

TRIAL CHAMBER II ("Trial Chamber") of the Special Court for Sierra Leone ("Special Court"), composed of Justice Teresa Doherty, presiding, Justice Richard Lussick and Justice Julia Sebutinde;

SEISED of the Prosecution Notice Pursuant to Rule 92bis to Admit Information into Evidence ("Notice");

SEISED of the Joint Defence Objections to Prosecution Notice Pursuant to Rule 92bis to Admit Information into Evidence, filed 15 November 2005;

NOTING the oral application of the Prosecution on 16 November 2005 to tender the information and documents submitted in their Notice;

MINDFUL OF the Trial Chamber's *Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence*, dated 25 October 2005¹;

CONSIDERING the Appeals Chamber's *Fofana – Decision on Appeal against "Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence"*, dated 16 May 2005 ("Appeals Decision on Judicial Notice")²;

NOTING that Rule 89 of the Rules provides that:

- (A) The rules of evidence set forth in this Section shall govern the proceedings before the Chambers. The Chambers shall not be bound by national rules of evidence.
- (B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.
- (C) A Chamber may admit any relevant evidence.

NOTING that Rule 92bis of the Rules provides that:

- (A) A Chamber may admit as evidence, in whole or in part, information in lieu of oral testimony.
- (B) The information submitted may be received in evidence if, in the view of the Trial Chamber, it is relevant to the purpose for which it is submitted and if its reliability is susceptible of confirmation.
- (C) A party wishing to submit information as evidence shall give 10 days notice to the opposing party. Objections, if any, must be submitted within 5 days.

CONSIDERING that Rule 89(C) vests the Trial Chamber with discretionary power to admit any relevant evidence and that the Trial Chamber has repeatedly ruled that "evidence may be excluded

¹ *Prosecutor v. Brima, Kamara, Kanu*, Case No. SCSL-04-16-PT, Decision on the Prosecution Motion for Judicial Notice and Admission of Evidence, 25 October 2005.

² *Prosecutor v. Norman, Kondewa, Fofana*, Case No. SCSL-04-14-AR73, *Fofana – Decision on Appeal against 'Decision on Prosecution's Motion for Judicial Notice and Admission of Evidence'*, 16 May 2005.

because it is unreliable, but it is not necessary to demonstrate the reliability of the evidence before it is admitted.”³

NOTING the Appeals Chamber interpretation of Rule 92bis of the Rules:

SCSL Rule 92bis is different to the equivalent Rule in the ICTY and ICTR and deliberately so. The judges of this Court, at one of their first plenary meetings, recognised a need to amend ICTR Rule 92bis in order to simplify this provision for a court operating in what was hoped would be a short time-span in the country where the crimes had been committed and where a Truth and Reconciliation Commission and other authoritative bodies were generating testimony and other information about the recently concluded hostilities. The effect of the SCSL Rule is to permit the reception of “information” – assertions of fact (but not opinion) made in documents or electronic communications – if such facts are relevant and their reliability is “susceptible of confirmation”. This phraseology was chosen to make clear that proof of reliability is not a condition of admission: all that is required is that the information should be capable of corroboration in due course.”⁴

CONSIDERING that the reliability of the evidence is something to be considered by the Trial Chamber at the end of the trial when weighing and evaluating the evidence as a whole, in light of the context and nature of the evidence itself, including the credibility and reliability of the relevant evidence.

CONFIRMING HOWEVER that when the Trial Chamber comes to consider the reliability of the present evidence it will disregard opinion evidence and any evidence which goes to the ultimate issue, or which draws any conclusions or inferences which the Trial Chamber will have to draw, or which makes any judgments which the Trial Chamber will have to make;

NOTING that the Defence did not object to the admissibility of Documents 1, 2, 4, 7, 11, 12, 55, 56, 57, 58, 70, 78, 86, Communiqué (exhibit 57 from original Prosecution Proposed Exhibit list, filed on 26 April 2004), as listed in Annex 1 to the Notice;

FOR THE ABOVE REASONS the Trial Chamber partially grants the Prosecution application

AND ORDERS AS FOLLOWS:

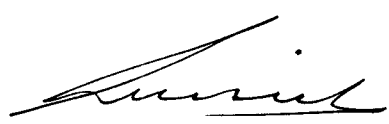
1. The information contained in the following documents satisfies the requirements of Rule 92bis and is admitted into evidence to the extent sought in Annex 1 to the Notice:
 - (a) Documents 1, 2, 4, 7, 11, 12, 13, 14, 15, 16, 17, 18, 19, 29, 32, 34, 35, 38, 45, 46, 52, 53, 54, 55, 56, 57, 58, 60, 70, 77, 78, 82, 83, 85, 86, 88, 89, and Communiqué Exhibit No. 57 from the original Prosecution Proposed Exhibit List, filed on 26 April 2004;
 - (b) Documents 26 and 31, on the condition that the Prosecution files the complete documents;
 - (c) Document 81, on the condition that the Prosecution files a legible copy.

³ *Prosecutor v. Brima, Kamara, Kanu*, Decision on Joint Defence Application for Leave to Appeal from Decision on Defence Motion to Exclude all Evidence from Witness TF1-277, 2 August 2005, para. 6.

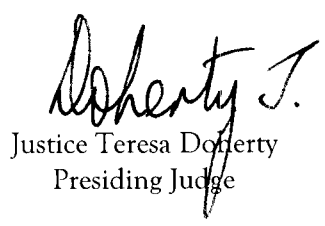
⁴ *Prosecutor v. Norman, Kondewa, Fofana*, Case No. SCSL-04-14-AR73, Fofana – Decision on Appeal against ‘Decision on Prosecution’s Motion for Judicial Notice and Admission of Evidence’, 16 May 2005, para. 26.

2. As regards Document 76, the information on pages 6, 12, 14 and 16 is admitted into evidence, but the information on page 2 relates to a period not relevant to the indictment (i.e. before 30 November 1996) and is therefore inadmissible and its tender as evidence is rejected.
3. As regards Document 79, Decrees 5/97 and 7/97 are admitted into evidence and Decree 1/97 is admitted into evidence on the condition that the Prosecution files the complete document.
4. As regards Exhibit No. 144 from the original Prosecution Proposed Exhibit List, filed on 26 April 2004 (unedited video footage, 6 January 1999), since there is nothing in the video to indicate where it was taken and no sources are identified, relevance cannot be established and its tender as evidence is therefore rejected.
5. The information admitted into evidence is allocated the Prosecution Exhibit numbers indicated in Annex A to this Order.

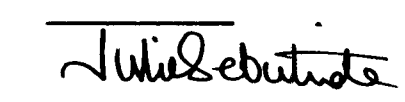
Done at Freetown, Sierra Leone, this 18th day of November 2005.



Justice Richard Lussick



Justice Teresa Doherty
Presiding Judge



Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]

ANNEX A

Document Type	No. in Annex B, Judicial Notice Motion	Name/Description of Document	Information Admitted in Evidence	Allocated Prosecution Exhibit No.
UN Document	1	Security Council Resolution 1132 (8 October 1997) Concerning Sierra Leone and the AFRC.	Entire document	P 37
UN Document	2	Security Council Resolution 1181 (13 July 1998) Concerning Sierra Leone and the ongoing conflict.	Entire document	P 38
UN Document	4	Security Council Resolution 1270 (22 October 1999) concerning Sierra Leone.	Page 4, paragraph 18.	P 39
UN Document	7	Security Council Resolution 1306 (5 July 2000) concerning diamond trade.	Entire document	P 40

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Document Type	No. in Annex B, Judicial Notice Motion	Name/Description of Document	Information Admitted in Evidence	Allocated Prosecution Exhibit No.
UN Document	11	Fourth Report of the Secretary General on the Situation in Sierra Leone, 18 March 1998 (S/1998/249)	Pages 2, 5, 6-7, paragraphs 6, 20 and 28.	P 41
UN Document	12	Fifth Report of the Secretary General on the Situation in Sierra Leone, 9 June 1998 (S/1998/486)	Pages 5, 7, and 8, paragraphs 27, 35, 36, and 44.	P 42
UN Document	13	Report of the United Nations Observer Mission in Sierra Leone (UNOMSIL), First Progress Report, 12 August 1998 (S/1998/750)	Pages 3- 4, 7- 9, paragraphs 10, 12-14 and 31-38.	P 43
UN Document	14	Report of the United Nations Observer Mission in Sierra Leone (UNOMSIL), Second Progress Report, 16 October 1998 (S/1998/960)	Pages 3, 5-6, paragraphs 9-10 and 21-23.	P 44

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Document Type	No. in Annex B, Judicial Notice Motion	Name/Description of Document	Information Admitted in Evidence	Allocated Prosecution Exhibit No.
UN Document	15	Report of the United Nations Observer Mission in Sierra Leone (UNOMSIL), Third Progress Report, 16 December 1998 (S/1998/1176)	Pages 4-5, 8, 14, Paragraphs 15-16, 18, 23, 36-39 and 71.	P 45
UN Document	16	Report of the United Nations Observer Mission in Sierra Leone (UNOMSIL), Fifth Report, 4 March 1999 (S/1999/237)	Pages 1, 5, paragraphs 2, 21-27.	P 46
UN Document	17	Report of the United Nations Observer Mission in Sierra Leone (UNOMSIL), Sixth Report, 4 June 1999 (S/1999/645)	Pages 5, 7-8, paragraphs 19-20, and 28-33.	P 47
UN Document	18	UN Officer for the Coordination of Humanitarian Affairs, Sierra Leone Humanitarian Situation Report, 5 June 1997	Page 2, paragraph 5.	P 48

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Document Type	No. in Annex B, Judicial Notice Motion	Name/Description of Document	Information Admitted in Evidence	Allocated Prosecution Exhibit No.
UN Document	19	UN Officer for the Coordination of Humanitarian Affairs, Sierra Leone Humanitarian Situation Report, 14 July 1997	Page 1-2, paragraphs 1-5.	P 49
UN document	26	Human Rights Assessment Mission to Freetown 25 January and 1 to 4 February 1999, Findings and Recommendations	Pages 3-9.	P 50 (on the condition that complete document is filed)
UN document	29	Report on Atrocities Committed Against the Sierra Leone Population, UNHCR Conakry Branch Officer, 28 January 1999.	Victim reports Cases #02, #04, #05, #06, #07, #15, #16, #18, #19, and #33.	P 51
NGO Report	31	Human Rights Watch, "Sowing Terror, Atrocities against civilians in Sierra Leone", Vol. 10, No.3 (A) July 1998.	Pages 4, 11, 12, 13, 16, 17, 19, 20, 21, 22, 23.	P 52 (on the condition that complete document is filed)

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Document Type	No. in Annex B, Judicial Notice Motion	Name/Description of Document	Information Admitted in Evidence	Allocated Prosecution Exhibit No.
NGO Report	32	Human Rights Watch, "We'll kill you if you cry, Sexual Violence in the Sierra Leone Conflict" Vol.15, No. 1 (A), January 2003.	Pages 3, 11, 12, 25, 26, 27, 35, 36, 42, 43.	P 53
NGO Report	34	Amnesty International, "Sierra Leone 1998 - a year of atrocities against civilians".	Pages 1, 2, 3, 13, 14, 18, 19, 20, 21, 22, 23, 26.	P 54
NGO Report	35	Amnesty International, "Sierra Leone: Childhood - a casualty of conflict", AI Index: AFR 51/69/00, 31 August 2000,	Pages 3, 7-8, 22.	P 55
NGO Report	38	Amnesty International Annual Report 2000, "AI Report 2000: Sierra Leone".	Pages 2 and 3.	P 56

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Document Type	No. in Annex B, Judicial Notice Motion	Name/Description of Document	Information Admitted in Evidence	Allocated Prosecution Exhibit No.
NGO Report	45	<p>No Peace without Justice, Sierra Leone Conflict Mapping Program, 9 March 2004</p> <p>and</p> <p>Letter from No Peace without Justice certifying the report.</p>	<p>No Peace without Justice: pp. 1-3</p> <p>Conflict Mapping Program: pp. 7-11</p> <p>Overview of the conflict: pp. 31-39, 49-51</p> <p>Bombali: 125-129 / 132-144</p> <p>Koinadigu: 163, 170-180</p> <p>Port Loko: 185-188 / 195-208</p> <p>Tonkolili: 218-219 / 233-242</p> <p>Kailahun: 251-253 / 276-281</p> <p>Kenema: 288-290/ 317-325</p> <p>Kono: 330-332/ 350-375</p> <p>Bo: 381-383/ 406-408</p> <p>Bonthe: 412-415/ 442,444-445</p> <p>Moyamba: 450-453/ 471,473, 476, 478</p> <p>Pujehun: 482-484/ 505, 513</p> <p>Western Area: 514-517 / 526, 527, 529-531, 533, 540-544</p>	P 57

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Document Type	No. in Annex B, Judicial Notice Motion	Name/Description of Document	Information Admitted in Evidence	Allocated Prosecution Exhibit No.
NGO Report	46	War-Related Sexual Violence in Sierra Leone, Report by Physicians for Human Rights, published 2002. ISBN: 1-879707-37-3.	Pages: 2-3, 19, 29, 34, 46-48, 52, 56-57, and 75-76.	P 58
Public document	52	Statement on the historic return to Freetown, Sierra Leone, of the Leaders of the Alliance of the Revolutionary United Front of Sierra Leone and the Armed Forces Revolutionary Council, 3 October 1999. (Freetown, Sunday. October 3, 1999).	Entire document.	P 59
Personal statement	53	Personal Statement by Lt. JP Koroma on 1 October 1999.	Entire document.	P 60
Public document	54	Revolutionary United Front's Apology to the Nation, delivered on SLBS, 18 June 1997.	Entire document.	P 61

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Document Type	No. in Annex B, Judicial Notice Motion	Name/Description of Document	Information Admitted in Evidence	Allocated Prosecution Exhibit No.
Peace Agreement	55	The Lomé Peace Accord, the Peace Agreement Between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL), 7 July 1999.	Entire document.	P 62
Peace Agreement	56	The Abidjan Peace Accord, the Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL), 30 November 1996.	Entire document.	P 63
Peace Agreement	57	The Conakry Accord: ECOWAS Six-month Peace Plan for Sierra Leone, 23 October 1997 - 22 April 1998, 23 October 1997.	Entire document.	P 64
Treaty	58	Ceasefire Agreement Between Government and the Revolutionary United Front, 18 May 1999.	Entire document.	P 65

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Document Type	No. in Annex B, Judicial Notice Motion	Name/Description of Document	Information Admitted in Evidence	Allocated Prosecution Exhibit No.
Governmental report	60	United States Department of State, "Sierra Leone Country Report on Human Rights Practices for 1997", Released by the Bureau of Democracy, Human Rights, and Labor, January 30, 1998.	Pages 1-11, 13-16, and 18.	P 66
UN document	70	First Report on the United Nations Mission in Sierra Leone (UNAMSIL) 6 December 1999 (S/1999/1223)	Paragraphs 3, 4, 7, 9, 11, 13, 20-22, 25-26, and 33-35.	P 67
NGO Report	76	Women Waging Peace and the Policy Commission, "From Combat to Community: Women and Girls of Sierra Leone", Dyan Mazurana and Khristopher Carlson, January 2004.	Pages 6, 12, 14 and 16.	P 68

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Document Type	No. in Annex B, Judicial Notice Motion	Name/Description of Document	Information Admitted in Evidence	Allocated Prosecution Exhibit No.
Sierra Leone official document	77	Minutes dated 23 January 1998 of meeting of AFRC Supreme Council held on 9 December, 1997	Entire document.	P 69
Sierra Leone Official document	78	Government Notice 272 (P.N. No.3 of 1997), Sierra Leone (SL) Gazette No.69	Entire document.	P 70
Sierra Leone Official documents	79	Decrees 1, 5, and 7 of 1997. Dec 1 - SL Gazette No.41; Dec 5 - SL Gazette No.49; Dec 6 - SL Gazette No.63; Dec.7 - SL Gazette No.66	Entire document.	P 71 (a) (Decree 1) (on the condition that complete document is filed) P 71 (b) (Decree 5) P 71 (c) (Decree 7)
Sierra Leone Official document	81	Record of Deaths 1-19 January 1999, Births and Deaths Registry, Freetown, Sierra Leone.	Entire document.	P 72 (on the condition that legible copy is filed)
Radio broadcast	82	SLBS Radio Broadcast, 25 May 1997, 18:42 GMT	Entire document.	P 73
Radio broadcast	83	SLBS Radio Broadcast, 25 May 1997, 19:30 GMT	Entire document.	P 74

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Document Type	No. in Annex B, Judicial Notice Motion	Name/Description of Document	Information Admitted in Evidence	Allocated Prosecution Exhibit No.
Radio broadcast	85	SLBS Radio Broadcast, 29 May 15:26 GMT. [Proclamation issued by the Administration of Sierra Leone Armed Forces Revolutionary Council, Proclamation 1997, in Freetown on 28 May 1997]	Pages 1 and 2.	P 75
Radio broadcast	86	SLBS Radio Broadcast, 30 May 19:22 GMT. ["Special Message" by the Revolutionary United Front Spokesman Lieutenant David Collins]	Page 1.	P 76
Transcript of address.	88	Address by Major Johnny Paul Koroma, Head of State and Chairman of the Armed Forces Revolutionary Council, Freetown, 1 June 1997	Pages 1-3.	P 77
Press Release	89	AFRC Press Release, 3 January 1998	Entire document.	P 78

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Document Type	No. in Annex B, Judicial Notice Motion	Name/Description of Document	Information Admitted in Evidence	Allocated Prosecution Exhibit No.
Communiqué	Exhibit No.57 from the original Prosecution Proposed Exhibit List, filed on 26 April 2004	Joint Communiqué, Meeting between the Special Representative of the UN Secretary General to Sierra Leone and the Delegation of the Revolutionary United Front, Abidjan, 19-21 February 1999. <i>(two copies included of the same document: one with signatures and the other more legible without signatures)</i>	Entire document.	P 79

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