecution’s Request to Admit Into Evidence Certain Documents Pursuant to Rules 92bis and 89(C), 15 July 2005, p.4; see also *Prosecutor v. Sesay, Kallon & Gbao*, SCSL-04-15-T, Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92bis, 15 May 2008, para. 30.

³⁶ *Prosecutor v. Norman, Fofana & Kondewa*, SCSL-04-14-T, Decision on Fofana Request to Admit Evidence Pursuant to Rule 92bis, 9 October 2006, note 32, para. 18; see also *Prosecutor v. Sesay, Kallon & Gbao*, SCSL-04-15-T, Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92bis, 15 May 2008, para. 31.

³⁷ *Prosecutor v. Galic*, IT-98-29-AR73.2, “Decision on Interlocutory Appeal Concerning Rule 92bis(C)”, 7 June 2002, para. 9; see also *Prosecutor v. Sesay et al.*, SCSL-04-15-T-1049, “Decision on Defence Application for the Admission of the Witness Statement of DIS-129 Under Rule 92bis or, in the Alternative, Under Rule 92ter”, 12 March 2008, pp. 2, 3; see Case No. SCSL-03-1-T

15. Thus, Rule 92bis excludes any written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish that the accused planned, instigated, ordered, or committed any of the crimes charged, or aided and abetted in the planning, preparation or execution of such crimes, or that the accused was a superior who actually committed the crimes, or knew or had reason to know that those crimes were about to be or had been committed by his subordinates, or failed to take the necessary and reasonable measures to prevent such crimes or to punish the perpetrators thereof.³⁸ Where the prosecution alleges that the accused participated in a joint criminal enterprise, Rule 92bis excludes any written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish that he had participated in that joint criminal enterprise.³⁹

16. The “conduct” of an accused person necessarily includes his relevant state of mind, so that a written statement which goes to proof of any act or conduct of the accused upon which the prosecution relies to establish that state of mind is not admissible under Rule 92bis.⁴⁰

17. Where the evidence is “so pivotal to the prosecution case, and where the person whose acts and conduct the written statement describes is so proximate to the accused, the Trial Chamber may decide that it would not be fair to the accused to permit the evidence to be given in written form.”⁴¹

III. DELIBERATIONS

18. Dealing first with the Prosecution application for the documents to be admitted under Rule 89(C), the Trial Chamber finds that the documents must be channelled through a witness competent to give evidence in relation to the documents in order to be admissible under Rule 89(C).⁴² The said documents were tendered in lieu oral testimony and therefore should have been tendered under Rule 92bis.⁴³ Accordingly, the Prosecution application pursuant to Rule 89(C) must fail.

19. Turning now to the Prosecution’s alternative application, the Trial Chamber will consider the admissibility of each of the documents provided in Annex B of the Motion under Rule 92bis.

also *Prosecutor v. Taylor*, SCSL-03-1-T, “Decision on Prosecution Notice Under Rule 92bis for the Admission of Evidence Related to Inter Alia Kenema District and on Prosecution Notice Under Rule 92bis for the Admission of the Prior Testimony of TF1-036 Into Evidence”, 15 July 2008, p. 4.

³⁸ *Galic*, *ibid.*, para. 10; see also Prosecution’s Second Amended Indictment (“Indictment”), paras 33, 34.

³⁹ *Galic*, *ibid.*, para. 10, see also Indictment, para. 33.

⁴⁰ *Galic*, *ibid.*, para. 11.

⁴¹ *Galic*, *ibid.*, para 13. See also *Prosecutor v. Bradanin & Talic*, IT-99-36-T, “Confidential Decision on the Admission of Rule 92bis Statements”, 1 May 2002, at para. 14.

⁴² Appeals Chamber Decision, para. 34.

⁴³ Appeals Chamber Decision, para. 34; see also *Prosecutor v. Taylor*, SCSL-03-1-T, Decision on Prosecution Motion for Admission of Document Pursuant to Rule 89(C), 9 February 2009, p. 3.

Document 1

20. At Tab 1 is Part 1 of Human Rights Watch Report: "Sierra Leone - Getting Away with Murder, Mutilation, Rape" (July 1999). The Prosecution seeks to have admitted into evidence that part of the Report from page 1 up to paragraph 2 on page 5 (as marked on the document). This material is part of the Summary of the Report concerning crimes committed during the invasion of Freetown in January 1999. The Trial Chamber finds that the authors of the Report did not require any special skill or technical knowledge in order to produce the Report and therefore rejects the Defence contention that the Report is an expert report. However, the Trial Chamber agrees with the Defence that that the reference to assailants from Liberia in the third paragraph of p. 23002 (page 4) goes to the acts and conduct of the Accused and is not admissible. Apart from that, the Trial Chamber concludes that the information contained in the Report is relevant, susceptible of confirmation and does not go to the acts and conduct of the Accused, and therefore admits the material into evidence with the exception of the third paragraph on p. 23002 (page 4), which must be redacted.

Document 2

21. At Tab 2 is Part III of Human Rights Watch Report: "Sierra Leone - Getting Away with Murder, Mutilation, Rape" (July 1999) which provides background information regarding the war in Sierra Leone leading up to the invasion of Freetown and the aftermath of that invasion. As submitted by the Defence, the first paragraph of page 23007 (page 1) states that the war began when the RUF entered Sierra Leone from Liberia and the second paragraph of p. 23007 (page 1) states that the RUF, under the leadership of Foday Sankoh, was supported by Liberian fighters from Charles Taylor's National Patriotic Front. This information not only links Foday Sankoh to the Accused, a pivotal element of the Prosecution case, but also goes to the acts and conduct of the Accused, and is therefore not admissible. Contrary to the submission of the Defence, the Trial Chamber considers that while the first paragraph of p. 23008 (page 2) does refer to Johnny Paul Koroma it does not do so in a manner that links him, directly or indirectly, to the Accused, and is therefore admissible. However, the Trial Chamber agrees with the Defence that the second paragraph of page 23009 (page 3), which speaks of Charles Taylor's assistance to the RUF, goes to the acts and conduct of the Accused and is not admissible. The Trial Chamber considers that the remaining sections of Part III are relevant, susceptible of confirmation and do not go to the acts and conduct of the Accused, and will be admitted into evidence.

Document 3

Jug



22. At Tab 3 is Part IV of the Human Rights Watch Report: Getting Away with Murder, Mutilation, Rape (July 1999). Part IV: Human Rights Abuses Committed by RUF Rebels, goes into significantly more detail about the organisation of the Freetown attack and the attackers. The Defence objects to the admission of this material as going to the acts and conduct of the Accused and to a critical element of the Prosecution case, as well as not being susceptible of confirmation. While the Trial Chamber finds that the information is relevant, it also considers that that much of the information goes to pivotal issues regarding the 1999 Freetown invasion. For example, the document is based on the premise that the atrocities in Freetown were the responsibility of the RUF (as opposed to the AFRC); it asserts that the human rights abuses in Freetown were “authorized at a high level within the RUF’s command structures”⁴⁴ and refers to the invasion as “the January RUF offensive”.⁴⁵ The Trial Chamber therefore agrees with the Defence submission that such evidence cannot be admitted without giving the Defence a genuine opportunity for cross-examination of the evidence. The Trial Chamber further observes that a representative of Human Rights Watch testified before the Trial Chamber and that the Prosecution opted not to tender these documents through that witness.⁴⁶ The Trial Chamber thus denies admission into evidence of the document at Tab 3.

Document 4

23. At Tab 4 is a Human Rights Watch Report entitled “Sierra Leone - Sowing Terror: Atrocities Against Civilians in Sierra Leone” (July 1008). The Prosecution seeks to admit various excerpts of the Report commencing with a passage on page 11 entitled “Human Rights Abuses Committed by Members of the AFRC/RUF”. The RUF is described as entering Sierra Leone from Liberia and being originally a “mix of members of Charles Taylor’s National Patriotic Front of Liberia (NPFL), NPFL - trained Sierra Leoneans and others.”⁴⁷ The Trial Chamber agrees with the Defence submission that reference in the document to gross violations of human rights by the AFRC/RUF are indirect references to the NPFL and consequently to the acts and conduct of the Accused. Moreover, the section of the report entitled “A War of Terror against Civilians (pp. 23079-23081)(pp. 11-13) includes information sufficiently pivotal to the Prosecution case that it would be unfair to admit it without giving the Defence an opportunity to cross-examine on the evidence. The Trial Chamber also agrees with the Defence submission that the first paragraph at p. 23100 referring to interaction between the AFRC/ RUF and the Liberian military, includes information too proximate to the

⁴⁴ p. 1 (23012).

⁴⁵ p. 27 (23038).

⁴⁶ PW-07, Witness Corrine Dufka, Testimony of 21 and 22 January 2008.

⁴⁷ Footnote, p. 11, ERN 00011244.





Accused to be admitted without giving the Defence an opportunity for cross-examination. Since there are references to the RUF throughout the material sought to be tendered, and bearing in mind the definition of "RUF" given in the Report, the Trial Chamber considers that it would be unfairly prejudicial to the Accused to admit the material into evidence without the Defence having had an opportunity to cross-examine on it. The Trial Chamber thus refuses to admit the documents in Tab 4 into evidence.

Document 5

24. At Tab 5 is a Human Rights Watch Report entitled "Sierra Leone - We'll Kill You if You Cry: Sexual Violence in the Sierra Leone Conflict (January 2003)", examining sexual violence during the conflict in Sierra Leone. The Prosecution seeks to have admitted into evidence the final paragraph on page 9 (23124) and the first paragraph on page 10 (23125) and pages 25 (23140) from the heading "Sexual Violence Against Women and Girls During the Civil War" to 46 (23161) up to the heading "Sexual Violence Committed by the CDF". The Trial Chamber agrees with the Defence submission that the paragraphs on pages 9 and 10 are direct references to sponsoring of the RUF in Sierra Leone by the Accused and his NPFL. These paragraphs go to the acts and conduct of the Accused and are not admissible. Further, the Trial Chamber exercises its discretion to refuse to admit into evidence the following paragraphs on the grounds that they link the RUF to Charles Taylor and/or Liberian forces and are either too proximate to the Accused or too pivotal to the Prosecution case to be admitted without giving the Defence an opportunity to cross-examine on the evidence: (i) the paragraph directly under the heading "Rebel Forces" on page 26 (23141), (ii) the third paragraph on page 27 (23142) (directly above the heading "Pro-Government Forces"; (iii) the third and fourth paragraphs on page 29 (23144) beginning "This extreme sexual violence" and ending "The rebels were mixed Sierra Leoneans and Liberians"; (iv) the third paragraph on page 31 (23146) beginning "The rebels, who spoke Liberian English"; (vii) the second-last paragraph on page 32 (23147) which refers to a "Colonel Titus, a mercenary who spoke Liberian English"; (viii) the fourth paragraph on page 37 (23152) which refers to a Liberian rebel; and (ix) the fifth paragraph on page 43 (23158), which refers to "Commander Patrick, a Liberian". The Trial Chamber considers that the remainder of pages 25 to 46 (23140 to 23161) highlighted by the Prosecution for admission are relevant, susceptible of confirmation and do not go to acts and conduct of the Accused and will therefore be admitted into evidence.



Jr



Document 6

25. At Tab 6 is an Amnesty International Report entitled "Sierra Leone: Rape and other forms of sexual violence against girls and women" (June 2000). The Prosecution tenders certain identified parts of pages 2 to 5 as evidence of *chapeau* elements and as crime base evidence. The Trial Chamber rejects the objections of the Defence that the document is irrelevant and not susceptible of confirmation. The remainder of the Defence objections go to weight, not admissibility. The Trial Chamber finds that the sections at Tab 6 highlighted by the Prosecution for admission are relevant, susceptible of confirmation and do not go to acts and conduct of the Accused and will therefore be admitted into evidence.

Document 7

26. At Tab 7 Medecins Sans Frontieres Report entitled "MSF 1998 Report: Atrocities against civilians in Sierra Leone". The Prosecution tenders pages 1 to 4 of the Report as evidence of *chapeau* elements, crime base, and intent, knowledge and awareness relating to the individual criminal responsibility of the Accused. The Trial Chamber considers that the Defence objections are baseless and that the sections of the Report sought to be tendered by the Prosecution are relevant, susceptible of confirmation, and do not go to acts and conduct of the Accused. Accordingly, pages 1 to 4 will be admitted into evidence.

Document 8

27. At Tab 8 is a 2002 report from Physicians for Human Rights entitled "War Related Sexual Violence in Sierra Leone, a Population - Based Assessment". The portions of the report tendered by the Prosecution as evidence of *chapeau* elements and crime base are on pages 2 to 3 (23227 to 23228), pages 37 to 61 (23262 to 23286) and pages 75 to 77 (23308 to 23310). The Trial Chamber agrees with the Defence that the section entitled "Do you know anything that could identify your attackers? Did they call each other by name? How do you know which military group your attackers were with?" (pages 75 to 77) includes the names of individuals alleged to have colluded with the Accused and is therefore too proximate to the Accused to admit into evidence without the Defence being given the opportunity to cross-examine on the evidence. The Trial Chamber therefore rejects the tender of pages 75 to 77. However, the Trial Chamber considers that the remainder of the report highlighted by the Prosecution on pages 2 to 3 and 37 to 61 is admissible in that it is relevant, susceptible of confirmation, and does not go to the acts and conduct of the Accused.



Jue



Document 9

28. At Tab 9 is a report by Amnesty International dated 31 August 2000 entitled "Sierra Leone: Childhood- a casualty of conflict" regarding the use of child soldiers and child labour during the conflict in Sierra Leone. The Prosecution tenders indicated parts of pages 1 (23342), 4 to 8 (233445 to 23349), 15 (23356), and 18 to 20 (23359 to 23361) as evidence of *chapeau* elements, use of child soldiers, and the individual criminal responsibility of the Accused including joint criminal enterprise and aiding and abetting. The Trial Chamber agrees with the Defence submissions that pages 18-20 of the Report (pp. 23359-23361) discuss links between the rebels in Sierra Leone and the government of Liberia during the time the Accused was President of Liberia, the supply of arms and ammunition from Liberia to Sierra Leone, Liberia being a transit route for diamonds and President Charles Taylor orchestrating the activities of the RUF. These pages go to acts and conduct of the Accused and will not be admitted. The Trial Chamber further agrees with the Defence that pages 4 to 8 deal with matters pivotal to the Prosecution case and information so proximate to the Accused that to admit it without the Defence having the opportunity to cross-examine on the evidence would unfairly prejudice the Accused. Accordingly, the Trial Chamber rejects the tender of pages 4 to 8 and 18 to 20. The Trial Chamber finds that pages 1 and 15 are relevant, susceptible of confirmation, do not go to acts and conduct of the Accused and will therefore be admitted into evidence.

Document 10

29. At Tab 10 is a report by the Coalition to Stop the Use of Child Soldiers entitled "Global Report on Child Soldiers" (2001). The Prosecution tenders indicated parts of pages 264 to 267 (23393 to 23396), 375 (23397), 377 (23399), 378 (23400), 379 (23401) and 380 (23402). The Trial Chamber considers that the information on pages 264 to 267, which deal with Liberia's support of the RUF and the Accused's use of child soldiers, goes to the acts and conduct of the Accused and is not admissible. The Trial Chamber finds that the information on the remainder of the pages, i.e. pages 375, 377 - 380, is relevant, susceptible of confirmation and does not go to the acts and conduct of the Accused and is therefore admissible.

Document 11

30. At Tab 11 is a press release from the Associated Press dated 2 May 2002 and entitled "US-based groups urges (sic) United Nations to extend Sanctions against Liberia" which the Prosecution tenders as evidence of a consistent pattern of conduct pursuant to Rule 93. The Prosecution concedes that

the parts of this document that it has underlined do go to the acts and conduct of the Accused. However, the Prosecution has not underlined other parts which also go to the acts and conduct of the Accused; for example this passage: "The U.N. Security Council extended a longstanding arms embargo on Liberia in March 2001 and imposed a diamond embargo and travel restrictions last May to punish the government for its gun- and diamond- running with brutal rebels across the border in Sierra Leone".⁴⁸ The Trial Chamber finds that a large portion of the document goes to the acts and conduct of the Accused and is not admissible. The Trial Chamber further considers that the remainder of the document goes to critical elements of the Prosecution case and that it would be unfair to the Accused to admit such evidence in written form, particularly when there is no chance of the Defence being able to cross-examine on the evidence. The Trial Chamber therefore rejects the tender of the document in Tab 11.

Document 12

31. At Tab 12 is a press release from the Associated Press, dated 19 July 2002, entitled "Liberian government forces committing scores of war crimes, Human Rights Watch says". This document is tendered by the Prosecution as evidence of a consistent pattern of conduct pursuant to Rule 93. The document details war crimes committed by the Liberian Government in Liberia, including the shooting and beating to death of unwilling recruits and the use of children as soldiers. The Accused is named in the article. This document is clearly not admissible.

Document 13

32. At Tab 13 is an article from Agence France - Presse, dated 20 July 2002, entitled "Liberia Denies Human Rights Abuses". The Prosecution concedes that part of the article does go to the acts and conduct of the Accused. The Trial Chamber agrees with the Defence that the article also goes to critical elements of the Prosecution's case. Therefore, for reasons mentioned numerous times above, the Trial Chamber refuses to admit the document into evidence.

Document 14

33. At Tab 14 is a Human Rights Watch press release, dated July 2002, entitled "Deteriorating Human Rights Situation in Liberia". The Prosecution tenders various portions of the document as proof of a consistent pattern of conduct under Rule 93. This document is obviously extremely

⁴⁸ See first page (23405).
Case No. SCSL-03-1-T

prejudicial to the Accused. It relates at length serious human rights abuses allegedly committed by the government of Charles Taylor, including the execution of numerous civilians, males of all ages shot and beaten to death for resisting conscription, widespread rape of women and girls as young as 12, civilians subjected to forced labour, restricted movement of hundreds of civilians intending to flee as refugees, and the use of child combatants. Parts of it are not admissible as going to the acts and conduct of the Accused and the Trial Chamber rejects the tender of the remainder of the document in the absence of any opportunity for the Defence to cross-examine on the evidence.

Document 15

34. At Tab 15 is an Amnesty International report, dated September 1996, entitled "Sierra Leone - Towards a future founded on human rights". The Prosecution tenders selected passages of the report as evidence of *chapeau* elements, a consistent pattern of conduct under Rule 93, an admission by Foday Sankoh that the RUF was responsible for atrocities, and that the Accused had notice and knowledge of the atrocities in 1996. The Trial Chamber finds that this evidence is so pivotal to the Prosecution's case and so proximate to the Accused that its admission in the absence of an opportunity to cross-examine on the evidence would unfairly prejudice the Accused. The Trial Chamber therefore, in the exercise of its discretion, refuses to admit the material in Tab 15 into evidence.

Document 16

35. At Tab 16 is an Amnesty International Report, dated August 2002, entitled "Liberia, Hassan Bility, Incomunicado detention without charge" which tells of the detention in Liberia of Prosecution Witness TF1-355, journalist Hassan Bility, in Liberia in 2002. The Trial Chamber finds that the information in the article is outside the scope of the Indictment, and is largely irrelevant. However, there is one paragraph on page one which does have some relevance; it asserts that the Liberian Government has been condemned by other countries for its lack of respect for human rights. This information goes to the acts and conduct of the Accused and the Prosecution concedes that other passages also in the article also go to the acts and conduct of the Accused. The document then is inadmissible in that part of it goes to the acts and conduct of the Accused and the remainder is irrelevant. The Trial Chamber notes that Witness TF1-355 gave evidence in this case from 12 January to 19 January 2009 and that this document was not put to him during his testimony.



Document 17

36. At Tab 17 is an Amnesty International report, dated 28 October 2002 entitled "Fear for safety/ Fear of torture or ill-treatment/incommunicado detention/health concern." This is another article concerning the detention of journalist Hassan Bility (Witness TF1- 355). It was also not put to the Witness when he gave evidence in this case. The Trial Chamber agrees with the Defence submission that the document is irrelevant and thus inadmissible.

Document 18

37. At Tab 18 is a report by the Women Waging Peace and The Policy Commission entitled "From Combat to Community: Women and Girls of Sierra Leone" dated January 2004, the subject of which is the abuse of women and girls during the conflict in Sierra Leone. The Prosecution tenders certain portions of the document as evidence of chapeau elements and crime base. The Trial Chamber agrees that the reference to Foday Sankoh leading the invasion of Sierra Leone from Liberia is sufficiently proximate to the Accused that its admission in the absence of an opportunity to cross-examine on the evidence would unfairly prejudice the Accused. The whole of page 2 is therefore ruled to be inadmissible. However, the Trial Chamber considers that the passages marked by the Prosecution on pages 12, 13, and 14 comply with the requirements of Rule 92bis and are admissible.

Document 19

38. At Tab 19 is a document by the ICRC, dated 15 December 2000, entitled "Update No. 36/2000 on ICRC activities in West Africa: Sierra Leone-Guinea-Liberia." The passage on page 1 which the Prosecution seeks to have admitted into evidence tells of a series of cross-border raids from Sierra Leone and Liberia into Guinea. The Trial Chamber agrees with the Defence submission that such evidence links Sierra Leone and Liberia in waging warfare and thus goes to a critical element in the Prosecution's case. The Trial Chamber therefore rejects the tender on the ground that it would be unfair to admit such evidence when the Defence has not had an opportunity to cross-examine on it.

Document 20

39. At Tab 20 is an Amnesty International report dated 12 April 1996, entitled "Liberia: Action Must be Taken Now to Protect Lives of Civilians Threatened by Armed Conflict". The Trial Chamber agrees with the Defence submission that the information sought to be admitted by the

Prosecution is confined to the Liberian conflict and is thus outside the scope of the Indictment and irrelevant. The Trial Chamber therefore rules the document inadmissible.

V. DISPOSITION

FOR THE ABOVE REASONS, the Trial Chamber:

DISMISSES the Prosecution's application for admission of the documents under Rule 89(C);

GRANTS the Prosecution's alternative application in part and

ORDERS that:

Document 1: The pages from page 1 up to the second paragraph on page 5, subject to the redaction of the third paragraph on page 4 (commencing "Witnesses and victims .."), are admitted into evidence as Prosecution Exhibit P-328;

Document 2: Part III, subject to the redaction of the first and second paragraphs on page 1 and the second paragraph on page 3 (which commences "The war in Sierra Leone..."), is admitted into evidence as Prosecution Exhibit P-329;

Document 5: Pages 25 to 46 as marked by the Prosecution, subject to the redaction of: (i) the paragraph directly under the heading "Rebel Forces" on page 26, (ii) the third paragraph on page 27 (directly above the heading "Pro-Government Forces"); (iii) the third and fourth paragraphs on page 29 beginning "This extreme sexual violence" and ending "The rebels were mixed Sierra Leoneans and Liberians"; (iv) the third paragraph on page 31 beginning "The rebels, who spoke Liberian English"; (v) the second-last paragraph on page 32, which refers to a "Colonel Titus, a mercenary who spoke Liberian English"; (vi) the fourth paragraph on page 37, which refers to a Liberian rebel; and (vii) the fifth paragraph on page 43, which refers to "Commander Patrick, a Liberian", are admitted into evidence as Prosecution Exhibit P-330;

Document 6: The parts of pages 2 to 5 marked by the Prosecution are admitted into evidence as Prosecution Exhibit P-331;

Document 7: Pages 1 to 4 are admitted into evidence as Prosecution Exhibit P-332;

Document 8: The parts marked by the Prosecution on pages 2 to 3 and 37 to 61 are admitted into evidence as Prosecution Exhibit P-333;

Document 9: The parts of pages 1 and 15 marked by the Prosecution are admitted into evidence as Prosecution Exhibit P-334;

Document 10: The parts of pages 375 and 377 to 380 marked by the Prosecution are admitted into evidence as Prosecution Exhibit P-335;

Document 18: The passages marked by the Prosecution on pages 12, 13 and 14 are admitted into evidence as Prosecution Exhibit P-336;

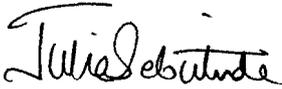
and

DISMISSES the Prosecution application for admission into evidence of the remaining documents.

Done at The Hague, The Netherlands, this 23rd day of February 2009.


Justice Teresa Doherty


Justice Richard Lussick
Presiding Judge


Justice Julia Sebutinde

