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SCSL-03-01-T
(24240 - 24252)

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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:	19 February 2009

PROSECUTOR

v.

Charles Ghankay TAYLOR

DECISION ON PROSECUTION MOTION FOR ADMISSION OF EXTRACTS OF THE REPORT OF THE TRUTH AND RECONCILIATION COMMISSION OF SIERRA LEONE

Office of the Prosecutor:
Brenda J. Hollis
Leigh Lawrie

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 Extracts of the Report of the Truth and Reconciliation Commission of Sierra Leone", filed on 31 October 2008 ("Motion");[1]

NOTING the "Defence Response to Prosecution Motion for Admission of Extracts of the Report of the Truth and Reconciliation Commission of Sierra Leone", filed on 10 November 2008 ("Response");[2]

NOTING ALSO the "Prosecution Reply to Defence Response to Prosecution Motion for Admission of Extracts of the Report of the Truth and Reconciliation Commission of Sierra Leone", filed on 17 November 2008 ("Reply");[3]

COGNISANT of the provisions of Article 17 of the Statute of the Special Court for Sierra Leone ("Statute") and Rules 26*bis*, 73A, 89(C), 92*bis* of the Rules of Procedure and Evidence ("Rules");

HEREBY DECIDES AS FOLLOWS, based solely on the written submissions of the parties, pursuant to Rule 73 A of the Rules;

I. SUBMISSIONS

Motion

1. The Prosecution requests that the Trial Chamber admit into evidence pursuant to Rule 89 (C) or, in the alternative, Rules 89(C) and 92*bis*, extracts of Appendix 1 ("Appendix")[4] to the Report of the Truth and Reconciliation Commission of Sierra Leone ("TRC Report"), which extracts are identified in Annex A to the Motion[5] and attached in Annex B to the Motion[6] ("Extracts").[7]

2. The Prosecution maintains that the Extracts are admissible under Rule 89(C) alone because (i) Rule 89(C) is the general rule governing admission of evidence that has been used to tender documents absent a witness in other proceedings: (ii) Rule 92*bis* has been amended such that it is now limited to witness statements and transcripts; and (iii) Rule 92*bis* as amended and limited does not apply to documents not prepared for legal proceedings.[8]

3. The Prosecution further submits that Rule 89(C) allows experienced professional judges to receive into evidence relevant written material "without compulsory resort to a witness serving only to present documents",[9] subject to the necessary safeguards to prevent prejudice to the Defence. The Prosecution asserts that the jurisprudence of the Special Court "favour(s) a flexible approach to

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[1] SCSL-03-01-T-652.
[2] SCSL-03-01-T-663.
[3] SCSL-03-01-T-669.
[4] "Appendix 1 - Statistical Appendix to the Report of the Truth and Reconciliation Commission of Sierra Leone - A Report by the Benetech Human Rights Data Analysis Group to the Truth and Reconciliation Commission", 5 October 2004;
[5] Motion, Annex A.
[6] Motion, Annex B, Part 1.
[7] Motion, para. 1.
[8] Motion, paras 1, 3.
[9] Motion, para. 5.

the issue of admissibility of evidence".[10] Further, admissibility under Rule 89(C) is subject to Rule 95 and to the Trial Chamber's inherent jurisdiction to exclude evidence where its probative value is manifestly outweighed by its prejudicial effect, so that a "very high standard must be met before relevant evidence is excluded."[11] The Prosecution further submits that another reason for admission of the Extracts under Rule 89(C) alone is that the amendments to Rule 92*bis* narrow its focus, making it now more suited to the admission of witness statements and trial transcripts rather than the reception of information, while Rule 89(C) is more suited to the admission of documents.[12]

4. In the alternative, the Prosecution requests that the Trial Chamber admit the Extracts into evidence pursuant to Rules 89 (C) and 92*bis*, submitting that "for evidence comprising public documents to be admitted pursuant to both Rules, the evidence must be relevant, its reliability must be susceptible to confirmation and its admission must not unfairly prejudice the Accused."[13] The Prosecution states that "susceptible of confirmation" mentioned in Rule 92*bis* means that "proof of reliability is not a condition of admission: all that is required is that the information be capable of corroboration in due course".[14]

5. The Prosecution further submits that the qualification in Rule 92*bis* that the evidence must "not go to proof of the acts and conduct of the accused" applies only to evidence contained in "witness statements and transcripts" and not to the "broader definition of 'information' for which there is no obvious live witness alternative". However, if the "acts and conduct qualification" also applies to non-testimonial documents then the term must be given its ordinary meaning and a distinction must be made between the acts and conduct of those who commit the crimes for which the Indictment alleges that the Accused is individually responsible and those of the Accused which establish his responsibility for the acts and conduct of others.[15]

6. The Prosecution states that Annex A to the Motion contains a table describing each portion of the TRC Report and indicating the relevant portions it submits for admission. The Appendix, from which the Extracts are taken, is attached to the Motion in full, in order to provide context.[16]

7. The Prosecution submits that the Extracts relate to (i) the *chapeau* requirements of the crimes charged; (ii) the several forms of liability alleged by the Prosecution in this case; and (iii) Count 1 of the Indictment (Terrorizing the civilian population).[17]

8. According to the Prosecution, as the material consists of abstracts taken from the public TRC Report, its admission does not impact adversely and unfairly upon the integrity of the proceedings nor is of such a nature that would bring the administration of justice into serious

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[10] Motion, paras 4-6.
[11] Motion, para. 8.
[12] Motion, paras 9-13.
[13] Motion, para. 14,19.
[14] Motion, para. 17, citing *Prosecutor v. Norman et al.*, SCSL-04-14-T, "Fofana- Appeal Against Decision Refusing Bail", 11 March 2005, para. 26.
[15] Motion, paras 15-16.
[16] Motion, para. 18.
[17] Motion, para. 19.

disrepute.[18] The inability of the Defence to cross-examine witnesses on whose statements the evidence is based, and any hearsay, goes to the weight to be given to the evidence.[19] Regarding susceptibility of confirmation, the Prosecution submits that it is not required to prove that the evidence is in fact reliable at this stage, only that the reliability of the evidence is susceptible of confirmation.[20]

9. Regarding its alternative request for admission of the documents under Rules 89(C) and 92*bis*, the Prosecution submits that the tendered extracts do not go to proof of the acts and conduct of the accused. Finally, these extracts from a public source are not being presented to a lay jury and therefore will not impact unfairly upon the integrity of the proceedings.[21]

Response

10. The Defence opposes the Motion on the grounds that: (i) Rule 89(C) cannot be used in isolation to admit the Report included in the Motion; and (ii) the Report is only admissible under Rule 89(C) in conjunction with Rule 92*bis* provided that any evidence that goes to the acts and conduct of the accused is inadmissible.[22] The Defence incorporates by reference its submissions made in response to an earlier Prosecution Motion.[23]

11. The Defence disputes the Prosecution submission that there is no specific rule for admission of documentary evidence and submits that the practice of the Special Court has been to admit documentary evidence under Rules 89(C) and 92*bis*.[24] The Defence submits that Rule 89(C) is not absolute, but is subject to the provisions of Rule 95 and the Court's inherent jurisdiction to exclude evidence where the probative value is outweighed by its prejudicial effect.[25]

12. The Defence further submits that the correct procedure for the proper admission of the evidence is under Rules 89(C) and 92*bis* and that the Prosecution is trying to circumvent Rule 92*bis*, particularly with regard to evidence going to the acts and conduct of the accused, by trying to admit documents containing such evidence through Rule 89(C) alone. The Defence contends that the Prosecution is mistaken in stating that Rule 92*bis* is exclusively limited to witness statements and transcripts as the Rule "encompasses information".[26]

13. The Defence further contends that, contrary to the Prosecution submissions, Rule 92*bis* was "deliberately amended to exclude information that goes to the acts and conduct of the accused in order to protect the Accused's fair trial rights."[27] The Defence points out that there remains a

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[18] Motion, para. 20.
[19] Motion, para. 21.
[20] Motion, para. 24.
[21] Motion, paras 26-27.
[22] Response, para. 2.
[23] Response, para. 3; Referring to Defence Response SCSL-03-01-T-664, "Public Defence Response to Prosecution Motion for the Admission of Documents of the United Nations and United Nations Bodies", 10 November 2008 ("Incorporated Response"); SCSL-03-01-T-650, "Public Prosecution Motion for the Admission of Documents of the United Nations and United Nations Bodies", 29 October 2008;
[24] Incorporated Response, paras 3-6.
[25] Incorporated Response, paras 7-8.
[26] Incorporated Response, paras 10-13.
[27] Incorporated Response, para. 16.

distinction between acts and conduct of those who commit the crimes for which the indictment alleges the accused is individually responsible and the acts and conduct of the accused which establish his responsibility for the acts and conduct of those others. The first, the Defence submits, is admissible under Rule92*bis* but the latter is not. The proximity of the acts and conduct of the alleged subordinate to the accused is relevant to this determination. Further, documents pertaining to acts and conduct of co-perpetrators and subordinates should not be admitted unless there is a witness who can be brought for cross-examination.[28]

14. The Defence refutes the Prosecution submission that the reforms to the Rules in May 2007 changed the position regarding TRC Reports, and submits that even TRC Reports which go to the acts and conduct of the accused must be excluded under Rule 92*bis*.[29]

15. In the alternative, the Defence submits that the Prosecution should have sought admission of the Report as expert evidence and then called one of the authors as an expert witness. The Report concerns specific issues of a technical nature because it "outlines and interprets the descriptive statistics regarding the nature and extent of the violations, behaviour of perpetrators and characteristics of victims."[30] The Report purports to be a scientific and empirical collection and analysis of data which is used to generate statistics. As such, it should be considered expert evidence.[31] Furthermore, expert witnesses cannot make findings that go to the guilt of the accused, nor make findings of fact, as this would usurp the role of the Judges.[32] The Report makes extensive findings of fact and therefore should not be admitted.[33]

16. The Defence cites the Prosecution's statement that there is "no obvious live witness alternative" to this information, and contend that this is an inaccurate representation. It submits that the TRC Report is "crime based" and that the Prosecution has led a multitude of crime based evidence some of which is "likely to cross over into the TRC report". Furthermore, the TRC Report has been prepared by persons who could be called upon to give live evidence.[34]

17. The Defence submits that the Prosecution is barred from seeking to admit the TRC Report, as the Prosecutor has previously stated that the Prosecution would not seek to admit material obtained during the TRC process in proceedings before the Special Court. Furthermore, public policy argument dictates that it "does not bode well for the successful overlap of truth and reconciliation commissions and war crimes tribunals if people who give statements for the purposes of speaking the truth and reconciling with perpetrators or victims have to be concerned that their statement would later be used for purposes of prosecution". Thus, the Report should be excluded in its entirety.[35]

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[28] Incorporated Response, paras 14-19.
[29] Response, para. 4.
[30] Response, para. 5; *quoting* Motion, Annex B, p. 36.
[31] Response, para. 5.
[32] Response, paras 6-8.
[33] Response, paras 20-21.
[34] Response, para. 9.
[35] Response, para 10; citing SCSL-03-08-PT-122, *Prosecutor v. Norman*, "Decision on Appeal by the Truth and Reconciliation Commission for Sierra Leone and Chief Samuel Hinga Norman against the Decision of His Lordship, Mr. Justice Bankole Thompson Delivered on 30 October 2003 to Deny the TRC's Request to Hold a Hearing with Chief Samuel Hinga Norman JP", 28 November 2003, paras 6, 15.

18. The Defence submits that if evidence is to be admitted under Rules 89(C) and 92*bis*, then the material must be relevant, and information that falls outside the temporal and geographical scope of the Indictment is not relevant and therefore should not be admitted. It points out that much of the information in the tendered evidence related to time periods prior to the temporal jurisdiction of the Indictment, from September 1996. Much of the report refers to times periods, as well as locations and perpetrators which fall outside of the Indictment, and these references should be excluded.[36]

19. The Defence agrees with the Prosecution that all documents must be susceptible to confirmation, that confirmation is not required immediately and that documents can be corroborated in due course, however questions how this is to happen so late in the case. It submits that the Prosecution has not shown how the documents are corroborated by the bulk of their witnesses who have already testified.[37]

20. The Defence submits that the Report shows human rights violations in "almost every district of Sierra Leone over a nine year period and attributes responsibility primarily to the RUF and AFRC, factions the Prosecution considers subordinates of the accused." It also details the existence of an RUF-NPFL study, including violations by persons of Liberian origin and members of the NPFL. The Defence submits that this clearly goes to the acts and conduct of the accused and should be excluded. Alternatively, if admitted, the Prosecution must produce a witness for cross-examination on any information within the Report that goes to a critical and proximate element of the Prosecution case.[38]

21. The Defence further contends that the probative value of the tendered evidence is outweighed by its prejudicial effect, and thus the report should be excluded. Firstly, the report contains a high degree of inaccuracy and uncertainty, particularly in regard to violations proximate to acts and conduct of the Accused such as the percentage of Liberians involved in RUF incidents. Secondly, neither the primary nor secondary witnesses on whose testimony and research methodology the Report is based can or will be tested by cross-examination.[39] The Defence points out that the Report was produced in October 2004, has been available to the Prosecution for the duration of the Prosecution case, and thus should have been tendered through an appropriate witness.[40] Furthermore, much of the evidence is cumulative of evidence already produced at trial.[41]

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[36] Response, para. 11.
[37] Response, para. 12.
[38] Response, para. 13.
[39] Response, paras 14-19.
[40] Response, para. 23.
[41] Response, para. 24.

Reply

22. The Prosecution disputes the Defence interpretation of the jurisprudence relating to Rules 89(C) and 92*bis*, and recounts the background to the amendment to the latter rule and the jurisprudence of the *ad hoc* tribunals to support their previous submissions.[42]

23. The Prosecution submits that the Defence erroneously attempts to classify extracts of the TRC Report as expert evidence. It submits that the information contained in the extracts is not information which is outside the experience and knowledge of the Chamber, but is rather analysis of crime based evidence which will assist the Trial Chamber by providing an overview. It submits that the prior practice of this Trial Chamber has been to admit similar evidence without recourse to expert testimony, such as the Physicians for Human Rights Report admitted in the AFRC Trial as Prosecution Exhibit P-58. Finally, the Defence reiterates that the facts in the TRC Report extracts are not central to establishing the Accused's criminal responsibility as set out in the Indictment, and thus there is no usurping of the trier of fact.[43]

24. Regarding the Defence's argument that information which falls outside the temporal and geographic cope of the Indictment should not be admitted, the Prosecution submits that Rule 93 permits evidence of a consistent pattern of conduct and such evidence may be used to prove an issue relevant to the charges or contextual elements.[44] In relation to the Defence's specific objections to perpetrators not covered by the Indictment, and the portion of the extract on the RUF-NPFL study, the Prosecution states that it has no objection to their redaction.[45] Regarding the Defence question as to how this documentary evidence can be corroborated this late in the trial, the Prosecution submits that susceptibility of confirmation does not need to be proven and is not a condition of admission, however also points out that information may be corroborated by evidence led in both the Prosecution and Defence phases of the trial.[46]

25. The Prosecution maintains that the probative value of the information is not manifestly outweighed by its prejudicial value, and that the Defence erroneously identify portions of the TRC Report as examples the Prosecution does not seek to admit.[47]

26. In relation to the Defence suggestion that the Prosecution is barred from using the TRC Report, the Prosecution submits that (i) it is not so barred; (ii) in conformity with its previous position, it has not sought to use any individual statement provided to the TRC, only data in aggregate; and, (iii) the Defence position is disingenuous in light of the considerable use it has made of the TRC Report during these proceedings.[48]

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[42] Reply, para. 2, incorporating by reference SCSL-03-01-T-670, "Public Prosecution Reply to Defence Response to Prosecution Motion for Admission of Documents of the United Nations and United Nations Bodies", 17 November 2008, paras 2-11; paras 16-21.
[43] Reply. paras 3-6.
[44] Reply, paras 8-10.
[45] Reply, paras 11, 13.
[46] Reply, para. 12.
[47] Reply, para. 14.
[48] Reply, paras 22-24.

II. APPLICABLE LAW

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

> **Rule 89: General Provisions**
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> (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.

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

> **Rule 92*bis*: Alternative Proof of Facts** (*amended 14 March 2004 and amended 14 May 2007*)
>
> (A) In addition to the provisions of Rule 92*ter*, a Chamber may, in lieu of oral testimony, admit as evidence in whole or in part, information including written statements and transcripts, that do no 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.

29. 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[49] ("Appeals Chamber Decision"), wherein the Appeals Chamber upheld a decision of the Trial Chamber, confirms that:

> By its express terms, Rule 92*bis* 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.[50] [...]
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> [...]
>
> The procedural scheme established by Rules 89(C) and 92*bis* does not allow a party to circumvent the stringency of the latter rule by simply tendering a document under the former.[51] [...]
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> [...]

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[49] 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").
[50] Appeals Chamber Decision, para. 30 (original footnotes omitted).
[51] 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 92*bis* 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 92*bis* 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).[52] [...]

30. The effect of Rule 92*bis* 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.[53] 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,[54] and what weight, if any, should be attached to it.[55] Simply admitting a document into evidence does not amount to a finding that the evidence is credible.[56]

31. 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 92*bis*.[57]

32. Thus, Rule 92*bis* 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

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[52] Appeals Chamber Decision, para. 34.

[53] *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.

[54] *Prosecu tor 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 92*bis*, 15 May 2008, para.30.

[55] *Prosecutor v. Norman, Fofana & Kondewa*, SCSL-04-14-T, Decision on Prosecution's Request to Admit Into Evidence Certain Documents Pursuant to Rules 92*bis* 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 92*bis*, 15 May 2008, para. 30.

[56] *Prosecutor v. Norman, Fofana & Kondewa*, SCSL-04-14-T, Decision on Fofana Request to Admit Evidence Pursuant to Rule 92*bis*, 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 92*bis*, 15 May 2008, para. 31.

[57] *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 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.

been committed by his subordinates, or failed to take the necessary and reasonable measures to prevent such crimes or to punish the perpetrators thereof.[58] Where the prosecution alleges that the accused participated in a joint criminal enterprise, Rule 92*bis* 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.[59]

33. 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 92*bis*.[60]

34. 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."[61]

III. DELIBERATIONS

35. 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).[62] The said documents were tendered *in lieu* of oral testimony and therefore should have been tendered under Rule 92*bis*.[63] Accordingly, the Prosecution application pursuant to Rule 89(C) must fail.

36. The Trial Chamber does not consider that there is any validity in the Defence submission that the TRC Report should be excluded because the Prosecutor announced that he would "not use any evidence collected or heard by the Commission." This was a statement made in different proceedings before a different forum and cannot fetter the Prosecutor in the presentation of the instant case.

37. Turning now the Prosecution's alternative application, the Trial Chamber will consider the admissibility of each of the documents under Rule 92*bis*.

38. The documents the Prosecution seeks to tender are extracts of Statistical Appendix to the Report of the Truth and Reconciliation Commission of Sierra Leone ("Appendix"),[64] as identified in

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[58] *Galic*, ibid., para 10; see also Prosecution's Second Amended Indictment ("Indictment"), paras 33, 34.
[59] *Galic*, ibid., para 10, see also Indictment, para 33.
[60] *Galic*, ibid., para 11.
[61] *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.
[62] Appeals Chamber Decision, para 34.
[63] 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 Feb. 2009, p3.
[64] Motion, Annex B, Part 2, "Appendix 1 - Statistical Appendix to the Report of the Truth and Reconciliation Commission of Sierra Leone - A Report by the Benetech Human Rights Data Analysis Group to the Truth and Reconciliation Commission", 5 October 2004.

Annex A to the Motion[65] and attached in Annex B to the Motion.[66] Annex A identifies the specific portions of the Appendix which the Prosecution tenders for admission into evidence, together with a summary of the information contained in the identified portions, the Prosecution's submissions as to the relevance of the information, and the Prosecution's submissions as to which (if any) counts of the Indictment to which the information relates.

Extract 1: TRC Report, Appendix 1: "Introduction"

39. The first document the Prosecution seeks to tender into evidence is an extract headed "Introduction" taken from pages 1-2 of the Appendix, and marked in Annex A as Extract 1. It is an "[i]ntroduction to the statistical findings available in the TRC's database"[67] and also provides other information about the source of the information gathered. The Parties do not provide any specific arguments on the admissibility of this document. However, the Trial Chamber notes that Appendix 1 is in fact an analysis of the findings of the Truth and Reconciliation Commission of Sierra Leone giving an overview of the nature and extent of human rights abuses during the Sierra Leone conflict during the period 1999-2000[68] and is therefore relevant to the crimes charged in the Indictment. The Chamber further notes that nothing in Extract 1 goes to the acts and conduct of the Accused, the section is relevant as it serves to place the information contained in the other extracts in proper context, and its reliability is susceptible of confirmation. Extract 1 is therefore admissible under Rule 92*bis*.

Extract 2: TRC Report, Appendix 1: "Background and Methodology"

40. The second document the Prosecution seeks to tender into evidence is an extract headed "Background and Methodology" taken from pages 2-8 of the Appendix, and marked in Annex A as Extract 2. It "provides a description of the background and methodology for the processing, entry and storage of the information contained in the TRC statements".[69] The information contained in Extract 2 is relevant to the Indictment and assists the Trial Chamber in its evaluation of information contained in other extracts of the Appendix. As mentioned above, the reliability of the document is susceptible of confirmation. Apart from one paragraph headed "RUF-NPFL Study," the information contained therein does not go to the acts and conduct of the Accused, and is admissible under Rule 92*bis*. The identified paragraph contains a statement which may or may not go to the acts and conduct of the Accused, and the Trial Chamber exercises its discretion to redact the said paragraph. [70]

Extract 3: TRC Report, Appendix 1: "Proportion and Ratio of Perpetrator Responsibility by Sex"

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[65] Motion, Annex A.
[66] Motion, Annex B, Part 1.
[67] Motion, Annex A, section 2.
[68] See Introduction to Appendix
[69] Motion, Annex A, section 2.
[70] The paragraph reads "It is widely believed that the initial RUF incursions into Sierra Leone in 1991 included forces from the Liberian NPFL. The special coding looked at the ethnicity of the perpetrators in statements identifying the RUF in the early years of the conflict. This information was used to determine the years in which Liberian forces were committing violations in Sierra Leone and the portion of RUF abuses that could more properly be attributed to the NPFL."

41. The third document the Prosecution seeks to tender into evidence is an extract headed "Figure 4.A1.11: Proportion and Ratio of Perpetrator Responsibility by Sex" taken from page 15 of the Appendix, and marked in Annex A as Extract 3. It provides a breakdown of documented violations by perpetrator group and sex, including a ratio of male to female. The Defence object to the admissibility of the extract on the basis of relevance, as the figures analysed include documented violations between the years 1991 and 2000 without distinction, and is therefore outside the scope of the Indictment. The Trial Chamber considers that the information is relevant as it goes to the *chapeau* elements of the crimes and the reliability of the document is susceptible of confirmation. The extract is therefore is therefore admissible under Rule 92*bis*.

Extract 4: TRC Report, Appendix 1: "Perpetrator Responsibility for Violations over Time and Space" and "Correlations Between Perpetrator Groups"

42. The fourth document the Prosecution seeks to tender into evidence consists of extracts headed "Perpetrator Responsibility for Violations over Time and Space" and "Correlations Between Perpetrator Groups" taken from pages 24-31 of the Appendix, and marked in Annex A as Extract 4. Regarding relevance, the Prosecution claims that the information goes to the *chapeau* requirements of Crimes Against Humanity, in particular the widespread and systematic nature of the crimes. It also shows a pattern - the long-term, ongoing nature of the crimes "all relevant to intent, knowledge, awareness of Accused; and reasonable foreseeability of crimes".[71] The Trial Chamber notes that some of the charts contained in the identified sections contain analysis by time period and some do not. The Trial Chamber considers that the information is relevant as it goes to the *chapeau* elements of the crimes, is susceptible of confirmation and does not go to the acts and conduct of the Accused, and is therefore admissible under Rule 92*bis*.

IV. DISPOSITION

FOR THE ABOVE REASONS THE TRIAL CHAMBER

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

GRANTS the alternative application for admission of documents under Rule 92*bis* in part and

ORDERS that:

i) Extract 1 is admitted into evidence, and marked as Prosecution Exhibit P-293;

ii) Extract 2, excluding the paragraph headed "RUF-NPFL Study", which should be redacted, is admitted into evidence and marked as Prosecution Exhibit P-294;

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[71] Motion, Annex A, section 4.

iii) Extract 3 is admitted into evidence, and marked as Prosecution Exhibit P-295;

iv) Extract 4 is admitted into evidence, and marked as Prosecution Exhibit P-296;

Done at The Hague, The Netherlands, this 19th day of February 2009.

Justice Teresa Doherty

Justice Richard Lussick
Presiding Judge

Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]