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SCSL-03-01-T  
(24372-24382)

24372



## SPECIAL COURT FOR SIERRA LEONE

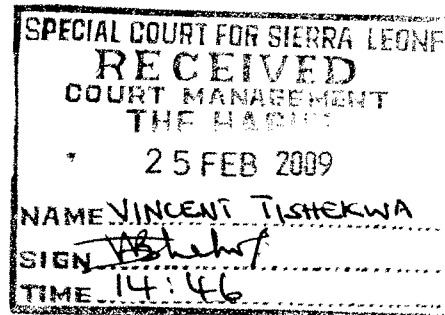
### TRIAL CHAMBER II

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: 25 February 2009



PROSECUTOR

v.

Charles Ghankay TAYLOR

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### DECISION ON PROSECUTION MOTION FOR ADMISSION OF BBC RADIO BROADCASTS

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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 BBC Radio Broadcasts, filed on 12 December 2008 (“Motion”);<sup>1</sup>

NOTING the Defence Response to Prosecution Motion for Admission of Documents of BBC Radio Broadcast, filed on 5 January 2009 (“Response”);<sup>2</sup>

NOTING the Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents of BBC Radio Broadcasts, filed on 9 January 2009 (“Reply”);<sup>3</sup>

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone (“Statute”) and Rules 26bis, 89(C), 92bis and 95 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 audio clips (“BBC Clips”) (identified in Annex A) of the Motion and accompanying unofficial transcripts (“BBC Transcripts”) (provided in Annex B of the Motion) pursuant to (i) Rule 89(C) or, in the alternative, (ii) Rules 89 (C) and 92bis.<sup>4</sup> The actual audio clips are recorded on a CD marked “BBC 12.12.08” accompanying the Motion.

2. The Prosecution submits, notwithstanding a decision of the Trial Chamber to the contrary, that the Taylor 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.<sup>5</sup>

3. In the alternative, the Prosecution submits that if Rule 92bis applies, then the requirements of Rules 89 and 92bis must be satisfied and that for evidence comprising public radio broadcasts and their associated transcripts to be admitted pursuant to both Rules, the evidence must be relevant, its reliability susceptible of confirmation and its admission not unfairly prejudicial to the Accused. In support of this alternative submission, the Prosecution relies on its arguments put forward in an earlier motion<sup>6</sup> and, in this regard, asserts that its submissions regarding documentary evidence not

<sup>1</sup> SCSL-03-01-T-698.

<sup>2</sup> SCSL-03-01-T-703.

<sup>3</sup> SCSL-03-01-T-707.

<sup>4</sup> Motion, paras 1, 18.

<sup>5</sup> Motion, para. 3.

<sup>6</sup> 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 14 - 17.

prepared for the purposes of legal proceedings apply equally to anything on which information not prepared for the purposes of legal proceedings is recorded, such as audio-recordings.<sup>7</sup>

4. In support of its application for admission under Rule 89(C), the Prosecution submits that the relevance of each BBC Clip is identified in Annex A of the Motion and, as noted therein, the clips relate to: (i) the chapeau requirements of the crimes charged; (ii) the several forms of liability alleged by the Prosecution in this case; (iii) crime base; and (iv) evidence of a consistent pattern of conduct admissible under Rule 93. Further, the BBC Clips establish the notoriety of the crimes and are therefore relevant to intent, knowledge, awareness or reasonable foreseeability of the crimes and also corroborate the evidence on record.<sup>8</sup> The BBC Clips are taken from the BBC radio programme "Focus on Africa" which was aired publicly. Therefore, submits the Prosecution, the material does not impact adversely and unfairly on the integrity of the proceedings nor is it of such a nature that its admission would bring the administration of justice into serious disrepute.<sup>9</sup> The Prosecution contends that the inability to cross-examine a witness is a matter going to the weight of the evidence, not its admissibility and that no undue prejudice to the Accused arises from the fact that an audio-recording and a transcript thereof are produced without calling a witness.<sup>10</sup> Furthermore, the authenticity of the BBC clips can be established by the content of the clips themselves, and from the original CDs, which are available for inspection and production if required.<sup>11</sup>

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,<sup>12</sup> their reliability is susceptible of confirmation<sup>13</sup> and that their admission would cause no undue prejudice to the Accused.<sup>14</sup> The Prosecution also states that those parts of the BBC material going to the acts and conduct of the Accused are identified in Annex A of the Motion by underlining the relevant summarized text and in Annex B of the Motion by underlining the relevant part of the transcript.<sup>15</sup> Further, while the Prosecution acknowledges that the BBC materials "do concern the 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 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".<sup>16</sup>

### *Response*

6. The Defence opposes the Motion on the grounds that the BBC material is inadmissible 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 his alleged subordinates, "and/or their probative value is outweighed by their prejudicial effect."<sup>17</sup> On the question of the correct legal principles to be applied when a party seeks admission of a document without a witness, the Defence relies on its submissions made in its response to an earlier motion.<sup>18</sup>

<sup>7</sup> Motion, para 6.

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

<sup>9</sup> Motion, para. 9.

<sup>10</sup> Motion, para. 10.

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

<sup>12</sup> Motion, para. 13.

<sup>13</sup> Motion, para. 14.

<sup>14</sup> Motion, para. 15.

<sup>15</sup> Motion, paras 7, 16.

<sup>16</sup> Motion, para. 17.

<sup>17</sup> Response, paras 2, 21.

<sup>18</sup> *Prosecutor v. Taylor*, SCSL03-010T-664, Defence Response to Prosecution Motion for the Admission of Documents of the United Nations and United Nations Bodies, 10 November 2008, paras 3-19; Response, para 3.

7. The Defence specifically submits that the BBC material should be excluded because (i) portions of the BBC material go directly to the acts and conduct of the Accused and it would be highly prejudicial for such evidence to be admitted into evidence without a witness who could speak to their contents;<sup>19</sup> (ii) the Prosecution seeks to admit evidence material to command responsibility or joint criminal enterprise without giving the Defence an opportunity for cross-examination;<sup>20</sup> (iii) as a pre-condition to admission, the Prosecution should have produced a witness to decipher, explain and provide context to the material;<sup>21</sup> (iv) the Accused is prejudiced in that witnesses who could have testified to the content of the material have already given evidence and cannot be cross-examined to test the material, despite the fact that the Prosecution has had the material in its possession for a long time;<sup>22</sup> (v) the probative value of the BBC material is outweighed by its prejudicial effect in that during a conflict the media is manipulated for propaganda purposes and Charles Taylor was condemned by the public years ago;<sup>23</sup> (vi) all 29 documents in the BBC material were produced and were in the public domain before the case commenced and were available to the Prosecution when it presented its case and therefore should be excluded at this stage of the trial;<sup>24</sup> (vii) several of the documents in the BBC material refer to crime-base evidence which is of insufficient significance at this stage of the trial and many other documents refer to events outside the scope of the Indictment;<sup>25</sup> (viii) all of the documents in the BBC material, except for 1, 3, 8, 17, 28 and 29, refer to matters already spoken to by numerous witnesses and in documentary evidence before the court and such evidence is therefore cumulative and not admissible;<sup>26</sup> (ix) all of the transcripts in the BBC material, except 16, 17, 19 and 27, are based on anonymous or hearsay sources which are incapable of being tested in cross-examination.<sup>27</sup>

### *Reply*

8. The Prosecution disputes the arguments of the Defence<sup>28</sup> and, while acknowledging that certain of the documents do contain evidence that might be considered acts and conduct of the Accused, submits that such fact does not dictate that the documents are inadmissible in the absence of a witness.<sup>29</sup>

## II. APPLICABLE LAW

9. 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.
- (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.

<sup>19</sup> Response, paras 4,5.

<sup>20</sup> Response, paras 6, 7.

<sup>21</sup> Response, paras 8,9.

<sup>22</sup> Response, para. 11.

<sup>23</sup> Response, paras 12, 13.

<sup>24</sup> Response, paras 14-17.

<sup>25</sup> Response, para. 18.

<sup>26</sup> Response, para. 19.

<sup>27</sup> Response, para. 20.

<sup>28</sup> Reply, paras 4-15.

<sup>29</sup> Reply, paras 4, 17.

(C) A Chamber may admit any relevant evidence.

10. 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**

- (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.

11. 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 2009<sup>30</sup> (“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.<sup>31</sup> [...]

[...]

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.<sup>32</sup> [...]

[...]

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).<sup>33</sup> [...]

12. 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.<sup>34</sup> 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

<sup>30</sup> Prosecutor v. Taylor, 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”).

<sup>31</sup> Appeals Chamber Decision, para. 30 (original footnotes omitted).

<sup>32</sup> Appeals Chamber Decision, para. 33(original footnotes omitted).

<sup>33</sup> Appeals Chamber Decision, para. 34.

<sup>34</sup> 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.

at trial,<sup>35</sup> and what weight, if any, should be attached to it.<sup>36</sup> Simply admitting a document into evidence does not amount to a finding that the evidence is credible.<sup>37</sup>

13. 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.<sup>38</sup>

14. 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.<sup>39</sup> 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.<sup>40</sup>

15. 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.<sup>41</sup>

16. 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.”<sup>42</sup>

### III. DELIBERATIONS

17. Dealing first with the Prosecution’s 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).<sup>43</sup> The said

<sup>35</sup> *Prosecutor v. Sesay, Kallon & Gbao*, SCSL04-15-T, Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92bis, 15 May 2008, para. 30.

<sup>36</sup> *Prosecutor v. Norman, Fofana & Kondewa*, SCSL04-14-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*, SCSL04-15-T, Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92bis, 15 May 2008, para. 30.

<sup>37</sup> *Prosecutor v. Norman, Fofana & Kondewa*, SCSL04-14-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*, SCSL04-15-T, Decision on Sesay Defence Motion and Three Sesay Defence Applications to Admit 23 Witness Statements Under Rule 92bis, 15 May 2008, para. 31.

<sup>38</sup> *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.*, SCSL04-15-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 also *Prosecutor v. Taylor*, SCSL03-1-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.

<sup>39</sup> *Galic*, *ibid.*, para. 10; see also Prosecution’s Second Amended Indictment (“Indictment”), paras 33, 34.

<sup>40</sup> *Galic*, *ibid.*, para. 10, see also Indictment, para. 33.

<sup>41</sup> *Galic*, *ibid.*, para. 11.

<sup>42</sup> *Galic*, *ibid.*, para. 13. See also *Prosecutor v. Brdanin & Talic*, IT-99-36-T, Confidential Decision on the Admission of Rule 92bis Statements, 1 May 2002, at para. 14.

<sup>43</sup> Appeals Chamber Decision, para. 34.

documents were tendered in lieu of oral testimony and therefore should have been tendered under Rule 92bis.<sup>44</sup> Accordingly, the Prosecution application pursuant to Rule 89(C) must fail.

18. Turning now to the Prosecution's alternative application, the Trial Chamber will consider the admissibility of each of the BBC Clips and its Related Transcript under Rule 92bis.

19. After having carefully examined the BBC Transcripts provided in Annex B, the Trial Chamber finds that the following BBC Clips are not admissible under Rule 92bis:

**Clip 1: BBC Clip D0000533 Track 1 dated 15 December 1998 17:05 and Related Transcript**

20. Clip 1 is a report of a confrontation between the Government of Liberia and two Liberian newspapers over claims of military training of about 500 children aged 10 to 17 years at Schefflin barracks in Liberia. It reports on allegations that the Liberian Government was involving children in military activities in breach of the Convention on the Rights of Children in the African Charter on Human Rights. The Prosecution seeks admission of the Clip as evidence establishing (*inter alia*) the use of child soldiers and a consistent pattern of conduct under Rule 93. The Trial Chamber finds that this evidence goes to the acts and conduct of the Accused and is therefore inadmissible under Rule 92bis.

**Clip 7: BBC Clip D0000525 Track 1 dated 24 December 1998 18:30 and Related Transcript**

21. As acknowledged by the Prosecution, almost all of this clip goes to the acts and conduct of the Accused or to the acts and conduct of a proximate subordinate. The Defence objects to the admission of the Clip and the Trial Chamber finds that it is clearly inadmissible.

**Clip 10: BBC Clip D0000550 Track 2 dated 30 December 1998 17:05 and Related Transcript**

22. This Clip reports on the UN Security Council condemning the upsurge of rebel attacks and calling upon countries to stop interfering in Sierra Leone. Furthermore, correspondents say that Liberia is accused by several regional countries of backing the rebels, who have said that they are poised to attack Freetown. The Prosecution claims that the information is evidence of the individual criminal responsibility of the Accused relevant to intent, knowledge and awareness, and also to joint criminal enterprise, including participation and reasonable foreseeability of crimes; and to planning and aiding and abetting. The Trial Chamber finds that the report goes to proof of the acts and conduct of the Accused and is therefore inadmissible under Rule 92bis.

**Clip 18: BBC Clip D0000555 Track 2 dated 10 January 1999 17:05 and Related Transcript**

23. This Clip reports on the arrival of hundreds of Nigerian ECOMOG troops in Freetown for deployment against the rebels. The Nigerians are reported to have advanced against rebels in densely populated areas of Freetown, and a rebel commander has threatened to set fire to the city. Hundreds of thousands of civilians were said to be trapped in the fighting and were running short of food and water. Liberia is reportedly sending a delegation to Burkina Faso, Ghana, Nigeria and Togo to try to organise a regional summit. The Prosecution tenders this Clip as evidence of the individual criminal responsibility of the Accused relevant to intent, knowledge, and awareness, and also to joint criminal enterprise, including plurality of persons and reasonable foreseeability of crimes. The Trial Chamber finds that the information in this Clip goes to the acts and conduct of the Accused and is not admissible under Rule 92bis.

**Clip 22: BBC Clip D000522 Track 1 dated 16 January 1999 17:05 and Related Transcript**

24. This is a report on the heavy fighting in Freetown, specifically that retreating rebels burnt everything in their wake. The report mentions that "the AFRC/RUF rebels, the Liberian

<sup>44</sup> 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.

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government, and President Kabbah have been arguing the fine points of a ceasefire and the release of RUF rebel leader Foday Sankoh". Later in the report the force destroying everything in their wake was said to be the RUF. The Prosecution tenders this Clip as evidence of (*inter alia*) the individual criminal responsibility of the Accused relevant to intent, knowledge, awareness, and also relevant to joint criminal enterprise, including plurality of persons and reasonable foreseeability of crimes. The Trial Chamber finds that the report goes to the acts and conduct of the Accused and is not admissible under Rule 92bis.

**Clip 27: BBC Clip D0000519 Track 1 dated 26 January 1999 17:05 and Related Transcript**

25. This Clip quotes a reporter as stating that President Jerry Rawlings of Ghana "lambasted Liberian president Charles Taylor, for his alleged support for the rebels in Sierra Leone". President Rawlings is reported to have said that "given the role that ECOMOG played to end the war in Liberia, Taylor's alleged backing for the Sierra Leonean rebels who are now fighting ECOMOG feels like a stab in the back". The Trial Chamber finds that the report goes to the acts and conduct of the Accused and is not inadmissible under Rule 92bis.

26. In addition, **Clip 16: BBC Clip D0000514 Track 2 dated 8 January 1999 15:05 and Related Transcript** has already been admitted into evidence as Exhibit P-85B and the Prosecution has consequently withdrawn its tender.<sup>45</sup>

27. Furthermore, the opinion evidence contained in **Clip 14: BBC Clip D0000528 Track 2 dated 4 January 1999 18:30 and Related Transcript** is not admissible. This Clip is an interview with reporter Al Hassan Cillah who tells of reports of about 3000 Sierra Leonean refugees fleeing the fighting between the RUF/ Junta forces and ECOMOG and Kamajors in the northern region on Sierra Leone (Makeni, Lunsar and Port Loko). The attacks led to the capture of a number of civilians, killings, looting of civilian property and burning civilian homes. The Prosecution tenders this report as relevant to chapeau requirements of Crimes against Humanity, violations of Common Article 3 Common to the Geneva Conventions and of Additional Protocol II and other serious violations of International Humanitarian Law, and also as evidence of the individual criminal responsibility of the Accused relevant to intent, knowledge, awareness, and to joint criminal enterprise including reasonable foreseeability of crimes, and to Rule 93 evidence (looting, burning, terror, forced military conscription and killing). The Defence objects to its admission as not being sufficiently significant, cumulative and from anonymous/hearsay sources. The Trial Chamber opines that cumulative evidence is not excluded by Rule 92bis and that the Defence objection regarding sources goes to weight not admissibility. However, while parts of the Clip are relevant, the Trial Chamber considers that the following parts consist of the reporter's own opinions rather than facts: (i) when speaking of refugees being taken to clinics, the reporter (Cillah) says "I mean, where they're giving treatment and sustain treatment just to get them relaxed and refreshed;" (ii) when reporting of the abduction of a number of young men and women, Cillah ventures this opinion: "I mean these obviously are going to be retrained to fight on the side of the rebels;" (iii) speaking of people killed in the attacks, Cillah says "it would appear that particularly in Port Loko, these rebels, they targeted senior functionaries of government or otherwise senior supporters of the ruling SLPP party;" (iv) answering a question about people fleeing into Guinea from Sierra Leone, Cillah says "it would appear that these refugees are now stopping at the last Sierra Leonean town of Kambia and adopting a wait-and-see attitude as to whether they should come into Guinean territory or go back to their homes". Such opinion evidence is not admissible, although the remainder of the information in the Clip is relevant.

28. The Trial Chamber finds that the information contained in the remaining Clips sought to be admitted into evidence by the Prosecution meets the three-fold test for admission under Rule 92bis in that it is relevant, its reliability is susceptible of confirmation in due course, and it does not go to

<sup>45</sup> Reply, para. 16.

*JL*






proof of the acts and conduct of the Accused. This finding includes Clip 14, subject to the redaction of the opinion evidence mentioned above.

#### IV. DISPOSITION

FOR THE ABOVE REASONS, the Trial Chamber

DISMISSES the Prosecution's application for admission of the BBC Clips and BBC Transcripts under Rule 89(C);

GRANTS the Prosecution's alternative application in part and

ORDERS that

- (a) Clip 2: BBC Clip D0000510 Track 1 dated 20 December 1998 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-338(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-338(B);
- (b) Clip 3: BBC Clip D0000509 Track 1 dated 21 December 1998 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-339(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-339(B);
- (c) Clip 4: BBC Clip D0000524 Track 1 dated 22 December 1998 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-340(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-340(B);
- (d) Clip 5: BBC Clip D0000523 Track 1 dated 22 December 1998 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-341(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-341(B);
- (e) Clip 6: BBC Clip D0000523 Track 2 dated 23 December 1998 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-342(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-342(B);
- (f) Clip 8: BBC Clip 0000537 Track 2 dated 27 December 1998 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-343(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-343(B);
- (g) Clip 9: BBC Clip 0000550 Track 1 dated 30 December 1998 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-344(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-344(B);
- (h) Clip 11: BBC Clip 0000549 Track 1 dated 30 December 1998 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-345(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-345(B);

- (i) Clip 12: BBC Clip D0000539 Track 1 dated 31 December 1998 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-346(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-346(B);
- (j) Clip 13: BBC Clip D0000528 Track 1 dated 4 January 1999 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-347(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-347(B);
- (k) Clip 14: BBC Clip D0000528 Track 2 dated 4 January 1999 - **subject to the redaction of the opinion evidence set out in paragraph 27 above** - identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-348(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-348(B);
- (l) Clip 15: BBC Clip D0000513 Track 1 dated 7 January 1999 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-349(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-349(B);
- (m) Clip 17: BBC Clip D0000554 Track 1 dated 8 January 1999 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-350(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-350(B);
- (n) Clip 19: BBC Clip D0000515 Track 1 dated 11 January 1999 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-351(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-351(B);
- (o) Clip 20: BBC Clip D0000515 dated 11 January 1999 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-352(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-352(B);
- (p) Clip 21: BBC Clip D0000516 Track 2 dated 12 January 1999 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-353(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-353(B);
- (q) Clip 23: BBC Clip D0000542 Track 2 dated 18 January 1999 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-354(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-354(B);
- (r) Clip 24: BBC Clip D0000542 Track 1 dated 18 January 1999 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-355(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-355(B);
- (s) Clip 25: BBC Clip D0000507 Track 2 dated 22 January 1999 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-356(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-356(B);
- (t) Clip 26: BBC Clip D0000508 Track 1 dated 23 January 1999 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-357(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-357(B);

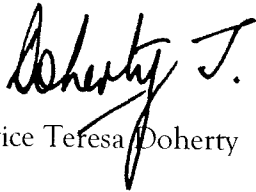
(u) Clip 28: BBC Clip D0000532 Track 1 dated 28 January 1999 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-358(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-358(B);

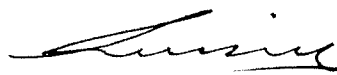
(v) Clip 29: BBC Clip D0000545 Track 3 dated 1 February 1999 identified in Annex A of the Motion is admitted into evidence as Prosecution Exhibit P-359(A) and the Related Transcript provided in Annex B of the Motion is admitted into evidence as Prosecution Exhibit P-359(B);

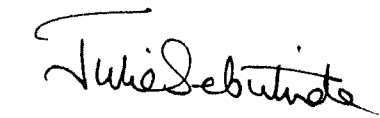
and

**DISMISSES** the Prosecution's application for admission into evidence of the remaining BBC Clips and BBC Transcripts.

Done at The Hague, The Netherlands, this 25<sup>th</sup> day of February 2009.

  
Justice Teresa Doherty

  
Justice Richard Lussick  
Presiding Judge

  
Justice Julia Sebutinde

