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SCSL-03-01-T  
(17577 - 17587)

17577



## SPECIAL COURT FOR SIERRA LEONE

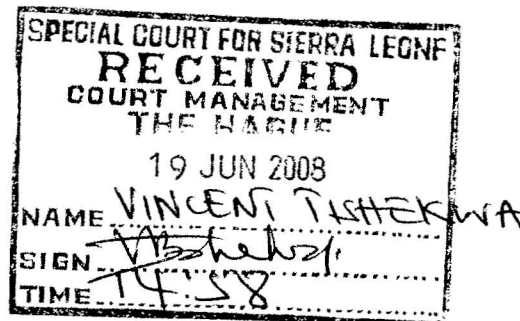
### TRIAL CHAMBER II

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

Registrar: Herman von Hebel

Case No.: SCSL-03-1-T

Date: 19 June 2008



PROSECUTOR

v.

Charles Ghankay TAYLOR

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DECISION ON DEFENCE APPLICATION TO EXCLUDE THE EVIDENCE  
OF PROPOSED PROSECUTION EXPERT WITNESS CORINNE DUFKA OR, IN THE ALTERNATIVE,  
TO LIMIT ITS SCOPE AND ON URGENT PROSECUTION REQUEST FOR DECISION

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Office of the Prosecutor:

Brenda J. Hollis  
Mohamed A. Bangura  
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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 "Defence Application to Exclude the Evidence of Proposed Prosecution Expert Witness Corinne Dufka or, in the Alternative, to Limit its Scope," filed on 28 January 2008 ("Motion");<sup>1</sup>

**NOTING** the "Prosecution Response to Defence Application to Exclude the Evidence of Proposed Prosecution Expert Witness Corinne Dufka, or in the Alternative, to Limit its Scope," filed on 1 February 2008 ("Response");<sup>2</sup>

**NOTING ALSO** the "Defence Reply to Prosecution Response to Defence Application to Exclude the Evidence of Proposed Prosecution Expert Witness Corinne Dufka, or in the Alternative, to Limit its Scope," filed on 7 February 2008 ("Reply");<sup>3</sup>

**RECALLING** the "Prosecution Filing of Expert Report Pursuant to Rule 94(bis)," filed on 15 May 2007 and re-filed on 4 June 2007 due to deficiencies in the first filing, wherein the Prosecution filed the proposed expert report of Corinne Dufka ("Report");<sup>4</sup>

**RECALLING ALSO** the Defence "Public Notice under Rule 94bis(B)," filed on 29 May 2007 ("94bis Notice"),<sup>5</sup> wherein it gave notice that it does not accept the witness' qualifications, does not accept the witness statement, and wishes to cross-examine the witness;

**SEISED ALSO** of the "Urgent Prosecution Request for Decision," filed on 23 May 2008, wherein the Prosecution requests that the Trial Chamber urgently issue a Decision on the Motion;<sup>6</sup>

**RECALLING ALSO** the oral submissions of the Parties on 21 and 22 January 2008;<sup>7</sup>

**COGNISANT** of Article 17 of the Statute of the Special Court ("Statute"), and Rules 73(A), 89 and 94bis of the Rules of Procedure and Evidence of the Special Court ("Rules");

**HEREBY DECIDES AS FOLLOWS:**

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<sup>1</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-402, Defence Application to Exclude the Evidence of Proposed Prosecution Expert Witness Corinne Dufka or in the Alternative, to Limit its Scope, 28 January 2008.

<sup>2</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-406, Prosecution Response to Defence Application to Exclude the Evidence of Proposed Prosecution Expert Witness Corinne Dufka or in the Alternative, to Limit its Scope, 1 February 2008.

<sup>3</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-412, Defence Reply to Prosecution Response to Defence Application to Exclude the Evidence of Proposed Prosecution Expert Witness Corinne Dufka, or in the Alternative, to Limit its Scope, 7 February 2008.

<sup>4</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-279, Prosecution Filing of Expert Report pursuant to Rule 94bis, 4 June 2007 [hereinafter Report]; *Prosecutor v. Taylor*, SCSL-03-01-PT-238, Prosecution Filing of Expert Report pursuant to Rule 94bis, 15 May 2007.

<sup>5</sup> *Prosecutor v. Taylor*, SCSL-03-01-T-267, Public Notice under Rule 94bis(B), 29 May 2007 [hereinafter 94bis Notice].

<sup>6</sup> SCSL-03-01-T-514.

<sup>7</sup> Transcript 21 January 2008, pp. 1728-1744; Transcript 22 January 2008, pp. 1940-1944.

## I. INTRODUCTION

1. On 15 May 2007, the Prosecution filed the Report of proposed Expert Witness Ms. Corinne Dufka. On 29 May 2007 the former Defence Counsel gave notice that the Defence (i) does not accept the witness's qualifications as an expert; (ii) does not accept the witness statement; and, (iii) wishes to cross-examine the witness. It also pointed out several deficiencies in the filing. On 4 June 2007, the Prosecution re-filed the Report in order to "restate" the area of expertise of the witness, and also to correct certain problems regarding the legibility of the document. On 17 July 2007 a new Defence team was appointed to represent the Accused.<sup>8</sup> On 21 January 2008 the Prosecution called Ms. Corinne Dufka to give evidence as an Expert Witness. The Defence objected to her status as an Expert Witness and to the tender of her report on several grounds. The Trial Chamber held that it was premature to rule on the Defence objections as the Witness had not yet testified, nor had the Prosecution applied to tender the said report in evidence.<sup>9</sup>

2. On 22 January 2008, after Ms. Dufka had testified and the Prosecution had sought to tender her report, the Defence again raised its earlier objections.<sup>10</sup> The Trial Chamber ordered the Parties to file written submissions before ruling on the issue.<sup>11</sup>

## II. SUBMISSIONS

### *Defence Motion*

3. The Defence submits that the Trial Chamber should exclude the evidence of the purported Prosecution Expert Witness Corinne Dufka on the following grounds:<sup>12</sup>

- (i) The witness is not an expert as such and her evidence does not qualify as expert evidence;<sup>13</sup>
- (ii) The objectivity and impartiality of the witness as an expert is impugned by her previous role as a member of the Prosecution team and her stated position on the guilt of the Accused;<sup>14</sup>
- (iii) Even if her testimony were to pass as expert evidence, her evidence is not necessary to assist the Trial Chamber to understand the context of the case and issues in dispute;<sup>15</sup>
- (iv) Some of her evidence relates to issues of fact which go to the guilt of the Accused in this case and thereby usurps the role of the Trial Chamber, or goes beyond the scope of the Indictment both in time and geographical extent;<sup>16</sup>

<sup>8</sup> SCSL03-01-320, Principal Defender's Decision Assigning New Counsel to Charles Ghankay Taylor, 17 July 2007.

<sup>9</sup> Transcript 21 January 2008, p. 1743.

<sup>10</sup> Transcript 22 January 2008, p. 1940.

<sup>11</sup> Transcript 22 January 2008, pp. 1943-1946.

<sup>12</sup> Motion, para. 2.

<sup>13</sup> Motion, paras 16-23.

<sup>14</sup> Motion, paras 24-26.

<sup>15</sup> Motion, para. 27.

<sup>16</sup> Motion, para. 28.

- (v) ~~Even if the witness could be classified as an expert her evidence undermines the~~  
 Accused's fundamental right to a fair trial, in that it consists of hearsay evidence for the  
 most part and thereby deprives him of the opportunity of cross-examining the witnesses  
 against him.<sup>17</sup>

### *Prosecution Response*

4. The Prosecution contests the five grounds relied upon by the Defence for the following reasons:

- (i) **Expert qualification.** The witness's area of expertise is "*Events in Liberia and Sierra Leone leading to and during the ongoing conflict including human rights violations.*"<sup>18</sup> The Prosecution submits that Ms. Dufka possesses in-depth, specialised knowledge of the human rights situation in West Africa from her experience investigating, researching and documenting human rights abuses.<sup>19</sup> Additionally, the Prosecution submits that while experts often present their opinion based on facts collected from numerous sources,<sup>20</sup> Ms. Dufka did not merely summarise the evidence of others but established clear patterns identifiable only by an expert.<sup>21</sup>
- (ii) **Impartiality.** The Prosecution submits that because "the mere fact that an expert witness is employed or paid by a party does not disqualify him or her from testifying as an expert,"<sup>22</sup> Ms. Dufka's former employment by the OTP should not automatically disqualify her from testifying as an expert.<sup>23</sup> The Prosecution contends that Ms. Dufka's evidence does not indicate that she is convinced of the guilt of the Accused, but instead that he has a "case to answer" in front of the Court.<sup>24</sup> Moreover, the Prosecution submits that "concerns relating to witness' independence and impartiality [...] are matters of weight, not admissibility."<sup>25</sup>
- (iii) **Necessity of Expert Assistance.** The Prosecution submits that Ms. Dufka's evidence is necessary to assist the Trial Chamber in its deliberations because it provides evidence of (a) overall findings of fact where it is unrealistic to call thousands of victims as witnesses before the Trial Chamber, (b) specific patterns identified through her extensive research and interviews, and (c) contextual information to aid the Trial Chamber in understanding the dynamic complexities of the Sierra Leone conflict.<sup>26</sup>
- (iv) **Evidentiary scope.** Because the witness offers evidence of the human rights violations committed by all factions of the conflict and does not seek to assign criminal

<sup>17</sup> Motion, paras 29, 30.

<sup>18</sup> Response, paras 10-11.

<sup>19</sup> Response, para. 13, 16.

<sup>20</sup> Response, para. 18.

<sup>21</sup> Response, para. 18.

<sup>22</sup> Response, para. 21.

<sup>23</sup> Response, para. 21.

<sup>24</sup> Response, para. 24.

<sup>25</sup> Response, para. 22.

<sup>26</sup> Response, paras 26-27.

~~culpability to any particular group or person, the Prosecution contends that her evidence does not address the ultimate issue of the Accused's culpability.~~<sup>27</sup>

- (v) **Fair trial rights.** The Prosecution submits that, as the Defence has already conceded, hearsay evidence, particularly hearsay evidence admitted through an expert's report, may be admitted before this Court.<sup>28</sup> Additionally, Ms. Dufka employed a methodology which took into account her training on bias, and the reliability of her evidence was tested by thorough cross-examination.<sup>29</sup>

5. The Prosecution requests the Trial Chamber to (a) reject the Defence Application and admit Ms. Dufka's expert evidence in its entirety; (b) alternatively, exclude limited portions of Ms. Dufka's material as indicated in Annex B of the Response; or (c) should the Trial Chamber find that Ms. Dufka does not qualify as an expert, admit her evidence as "overview evidence".<sup>30</sup>

### *Defence Reply*

6. The Defence reiterates its objections and requests the Trial Chamber to (a) grant the Motion and declare Ms. Dufka's evidence inadmissible in its entirety, or (b) alternatively, exclude the parts of Ms. Dufka's evidence identified in Annex A.<sup>31</sup> The Trial Chamber notes that there is no "Annex A" attached to the Reply. However, it appears that the Defence is referring to Annex 1 of the Motion, which deals with "material that goes to the ultimate issues" and "material beyond the scope of the indictment, either in time or place or both".

### III. APPLICABLE LAW

7. The Rules do not provide specific guidelines on the admissibility of testimony given by expert witnesses. However, a definition of "expert" is contained in another of the Special Court's basic documents, the Headquarters Agreement,<sup>32</sup> Article 1(f) of which provides:

"Expert" means a person referred to as such in Article 15 of the Agreement establishing the Special Court<sup>33</sup> and appearing at the instance of the Special Court, a suspect or an accused to present testimony based on special knowledge, skills, experience or training.<sup>34</sup>

<sup>27</sup> Response, para. 28.

<sup>28</sup> Response, para. 35.

<sup>29</sup> Response, paras 40-41.

<sup>30</sup> Response, para. 43.

<sup>31</sup> Reply, para. 31.

<sup>32</sup> Headquarters Agreement Between the Republic of Sierra Leone and the Special Court for Sierra Leone.

<sup>33</sup> Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone; Article 15 provides: "Witnesses and experts appearing from outside Sierra Leone on a summons or a request of the judges of the Prosecutor shall not be prosecuted, detained or subjected to any restriction on their liberty by the Sierra Leone authorities. They shall not be subjected to any measure which may affect the free and independent exercise of their functions. The provisions of article 14, paragraph 2(a) and (d), shall apply to them."

<sup>34</sup> *Prosecutor v. Brima et al.*, SCSL-04-16-T-365, Decision on Prosecution Request for Leave to Call an Additional Witness (Zainab Hawa Bangura) Pursuant to Rule 73bis(E), AND on Joint Defence Notice to Inform the Trial Chamber of Its Position Vis-à-vis the Proposed Expert Witness (Mrs. Bangura) Pursuant to Rule 94bis, 5 August 2005, para. 23.

~~8. Consistent with that definition is the definition of an expert witness given by the Trial Chamber in *Prosecutor v. Brima et al.*, in which it stated:~~

[...] we adopt the accepted qualitative definition that “an expert must possess relevant specialised knowledge acquired through education, experience or training in the proposed field of expertise”.

9. In the same decision, the Trial Chamber recognised the role of an expert as being:

[...] to assist the Chamber to understand or determine an issue in dispute and the context in which the events took place.<sup>35</sup>

10. The only provision in the Rules dealing specifically with expert witnesses is Rule 94bis, which prescribes a procedure whereby the statement of an expert witness can be admitted into evidence without calling the expert to testify. Rule 94bis provides:

- (A) Notwithstanding the provisions of Rule 66(A), Rule 73bis (B)(iv)(b) and Rule 73ter (B)(iii)(b) of the present Rules, the full statement of any expert witness called by a party shall be disclosed to the opposing party as early as possible and shall be filed with the Trial Chamber not less than twenty-one days prior to the date on which the expert is expected to testify.
- (B) Within fourteen days of filing of the statement of the expert witness, the opposing party shall file a notice to the Trial Chamber indicating whether:
  - (i) It accepts the expert witness statement; or
  - (ii) It wishes to cross-examine the expert witness.
- (C) If the opposing party accepts the statement of the expert witness, the statement may be admitted into evidence by the Trial Chamber without calling the witness to testify in person.

11. Apart from Rule 94bis, the admission of expert testimony is governed by the general provisions of Rule 89, which states that “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>36</sup> and that “A Chamber may admit any relevant evidence.”<sup>37</sup>

<sup>35</sup> *Ibid.*, para. 31. See also the definition adopted by Trial Chamber 1, which states that an expert is “a person whom by virtue of some specialised knowledge, skill or training can assist the trier of fact to understand or determine an issue in dispute.” *Prosecutor v. Norman et al.*, Case No. SCSL04-14-T, Decision on Prosecution Request for Leave to Call Additional Witnesses and for Orders for Protective Measures, 21 June 2005, citing *Prosecutor v. Galic*, IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Phillips, 3 July 2002, at 2; see also *Prosecutor v. Sesay et al.*, Case No. SCSL04-15-T, Decision on Prosecution Request for Leave to Call an Additional Expert Witness, 10 June 2005.

<sup>36</sup> Rule 89(B).

<sup>37</sup> Rule 89(C).

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### III. DELIBERATIONS

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(a) *Expert Qualification*

12. Before determining whether Ms. Dufka's evidence is admissible as expert evidence, the Trial Chamber must first decide whether she possesses the relevant specialised knowledge acquired through education, experience or training in the proposed field of expertise to qualify as an expert.<sup>38</sup>

13. It is clear on the evidence that Ms. Dufka has, over a period of time, collected and documented testimonies of various victims and witnesses, in essentially the same manner as that of an Investigator working with the Office of the Prosecutor. The commentary provided alongside does not, as the Prosecutor submits, establish "clear patterns identifiable only by an expert" and does not constitute specialist knowledge beyond the capability of the court to understand. Accordingly, the Trial Chamber finds that Ms. Dufka cannot properly be characterised as an expert.

(b) *Impartiality*

14. In order to be entitled to appear, an expert witness must not only be a recognised expert in his or her field, but must also be impartial in the case.<sup>39</sup>

15. The mere fact that an expert witness is employed by or paid by a party does not disqualify him or her from testifying as an expert witness.<sup>40</sup> However, Ms. Dufka's involvement in the present case goes beyond that of a mere employee. In this regard, the Trial Chamber notes that Ms. Dufka was worked with the Office of the Prosecutor from October 2002 to October 2003 as a human rights adviser.<sup>41</sup> In that capacity she interviewed a number of persons who subsequently gave evidence for the Prosecution in the present case. Moreover, the Trial Chamber notes the Defence submission that during cross-examination, Ms. Dufka made statements which demonstrate her lack of impartiality.<sup>42</sup>

16. The Trial Chamber recalls the following exchange between Defence Counsel and the Witness:

Q. The fact, Ms Dufka, that you have a personal opinion does go to the question of your impartiality, as does the fact that you have worked with the very body that has been seeking his conviction?

A. Well, when we speak of the case or the issue of impartiality I think that my work, the trajectory of my work, has

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<sup>38</sup> See *Prosecutor v. Norman et al.*, Case No. SCSL04-14-T, Decision on Fofana Submissions Regarding Proposed Expert Witness Daniel J. Hoffman PhD, 7 July 2006; see also *Prosecutor v. Brdanin*, Case No. IT-99-36-T, Decision on Prosecution's Submissions of Statement of Expert Witness Ewan Brown, 3 June 2003.

<sup>39</sup> *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Decision on a Defence Motion for the Appearance of an Accused as an Expert Witness, 9 March 1998.

<sup>40</sup> *Prosecutor v. Brdanin*, Case No. IT-99-36-T, Decision on Prosecution's Submission of Statement of Expert Witness Ewan Brown, 3 June 2003; *Prosecutor v. Galic*, Case No. IT-98-29-T, Decision Concerning the Expert Witnesses Ewa Tabeau and Richard Philipps, 3 July 2002.

<sup>41</sup> Motion, para. 16; see also Transcript 21 January 2008, p. 1749 lines 23, 28.

<sup>42</sup> Motion, paras 25-26.



~~shown that we do not only report on abuses on one side. I mean I~~  
 think that's one of the points that the - that I have tried to  
 make repeatedly and in my report a good portion of it addresses  
 abuses committed by opposing warring factions.

- Q. That is not the point of my question. My question isn't directed to who did what, it's directed to your view of this particular accused in the light of all the reports that you have produced, the press notices you've put out, the comments you've made to the world's press and the fact that you worked for a whole year with the organisation that is seeking his conviction demonstrates, does it not, that you already concluded that he was guilty. Yes or no?
- A. What is the difference between being implicated in crimes and being guilty?
- Q. I'm not here to answer questions, I'm here to ask them. I will ask you for the last time, yes or no?
- A. I feel that Mr Taylor has a case to answer and that he is implicated in serious crimes.
- Q. Implicated means has committed, doesn't it?
- A. So you have defined it, yes.<sup>43</sup>

17. The Trial Chamber was of the view that Ms. Dufka's evidence clearly demonstrated a lack of objectivity. Therefore, the Trial Chamber finds that she is not impartial in this case. However, in the opinion of the Trial Chamber, this finding would not disqualify Ms. Dufka from testifying as an expert witness, since concerns relating to the independence and impartiality of an expert witness are matters of weight, not admissibility.<sup>44</sup>

(c) *Necessity of Expert Assistance*

18. The Trial Chamber notes the Defence submissions that the material which Ms. Dufka seeks to put before the court falls in precisely the same category of primary or factual evidence which the Prosecution proposes to call or has already adduced from factual witnesses and victims, and that the

<sup>43</sup> Transcript 22 January 2008, p. 1890.

<sup>44</sup> *Prosecutor v. Brdanin*, Case No. IT-99-36-T, Decision on Prosecution's Submission of Statement of Expert Witness Ewan Brown; *Prosecutor v. Dragomir Milosevic*, Case No. IT-98-29/1-T, Decision on Admission of Expert Report of Robert Donia, 15 February 2007, para. 9; *Prosecutor v. Ljube Boskoski et al.*, Case No. IT-04-82-T, Decision on Motion to Exclude the Prosecution's Proposed Evidence of Expert Bezruchenko and his Report, 17 May 2007, paras 8, 12; *Prosecutor v. Slobodan Milosevic*, Case No. IT-02-54-T, Decision on Admissibility of Expert Report of Kosta Cavoski, 1 March 2006, p. 2; *Prosecutor v. Pavle Strugar*, Case No. IT-01-42-PT, Decision on the Defence Motion to Oppose Admission of Prosecution Expert Reports Pursuant to Rule 94bis, 1 April 2004, p.4; *Prosecutor v. Popovic et al.*, Case No. IT-05-88-AR73.2, Decision on Joint Defence Interlocutory Appeal Concerning the Status of Richard Butler as an Expert Witness, 30 January 2008, para. 21.



~~court does not require the assistance of an expert in understanding such evidence.~~<sup>45</sup> The Trial Chamber further notes that although Ms. Dufka's purported field of expertise is "Events in Liberia and Sierra Leone leading to and during the ongoing conflict including human rights violations" her Report consists for the most part, of undigested Human Rights watch reports, some of which she co-authored, and a collection of anonymous testimonies, none of which require specialised knowledge or skill beyond the capability of the court to understand without expert assistance.

19. In this regard, the Chamber adopts the approach taken in the case of *Prosecutor v. Karemera et al.*, where Trial Chamber III of the ICTR stated that:

The Chamber acknowledges that André Guichaoua and Alison Des Forges have likely been of value and assistance to the Prosecution in the development of its theories and the selection of evidentiary material to prove them. However, the fact that this assistance was provided does not mean that the testimony of these experts is necessary for the Chamber in its analysis of this case.

The Chamber considers that an expert's testimony is intended to enlighten the Judges on specific issues of a technical nature, requiring special knowledge in a special field; however, the matters at stake in the present case are not those on which the Chamber requires expert assistance. As explained in details in the Impugned Decision, the Chamber considered that it was able to make its judgement without such assistance.<sup>46</sup>

20. In the present case, the Trial Chamber is of the view that it does not require expert opinion in order to appreciate the contents of publicly distributed human rights reports or statements made by victims or factual witnesses. Accordingly the Trial Chamber finds that the purported expert report does not qualify as expert evidence, as defined by the jurisprudence referred to above.

*(d) Evidentiary Scope*

21. The Trial Chamber disagrees with the Prosecution's submission that Ms. Dufka's findings "do not assign criminal culpability to any specific individual."<sup>47</sup> On the contrary, her evidence referred to above clearly contains an opinion on the culpability of the Accused, an area which is the exclusive province of the Trial Chamber. As stated in *Karemera*:

[T]he established jurisprudence of this Tribunal proscribes expert evidence from usurping the function of the Trial Chamber by offering opinions that are determinative of the guilt or innocence of the Accused or by adverting to the acts, conduct and mental state of the Accused.<sup>48</sup>

22. This Trial Chamber has previously held that it will "disregard any material which in our judgement goes to the ultimate issue or provides opinions on matters upon which the Trial Chamber

<sup>45</sup> Motion, paras 2, 27; Reply, para.17.

<sup>46</sup> *Prosecutor v. Karemera et al.*, Case No. ICTR-98-44-T, Decision on Prosecution Motion for Reconsideration of the Decision on Prospective Experts Guichaoua, Nowrojee and Des Forges, or for Certification, 16 November 2007, paras 13-14.

<sup>47</sup> See Response, para. 28.

<sup>48</sup> *Ibid.*, para. 21.

~~is going to have to rule, or draws any conclusions or inferences which the Trial Chamber will have to draw, or makes any judgements which the Trial Chamber will have to make".<sup>49</sup>~~

23. Accordingly, the Trial Chamber holds that any of Ms. Dufka's evidence falling within the foregoing categories is inadmissible.

(e) *Fair Trial Rights*

24. In relation to this ground, the Defence argues that if Ms. Dufka's collection of testimonies of witnesses in documentary form such as Human Rights Watch reports were allowed into evidence it would deny the Accused the opportunity of cross-examining any of those witnesses.<sup>50</sup> Indeed, Ms. Dufka's testimony and Report do contain summaries of Human Rights Watch reports and interviews which she conducted with victims and witnesses in Sierra Leone and Liberia.

25. However, the Trial Chamber has a discretion under Rule 89(C) to admit any relevant evidence. Accordingly, the Trial Chamber holds that the inability of the Defence to cross-examine such witnesses is a matter that goes to the weight of the evidence, not its admissibility.

#### IV. DISPOSITION

26. The Trial Chamber's findings on the first ground above that Ms. Dufka cannot properly be characterised as an expert witness is, of itself, enough to dispose of this Application and renders the arguments in grounds two to five of academic interest only. Accordingly, the proposed Expert Report together with its appendices<sup>51</sup> (MFI-1) and the documents tendered by the Prosecution and marked in court as MFI-2 to MFI-11 are inadmissible under Rule 94bis, as they form part of the Report either by incorporation or through reference. The Trial Chamber notes that it granted the parties leave to file written submissions on the issue of the admissibility of the proposed exhibits sought to be tendered by the Prosecution,<sup>52</sup> but that no specific submissions have been made in respect of the photographs, video clips and associated transcripts marked in court as MFI-12(A) & (B) and MFI-13(A) & (B) to MFI-15(A) & (B).

27. None the less, the Trial Chamber finds that some of Ms. Dufka's testimony, including the photographs, video clips and associated transcripts marked in court as MFI-12(A) & (B) and MFI-13(A) & (B) to MFI-15(A) & (B), does have factual content and is admissible on that basis. It follows that all opinion evidence contained in Ms. Dufka's testimony, including any opinions touching upon the ultimate issue in this case, or reaching conclusions which are within the province of the Trial Chamber, will be disregarded.

<sup>49</sup> *Prosecutor v. Brima et al.*, Case No. SCSL04-16-T, Oral Ruling on Admissibility of Report of Expert Witness TF1-301, Transcript 14 October 2005, p. 38, lines 14-29.

<sup>50</sup> Motion, para. 29.

<sup>51</sup> Appendix 1 (Corinne Dufka's CV); Appendix 2 (Human Rights Watch Publications); Appendix 3 (News Articles Wherein Liberian Government Officials Deny Human Rights Watch Accusations, Thereby Proving Their Knowledge of Human Rights Watch's Work).

<sup>52</sup> Transcript 22 January 2008, page 1945 line 20.

**FOR THE FOREGOING REASONS THE TRIAL CHAMBER:**

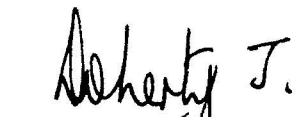
**PARTIALLY GRANTS THE MOTION** and excludes the Report in its entirety.

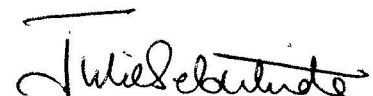
**RECLASSIFIES** Ms. Dufka as a witness of fact and admits in evidence MFI-12(A) & (B) as Prosecution Exhibits P-142(A) & (B) respectively; MFI-13(A) & (B) as Prosecution Exhibits P-143(A) & (B) respectively, MFI-14(A) & (B) as Prosecution Exhibits P-144(A) & (B) respectively, and MFI-15(A) & (B) as Prosecution Exhibits P-145(A) & (B) respectively;

**DISMISSES** the Urgent Prosecution Request for Decision as frivolous, an abuse of process, and without merit. The Trial Chamber warns Counsel for the Prosecution that similar filings in the future will attract sanctions in accordance with Rule 46.

Done at The Hague, The Netherlands, this 19<sup>th</sup> day of June 2008.

  
Justice Richard Lussick

  
Justice Teresa Doherty  
Presiding Judge

  
Justice Julia Sebutinde

[Seal of the Special Court for Sierra Leone]

